SRI LANKA: TAMIL POLITICS AND THE QUEST FOR A POLITICAL SOLUTION

Asia Report N°239 – 20 November 2012

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

TABLE OF CONTENTS

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Asia Report N°239 **20 November 2012**

SRI LANKA: TAMIL POLITICS AND THE QUEST FOR A POLITICAL SOLUTION

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Sri Lankan government's refusal to negotiate seriously with Tamil leaders or otherwise address legitimate Tamil and Muslim grievances is increasing ethnic tensions and damaging prospects for lasting peace. The administration, led by the Sri Lanka Freedom Party of Mahinda Rajapaksa, has refused to honour agreements with the Tamil National Alliance (TNA), broken promises to world leaders and not implemented constitutional provisions for minimal devolution of power to Tamil-speaking areas of the north and east. Militarisation and discriminatory economic development in Tamil and Muslim areas are breeding anger and increasing pressure on moderate Tamil leaders. Tamil political parties need to remain patient and keep to their moderate course, while reaching out more directly to Muslims, Upcountry Tamils and Sinhalese. International actors should press the government more effectively for speedy establishment of an elected provincial council and full restoration of civilian government in the north, while insisting that it commence serious negotiations with elected Tamil representatives from the north and east.

Many believed that the end of the war and elimination of the separatist Tamil Tigers (LTTE) would open space for greater political debate and moderation among Tamils, while encouraging the government to abandon the hardline Sinhalese nationalism it had cultivated to support its war efforts and agree to devolve meaningful power to the majority Tamil-speaking northern and eastern provinces. While there has been an increase in democratic and moderate voices among Tamils, the government has failed to respond in kind.

Instead, it has adopted a policy of promising negotiations and expanded devolution in discussions with India, the U.S., and the UN Secretary-General, while denying these same things when addressing its Sinhala voting base. It has refused to negotiate seriously with TNA representatives, repeatedly failing to honour promises and ultimately breaking off talks in January 2012. Since then it has demanded that the TNA join the government's preferred vehicle, a parliamentary select committee (PSC), a process clearly designed to dilute responsibility and buy time. Three-and-a-half years after the end of the war, President Rajapaksa continues to delay the long-promised election to the northern provincial council – elections the TNA would be nearly certain to win. Despite repeated public promises, the president has refused to grant even the limited powers ostensibly given to provincial councils under the constitution's thirteenth amendment. Instead, he and other senior officials have begun to discuss the amendment's possible repeal or replacement by even weaker forms of devolution.

Even as the government refuses to respond to longstanding demands for power sharing, Tamil political power and identity are under sustained assault in the north and east. While Tamil leaders and nationalist intellectuals base their demands for political autonomy on the idea that these regions are the traditional areas of Tamil habitation, government figures, including the president's powerful brother and defence secretary, Gotabaya Rajapaksa, follow a long line of Sinhala nationalist thinking and explicitly reject that the north has any privileged Tamil character. Military and economic policies have been institutionalising this ideological position with vigour.

The de facto military occupation of the northern province and biased economic development policies appear designed to undermine Tamils' ability to claim the north and east as their homeland. For many Tamils, this confirms their long-held belief that it was only the LTTE's guns that placed their concerns and need for power sharing on the political agenda. In the face of the government's resistance to a fair and negotiated settlement, TNA leaders have come under increasing pressure from their constituencies to adopt more confrontational language and tactics. Growing demands for the right to self-determination for the Tamil nation and hints that separatist goals have not been permanently abandoned have, in turn, provoked harsh reactions and expressions of distrust from Sinhala leaders.

The situation is likely to remain difficult, with major negotiating breakthroughs unlikely in the near term. Nonetheless, the international community – especially India and the U.S. – should increase pressure on President Raja-

paksa to significantly reduce the numbers and influence of the military in the north and hold credible northern provincial council elections in advance of the March 2013 meeting of the UN Human Rights Council. The president should also be pressed to agree to the TNA's reasonable terms for joining the PSC and begin implementing the thirteenth amendment meaningfully. Effective and lasting power sharing will almost certainly require forms of devolution that go beyond the current unitary definition of the state. Yet if skilfully handled, the current political conjuncture, both domestic and international, holds out possibilities to convince the government to concede greater space and ratchet back some of the worst abuses.

For the TNA to improve Tamils' chances of receiving a fair deal from the state and, ultimately, some significant degree of power sharing, it will need to articulate grievances and the value of devolved powers more clearly and in ways that larger numbers of the other main communities – in particular Sinhalese and Muslims – can understand and accept as reasonable. In particular, the demand for autonomy needs to be framed in ways that can reassure at least some large minority of Sinhalese that the threat of secession is no longer there. It is also important for Tamil political leaders of all parties to begin mending relations with Muslims, so badly damaged by LTTE killings and the expulsion of all Muslims from the northern province in 1990. The TNA should insist that Muslim representatives be given a central role in negotiations on expanded devolution of power.

Finally, the Tamil leadership needs to find both practical and rhetorical ways of building links between its struggle for rights and power sharing and the growing unease among Sinhalese at the corruption and abuse of power characteristic of the Rajapaksa government. The Tamil struggle for rights and freedom is likely to succeed only when the broader national struggle for the restoration of democracy and the rule of law, including the depoliticisation of the judiciary and the police, has made substantial progress. Joining together efforts to solve the two different forms of the "national question" should become an imperative part of the struggle for Tamil rights.

RECOMMENDATIONS

To the Tamil National Alliance (TNA):

1. Maintain commitment to bilateral negotiations with the government to achieve substantial autonomy for the north and east within a united Sri Lanka; work to strengthen ties with other communities and broaden its reform agenda, by:
    a) acknowledging LTTE crimes, particularly the expulsion of northern Muslims, apologising for not speaking out then, and setting up truth and reconciliation committees with Muslim and Sinhalese representatives;
    b) speaking clearly to Sinhalese about the nature of Tamil grievances, why these require devolution – but not independence – and how the TNA would use devolved powers;
    c) cooperating with the Sri Lanka Muslim Congress and other Muslim organisations to resolve land and resource conflicts in the north and east and on constitutional negotiations and devolution;
    d) reaching out to Upcountry Tamil organisations to work jointly on shared concerns, particularly with regard to language discrimination and other problems facing Tamils outside the north and east; and
    e) building alliances with non-Tamil parties and organisations, including those in the Sinhala community that share concerns about corruption and abuse of power, for governance reforms outside the north and east, including implementation of core Lessons Learnt and Reconciliation Commission recommendations.
2. Prioritise developing the capacity of local TNA politicians and building a stronger community-level party organisation, better able to address local needs in the north and east, particularly on land and livelihood issues.

To Tamil Civil Society Organisations and Leaders:

3. Acknowledge Muslim and Sinhalese suffering from the war and LTTE actions; welcome and facilitate Muslim returns to the north by cooperating to resolve land and resource disputes; and establish or revive inter-ethnic peace committees able to counter politicians and vested interests who seek to divide and control communities.

To Organisations in the Tamil Diaspora and in Tamil Nadu:

4. Support the TNA strategy for a negotiated power-sharing agreement within a united Sri Lanka, including by sharing professional skills needed to strengthen the TNA's organisational capacity.
5. Acknowledge the LTTE's role in deepening ethnic tensions and its shared responsibility for the suffering and massive loss of Tamil life in the final stages of the conflict and support inclusion of the LTTE's actions in any independent international investigation into possible war crimes or crimes against humanity.

To the Government of Sri Lanka:

6. Recommit publicly, before domestic and international audiences, to a political solution based on maximum devolution within a united Sri Lanka with significant autonomy for the north and east, including by:
   a) restarting bilateral negotiations with the Tamil National Alliance (TNA) immediately, with the aim of reaching a basic consensus to take to the Parliamentary Select Committee (PSC) for consideration;
   b) agreeing that the PSC will be a time-bound process, with a formal agenda building upon discussions with the TNA; PSC deliberations will not delay elections to the northern provincial council; and its outcomes are to pave the way for further devolution or other forms of power sharing;
   c) holding free and fair elections for the Northern Provincial Council by early 2013;
   d) implementing the thirteenth amendment so as to maximise powers granted to all provinces, beginning by appointing civilian governors in the north and east with the confidence of their councils; introducing legislation to reduce governors' powers; giving the northern and eastern councils adequate financial resources and new powers to raise revenue; and consulting meaningfully with them on development projects; and
   e) withdrawing the Divineguma bill and instead decentralising decision-making on economic development to give local government significant input into and control over resources and projects.
7. Begin rapid demilitarisation and return to civilian administration in the north and east by reducing significantly the numbers and public presence of troops, removing troops from all influence over development and humanitarian work and other civilian activities, and placing the police fully in charge of law enforcement.
8. Acknowledge and take concrete steps to respect the traditionally Tamil and Tamil-speaking character of the northern province and much of the eastern province, including by:
   a) promising publicly that there will be no state-sponsored demographic change leading to the Sinhalisation of traditionally Tamil and Muslim areas in the north and east;
   b) protecting land rights, ensuring transparent processes for land policies and transactions, returning real property seized by the military and offering compensation when private land is used or taken; and
   c) protecting the cultural and religious rights of Tamils, both Hindu and Christian, as well as Muslims, including by ending the military-supported construction of Buddhist statues and temples in the north and preventing and punishing damage to or destruction of holy sites.
9. Revise immediately policies that are exacerbating grievances of Tamils in the north and east, including by:
   a) giving family members the names and locations of all individuals detained by any government agency for suspected LTTE involvement; allowing open mourning of the dead; and assisting recovery of remains;
   b) acknowledging credible evidence of extensive enforced disappearances of Tamils in the final stages of the war and initiating an independent investigation;
   c) allow the Sri Lankan national anthem to be sung in Tamil at public events in Tamil-speaking areas and in both Sinhala and Tamil at national events;
   d) ending harassment of Tamil political activists and allowing all citizens in the north and east to freely protest and criticise the government and military without risk of violence or disappearance; and
   e) reducing restrictions on and harassment of humanitarian workers and community groups, allowing them to determine priorities, with input from local communities, and increase assistance, including in housing, livelihoods, and gender-based violence and psycho-social programming.
10. Act immediately on other longstanding and legitimate grievances of Tamils throughout the island by:
   a) guaranteeing their physical security and respecting their basic human rights; disarming illegal armed groups; ending abduction, disappearance and arbitrary detention as means of political control and ceasing harassment of Tamil women by military personnel; ensuring credible, independent investigations of past abuses; and establishing local and regional control and accountability mechanisms for all security forces;
   b) guaranteeing the right to use their language, especially when doing business with state officials; and
   c) ending all forms of discrimination, including with regard to government assistance, state jobs, courts and the police, and by increasing the percentage of Tamil-speakers in the security and public services.
11. Expedite implementation of the core recommendations of the Lessons Learnt and Reconciliation Commission, in particular reversing consolidation of power in the presidency and military by repealing the eight-

eenth amendment to the constitution and restoring constitutional limits on presidential power over the attorney general and judiciary; reestablishing independent commissions on human rights, police, elections, bribery, finance and public service; removing the police from the defence ministry; and ceasing intimidation of the judiciary, beginning with the withdrawal of impeachment proceedings against the Supreme Court chief justice.

12. Cooperate fully with UN and other international agencies, including in implementing the March 2012 Human Rights Council resolution; invite all relevant special procedure mandate holders to visit before the March 2013 session.

To the Sri Lankan Muslim Congress, other Muslim Parties and the United National Party:

13. Reaffirm support for devolution of power, beginning with rapid, expansive implementation of the thirteenth amendment, followed by reforms designed to increase, not reduce, effective devolution of power.

To Sri Lanka's International Partners, including China, India, Japan, the U.S., UK, EU, UN, Australia, and the International Financial Institutions:

14. Press the government for quick, irreversible, and genuine action to address Tamil grievances and pave the way for a lasting political solution, including most urgently:

    a) public recommitment by the president to implement the thirteenth amendment fully, followed by immediate return to bilateral talks with the TNA, prior to activation of the PSC;

    b) elections to the northern provincial council by early 2013, accompanied by demilitarisation of the north, its full return to civilian administration and a range of other policy changes to foster reconciliation;

    c) allowing all UN special procedure mandate holders who desire to visit Sri Lanka to do so in time to report to the March 2013 Human Rights Council session; and

    d) fulfilment of the March 2012 Human Rights Council resolution, including rapid implementation of the core Lessons Learnt and Reconciliation Commission recommendations to establish independent bodies to hold presidential and military power to account and credible, independent investigations of alleged war crimes.

15. Ensure that development aid does not further consolidate an undemocratic, ultimately volatile political regime in the north and east; insist on transparency, external monitoring and non-discriminatory community participation in setting its priorities; and condition all loans and development aid, including from the World Bank, Asian Development Bank and International Monetary Fund, on demilitarisation and democratisation of the north and east.

To the Secretariat and Member States of the Commonwealth:

16. Insist that the Sri Lankan government take the actions listed in recommendation 14 above, and agree that in the event it fails to do so, the October 2013 Commonwealth heads of government meeting will be moved from Colombo to an alternative location.

Brussels/Colombo, 20 November 2012

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Asia Report N°239 **20 November 2012**

SRI LANKA: TAMIL POLITICS AND THE QUEST FOR A POLITICAL SOLUTION

I. INTRODUCTION

Despite the end of Sri Lanka's civil war three-and-a-half years ago, one of the fundamental problems that led to the violence – the state's failure to protect the rights and guarantee the equal status of Tamils – remains.[1] The government has done nothing to address the denial of rights and political marginalisation that gave rise to demands for political autonomy and ultimately for a separate state of Tamil Eelam. Instead, government policies, particularly in the Tamil-majority northern province and Tamil-speaking-majority east, are generating new grievances and new anger.

This report examines developments and debates in Tamil politics in post-war Sri Lanka. It analyses the challenges faced by Tamil political parties – both moderate and more strongly Tamil nationalist – searching for a lasting political solution and a new, more equitable constitutional framework. It looks in particular at the constraints imposed by the strongly Sinhala nationalist government of President Mahinda Rajapaksa and its resistance to negotiating seriously with Tamil parties and to presenting its own proposals for constitutional changes.

The paper analyses debates over the future of the thirteenth amendment to the constitution that remains the only successful attempt to reform the constitution and reshape the state to address Tamil grievances. Established through Indian pressure and resisted violently by both Sinhalese and Tamil nationalists, the amendment has never been fully implemented by any government, especially in the north and east. The question of whether and how to implement it, go beyond it or do away with it, is at the centre of political debate over what is often referred to as Sri Lanka's "national question".

Based on interviews with politicians, lawyers, legal scholars, and rights activists, the report is not a detailed argument on the merits of devolution or an analysis of particular power-sharing proposals. It focuses instead on the political context in which debates over devolution and constitutional negotiations play out and the positions of the key political actors. It looks closely at the approach of the largest Tamil political group, the Tamil National Alliance (TNA), and its fraught engagement with the government; examines the positions of the TNA's Tamil critics and the challenges in formulating a principled, yet realistic strategy for the community when faced with a government opposed to any power sharing; and analyses the role of the Sinhalese and Muslim communities and the need for the TNA and other Tamil actors to engage in creative and principled ways with both groups, as well as with Sri Lanka's other Tamil-speaking community, Upcountry Tamils. Finally, it considers what can be done by various parties, including those in the international community, to reverse the negative trends and begin progress toward a lasting settlement.

[1] Previous Crisis Group reporting addresses many issues central to Sri Lankan Tamil politics, in particular Asia Reports N°219, *Sri Lanka's North I: The Denial of Minority Rights*, 16 March 2012; N°220, *Sri Lanka's North II: Rebuilding under the Military*, 16 March 2012; N°217, *Sri Lanka: Women's Insecurity in the North and East*, 20 December 2011; N°209, *Reconciliation in Sri Lanka: Harder than Ever*, 21 July 2011; N°206, *India and Sri Lanka after the LTTE*, 23 June 2011; N°191, *War Crimes in Sri Lanka*, 17 May 2010; N°159, *Sri Lanka's Eastern Province: Land, Development, Conflict*, 15 October 2008; N°141, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, 7 November 2007; N°134, *Sri Lanka's Muslims: Caught in the Crossfire*, 29 May 2007; and N°124, *Sri Lanka: The Failure of the Peace Process*, 28 November 2006.

II. TAMIL GRIEVANCES AND THE FAILURE OF POLITICAL RESPONSES

Tamil politics in post-independence Sri Lanka have developed in response to – and largely been defined by – a sense of individual and collective vulnerability to a state that has, over the course of many governments, aggressively asserted the rights of the Sinhala majority.[2] The repeated failure of Tamil political parties to win positive changes in state practices weakened their legitimacy and paved the way to separatism and militancy, culminating in nearly three decades of civil war between the government and LTTE. With the end of the war and the LTTE in 2009, Tamil nationalism is battered, but the ideas underpinning the initial calls for separatism still resonate with many and shape the political response to grievances.

A. CONTINUING GRIEVANCES

The following grievances have been at the heart of Tamil politics and the Tamil struggle for rights since the mid-1950s.[3] While the particular forms they take have changed over time, they remain at the centre of Sri Lanka's unresolved "national question".

Language: The "Sinhala Only" act of 1956, which made Sinhala the sole official language for state business, had a devastating effect on the many Tamil civil servants who did not speak it and closed down opportunities for state employment for many others. It also sent a strong message to Tamils that they were less than equal citizens. Since 1987, Tamil has been an official language, and there are legal guarantees that Tamil-speakers can access state services and conduct government business in that tongue. In practice, however, Tamil-speakers often suffer language discrimination throughout the country.

Land: Government irrigation and development projects in the eastern province from the late 1940s onwards saw the arrival of tens of thousands of Sinhala peasants. Despite objections from Tamil politicians, state-sponsored colonisation projects continued into the 1980s and ultimately contributed to a major shift in the population of the east: Sinhalese grew from being 5 per cent of the province in 1921 to 25 per cent in 1981.[4] There is evidence that a similar strategy may be underway in the north.[5]

Identity and culture: Buddhism, the religion of most Sinhalese and almost no Tamils, was given special status in the 1972 and 1978 constitutions, despite objections from Tamil parties.[6] State history textbooks, archaeological projects and public imagery define and celebrate Sri Lanka as an essentially Sinhala and Buddhist country. While scores of Buddha statues have been built with military assistance in the post-war north, numerous Tamil Hindu religious sites have been destroyed or effectively closed.[7]

Centralisation of power: A strongly centralised state has made it virtually impossible for Tamils to have meaningful control over land or economic policies in the areas where they are traditionally the majority – the north and east. Agreements in 1957 and 1965 with Tamil leaders to grant limited autonomy to the Tamil-speaking north and east were abrogated after opposition from nationalist Sinhalese.[8] The centralisation of power grew even greater under the 1972 and 1978 constitutions, both of which defined Sri Lanka as a unitary state. Neither constitution was developed with any meaningful involvement of Tamil parties.

Physical insecurity: Beginning with the 1956 mob attack on their leaders conducting a peaceful protest outside parliament, Tamils suffered increasingly violent attacks that had varying degrees of government support. Serious anti-Tamil mob violence later that year and again in 1958, 1977, 1979 and 1981 culminated in the state-sanctioned pogrom

[2] The main Tamil-speaking community, Sri Lankan Tamils, are 11.2 per cent of the population; 70 per cent of them live in the northern and eastern provinces. Upcountry Tamils, also known as Indian Origin Tamils, live mostly in the central hills and are 4.2 per cent of the population. Of the combined Sri Lankan Tamil and Upcountry Tamil populations, just under 50 per cent live outside the north and east. Most Sri Lankan Muslims (9.2 percent of the population) speak Tamil; those in the north and east have long, if fraught, connections with Tamils. Almost 22 per cent of Colombo district is Tamil-speaking. "Population by ethnic group according to districts, 2012", Sri Lanka Department of Census and Statistics, at www.statistics.gov.lk/PopHouSat/CPH2011/index.php?fileName=pop42&gp=Activities&tpl=3.

[3] Tamil-speaking Muslims and Upcountry Tamils suffer from many of these problems, as well as distinct grievances of their own.

[4] For an analysis of colonisation and the political debates it produced, see Crisis Group Report, *Sri Lanka's Eastern Province*, op. cit., pp. 4-6. In 1982, Trincomalee district was 40 per cent Sinhalese and Ampara 38 per cent. For full provincial and district ethnic ratios in the east, see ibid.

[5] See Crisis Group Asia Report, *Sri Lanka's North I*, op. cit., pp. 20-27.

[6] Chapter two of the constitution states that "the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana".

[7] See Crisis Group Report, *Sri Lanka's North I*, op. cit., p. 18.

[8] For more on the1957 Bandaranaiake-Chelvanayakam pact and the 1965 Dudley Senanayake-Chelvanayakam pact, see Appendix B. The failure of both SLFP- and UNP-led governments, under pressure from Sinhala nationalist groups, to honour even modest compromise deals made with the Tamil Federal Party (FP), was a major factor behind increased Tamil support for a separate state.

of July 1983, when as many as 2,000 Tamils were killed and tens of thousands were displaced – some fleeing to the northern province, others overseas. State counter-insurgency policies and anti-terrorism laws directed at Tamil militant groups that emerged in the late 1970s and early 1980s produced ever greater suffering for Tamil civilians, culminating in the tens of thousands killed in the final months of war.[9]

Economic discrimination: Tamils' chances at education and state employment were badly affected from the 1950s into the 1970s by state policies, including for university admissions (later rescinded) that harmed many young Tamils in Jaffna.[10] The chronic economic underdevelopment of Tamil-majority areas has also been a major source of discontent.

Lack of redress: Thanks to the majoritarian nature of Sri Lanka's democracy,[11] through which Tamil concerns have been consistently marginalised, ethnically biased state institutions and an increasingly politicised court system, there has been little or no redress for or legal protection against the range of injustices faced by Tamils.[12]

Tamil militancy, starting in the 1970s with Indian government training,[13] brought with it new problems for Tamils in the form of the government's brutal counter-insurgency tactics, as well as intra-community violence, including the LTTE's murder of many moderate Tamil politicians.[14] Militancy also deepened the already growing split with the smaller number of Tamil-speaking Muslims, who increasingly saw themselves as a separate community.

B. NATION, HOMELAND, SEPARATISM

The Tamil nationalist position became more extreme in line with the rise in militancy. While federalism, with autonomy for the north and east, had long been the central political aim of its politics,[15] the 1976 Vaddukoddai resolution, passed by the Tamil United Liberation Front (TULF), which was overwhelming endorsed by Tamil voters in 1977, confirmed mainstream support for an independent state of Tamil Eelam.[16] Many of TULF politicians considered the pro-independence stance an opening gambit for negotiations, but younger, increasingly militant Tamils were true believers and rejected any attempts to backtrack.[17]

The essence of the nationalist position was rearticulated in the 1985 "Thimpu principles".[18] These demanded that the state recognise four claims: that the Tamils are a distinct nationality; that they have an identifiable homeland whose territorial integrity must be guaranteed; that the Tamil nation has the inalienable right of self-determination; and that all Tamils throughout the island have the right to full citizenship and other fundamental democratic rights.[19]

[9] See Crisis Group Report, *War Crimes in Sri Lanka*, op. cit.
[10] K.M. de Silva, *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (New Delhi, 1998), pp. 131-135, 166-173.
[11] Sri Lanka has since independence been less a democracy than an "ethnocracy", where the state is used systematically to ensure the dominance of one community. Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia, 2006).
[12] See Crisis Group Asia Report N°172, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, 30 June 2009.
[13] For more on India's role in the growth of Tamil militancy, see Crisis Group Report, *India and Sri Lanka*, op. cit.
[14] Militancy made some problems harder to blame just on Sinhala-dominated governments: economic and infrastructural underdevelopment of north and east, detentions and round-ups of Tamils and other human rights abuses, the decreasing percentage of Tamil civil servants and police; all were in part an effect of the war and a response, often misguided, to LTTE terrorist tactics.
[15] Devanesan Nesiah, "Tamil Nationalism", Marga Institute, Colombo, 2001, pp. 13, 16. According to Nesiah and other scholars, support for federalism grew after the Sinhala Only act of 1956, and the few Tamil politicians who supported separatism before 1976 were routinely defeated in elections.
[16] The TULF was composed of the then dominant Federal Party, the smaller All-Ceylon Tamil Congress and the Ceylon Workers Congress, representing Tamils in the central plantation areas. It was first formed as the Tamil United Front (TUF) in 1972, but changed its name in 1977 to reflect its new, separatist platform. The Vaddukoddai resolution concluded with a call for "the Tamil Nation in general and the Tamil youth in particular to come forward to throw themselves fully into the sacred fight for freedom and to flinch not till the goal of a sovereign state of Tamil Eelam is reached". For the text, see Edrisinha, et al., *Power-Sharing in Sri Lanka: Constitutional and Political Documents 1926-2008* (Colombo, 2008).
[17] Nesiah, "Tamil Nationalism", op. cit., p. 17. Many scholars see the Vadukkodai resolution as forced on mainstream parties by young militants over whom the older politicians lost control, and by whom some were ultimately killed. The separatist claim provoked fury among many Sinhalese; anti-Tamil violence grew more regular and vicious, with riots in 1977, 1979, 1981 and 1983.
[18] They were formulated jointly by the TULF and the five main Tamil militant groups of the time, including the LTTE, at Indian-sponsored peace talks with the government in Bhutan. While the Thimpu principles have generally been seen as supporting a separate state, there have been various attempts to rework them to make them consistent with devolution in a united Sri Lanka. See, for instance, Rohan Edrisinha, "Meeting Tamil Aspirations within a United Sri Lanka: Constitutional Options", in Rohan Edrisinha and Asanga Welikala, *Essays on Federalism in Sri Lanka* (Colombo, 2008).
[19] A.J. Wilson, *Sri Lankan Tamil Nationalism* (Vancouver, 2000), pp. 144-145.

The claim of a Tamil homeland is rooted in the existence of the medieval Tamil-speaking Jaffna kingdom.[20] While such a kingdom did exist for hundreds of years, there is no evidence that it controlled much territory in the east, as nationalists claim.[21] The ambitious version of a "Tamil homeland" that covers the entire northern and eastern provinces in fact includes many areas with a long and complex history of shifting and ethnically mixed settlement and political control.[22] It includes territory inhabited for centuries by Tamil-speaking Muslims, who constitute half the Tamil-speaking people in the east and roughly ten per cent in the north. Most Muslims would reject inclusion in such a homeland. The usefulness of the homeland idea to ground a meaningful claim to self-determination is further weakened by the fact that as many as half of Sri Lanka's Tamils live outside the territory claimed in their name.[23]

None of this challenges the incontestable fact that Tamils form one of the constituent peoples of Sri Lanka, nor that Tamil-speaking communities have lived in the north, and much of the east, for at least two millennia and been a clear majority there for centuries. Even without the classic version of the homeland claim, there are still strong arguments for significant political autonomy for the north and east: as a safe refuge;[24] a place where Tamils and Muslims can control lands their communities have lived on for centuries and where various forms of Tamil and Muslim identity and culture can flourish more easily; and where Tamils can be something other than a perpetually outvoted minority.

C. The Thirteenth Amendment and After

Despite attempts and promises to address demands for territorial autonomy in the historically Tamil-speaking north and east, the thirteenth amendment to the constitution, passed in 1987 under intense Indian pressure,[25] is the first and only constitutional or administrative arrangement that attempts to devolve power. Adopted pursuant to the July 1987 Indo-Lanka Accord, it established provincial councils through which Tamils were to be granted limited powers of self-rule in a merged north-eastern province.[26] But there are major limitations to its approach, and it has had little effect.

While the Indo-Lanka Accord gave ambiguous, watered-down recognition to the idea that the north and east constituted the Tamil homeland,[27] the provincial council system was made to fit within the strongly centralised unitary state. As a result, the system offers only the most fragile delegation of powers, with multiple avenues by which the president and parliament can take back these powers and obstruct the provincial councils.[28] No councils – even in

[20] It continues to be invoked today, as in the speech by TNA leader Sampanthan to the Illankai Tamil Arasu Kadchi (ITAK) convention in May 2012 which argues that "up to 500 years ago … our people had their own sovereign Tamil governments".

[21] For academic critiques of Tamil homeland claims, particularly relating to the eastern province, see *Reaping the Whirlwind*, op. cit., pp. 207-213, and G.H. Peiris, "An Appraisal of the Concept of a Traditional Tamil Homeland in Sri Lanka", *Ethnic Studies Report*, vol. IX, no. 1 (January 1991).

[22] Tamil Eelam, as defined by the LTTE, also included the Puttalam district, on the west coast, and covered some two thirds of the coastline, a source of outrage among many Sinhalese. The LTTE's "ethnic cleansing" of Muslims and regular attacks on Sinhalese living in "border villages" in the east and north-central provinces show how they thought of pluralism in Tamil Eelam.

[23] According to government census figures released in 2012, 30 per cent of Tamils live outside the north and east. If Upcountry Tamils are included, 49 per cent do so. "Population by ethnic group", op. cit. For earlier analysis, see Crisis Group Report, *Sri Lanka: Sinhala Nationalism*, op. cit., p. 16.

[24] Tamil scholar A.J. Wilson argues that "the vision of a Tamil homeland dawned for the first time" in 1958, in reaction to the first major violence by Sinhalese against Tamils. *Sri Lankan Tamil Nationalism*, op. cit., p. 89. The idea of the Tamil homeland as a refuge for a people vulnerable to violence was given unofficial state approval when the government chartered ships in 1983 to send Tamils from Colombo to areas in the north and east. Homeland as a practical refuge, however, is in principle distinct from a homeland defined as the area of historical habitation of a distinct nationality deserving of collective self-rule.

[25] Pressure included food airdrops to Tamils in Jaffna, where the LTTE was under siege by the Sri Lankan military. For more on India's involvement in Sri Lanka's ethnic crisis in the mid- and late-1980s, see Crisis Group Report, *India and Sri Lanka*, op. cit.

[26] The Indo-Lanka Agreement to Establish Peace and Normalcy in Sri Lanka", was signed by Sri Lankan President J.R. Jayawardene and Indian Prime Minister Rajiv Gandhi in Colombo on 29 July 1987. The accord also made Tamil an official language. The decision to establish councils in all provinces, not just in the north and east from which the demand for devolution had come, was designed to weaken Sinhalese resistance and dampen the sense that the amendment was granting territorial and ethnically-based autonomy and was the first step towards a separate Tamil state. Provincial councils have functioned everywhere but the north and east since 1988, but with little power, few resources and no great effect.

[27] Clause 1.4 of the accord "recognis[ed] that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups".

[28] The amendment establishes three sets of powers – solely for provincial councils; reserved for the central government; and a "concurrent" list on which both parliament and councils can legislate. In practice, provincial councils have never been able to pass statutes on issues in the concurrent list and have lost control even over many of the powers formally on the provincial list. For a more detailed analysis of the limited nature of

majority Sinhalese areas – have ever been allowed to exercise the formally granted police and land authorities. Without effective taxation powers, councils have been made to rely on the limited and politically motivated generosity of the central government.

The initial north-eastern provincial council was rejected outright by the LTTE and dissolved by parliament in 1990 in response to attempts by LTTE rivals to convert it into a constitution-drafting assembly for the "Eelam Democratic Republic".[29] With no functioning council from 1990 to 2008, the merged province was administered directly by the president through an appointed governor. A provincial council was established in the eastern province in 2008 after the LTTE had been pushed out and the province had been "demerged" from the north via an October 2006 Supreme Court judgment.[30]

While doing little to address Tamil demands, the thirteenth amendment nonetheless engendered violent opposition from many Sinhalese. It split the ruling United National Party (UNP) and bolstered the Sinhalese nationalist Sri Lanka Freedom Party (SLFP). Opponents denounced the creation of the north-east provincial council as a stepping-stone toward a separate Tamil state in the merged region. India's role in imposing the change was particularly controversial and a major factor that fuelled the second violent uprising of the Sinhala nationalist and leftist Janatha Vimukthi Peramuna (People's Liberation Front, JVP), which led to the deaths of tens of thousands of Sinhalese between 1988 and 1990.[31]

Over the next two decades, there was a consensus among policymakers, including all but the most nationalist Sinhalese, that more substantial power sharing would be needed to satisfy Tamil aspirations. Even if the LTTE was unlikely to agree to anything short of a separate state, the hope among many devolution-supporters was that a political package granting adequate powers to the north and east and offering other protections for minority rights would help win enough Tamil support to weaken the LTTE or convince it to accept a solution within a reformed Sri Lanka. Several attempts were made between 1991 and 2006, but all faltered.[32]

The political context, and with it the chances for meaningful devolution, changed substantially with Mahinda Rajapaksa's election as president in November 2005.[33] He came to power on an anti-LTTE platform extremely critical of the UNP-sponsored peace process and promising to defend what he saw as Sri Lanka's threatened sovereignty and territorial integrity. Even as the government was on the brink of returning to war in July 2006, he initiated the All-Party Representative Committee (APRC), for "formulating a political and constitutional framework for the resolution of the national question" through "maximum devolution" within a united Sri Lanka. It produced far-reaching, imaginative proposals over the next three years, but the president provided no process for acting on them.[34]

D. LOWERING THE BAR

The decades of devolution and power-sharing initiatives, including the APRC, can only be understood in the context of, and to a significant degree as a response to, the LTTE's military pressure.[35] Now that this is gone, it appears that the Rajapaksas, and much of the Sinhalese political class, see no real need for a political solution.[36] After

devolution under the thirteenth amendment, see Section IV.A and Appendix C.

[29] Chief Minister and EPRLF leader A. Varatharajaperamul fled Sri Lanka and has been living in exile in India ever since.

[30] For details on the Supreme Court's controversial judgment demerging the north and east, see Asanga Welikala, "Devolution within the Unitary State: A Constitutional Assessment of the Thirteenth Amendment with reference to the experience in the Eastern Province", in "Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010", Centre for Policy Alternatives, August 2010, pp. 20-22. The two provinces were formally separated in January 2007. The north remains without a functioning council and is ruled by a governor appointed by the president.

[31] For details on the JVP's two insurrections, see Crisis Group Report, *Sri Lanka: Sinhala Nationalism*, op. cit., pp. 10-11.

[32] See Appendix B.

[33] Rajapaksa defeated UNP candidate, Ranil Wickremasinghe, by just 180,000 votes and would have lost had the LTTE not enforced a boycott on Tamil voters in areas it controlled in the north and east. Allegations, never proved, emerged after the election that the boycott was in part the result of a deal with Rajapaksa including a large monetary payment to the LTTE. See "Opposition leader calls for arrest of president's brother, chief of staff, and treasury secretary", U.S. embassy Colombo cable, 14 June 2007, as made public by WikiLeaks. President Rajapaksa has long denied those allegations. "President outlines peace strategy", interview with Inderjit Badwar, priu.gov.lk, 20 September 2007.

[34] "Sri Lanka President stresses peace through talks and a 'home grown' solution for the ethnic crisis", *ColomboPage*, 11 July 2006. For an analysis of the difficulties facing the APRC process during its first year, see Crisis Group Report, *Sri Lanka: Sinhala Nationalism*, op. cit., pp. 23-27. For further details on the APRC process, see Appendix B.

[35] The current predicament is in part an effect of India and the U.S. helping the defeat of the LTTE without demanding guarantees or tangible movement toward a political solution and instead accepting the president's promises that he would offer Tamils something once the LTTE was gone.

[36] In the words of Defence Secretary Gotabaya Rajapaksa, "the existing constitution is more than enough for us to live together. I don't think there is any issue on this more than that …. I mean now the LTTE is gone, I don't think there is any requirement …. Devolution wise, I think we have done enough, I don't

seven years of Rajapaksa rule, the bar for an acceptable constitutional settlement has been lowered radically.[37] The debate is no longer focused on whether and how to go beyond the unitary state and assure that meaningful power is shared across regions and ethnic communities. Instead, 25 years after the Indo-Lanka accord, the struggle is to convince the government to implement even the minimalist and tenuous delegation of powers in the thirteenth amendment.

With no powers over police or state land granted to provinces, other authorities undermined more subtly, and the northern and eastern provinces "demerged" since early 2007, the president's repeated promises to fully implement the thirteenth amendment remain unfulfilled. International pressure can produce occasional statements promising to "go beyond" or "build on" the amendment, but for now the constitutional regime is "thirteenth minus" rather than "thirteenth plus". With the regime showing no interest in serious negotiations or any power sharing, the post-war challenge Tamil parties face is severe.

III. POST-WAR TAMIL POLITICS UNDER TNA LEADERSHIP

With the military defeat of the LTTE, the widely accepted political representative of the Tamil people in the north and east is again a democratically elected coalition of parties, the TNA. Its daunting challenge is to pick up the shattered pieces of the liberation struggle and build an effective democratic political organisation in the face of a powerful and hostile government with a proven ability to destroy opposition parties.[38]

A. RESURRECTING THE DEMOCRATIC TRADITION IN TAMIL POLITICS

1. The TNA

One of the most damaging aspects of the LTTE's violent struggle was its sustained attack on democratic Tamil political parties. For the Tigers, the military struggle trumped politics, and politicians who did not unquestioningly accept their leadership and the goal of Eelam were denounced as traitors and often killed.[39] This did major damage to the basic fabric of Tamil civil society and its traditions of political organisation.

The TNA, founded in 2001 with the LTTE's encouragement, was the ambiguous product of the Tigers' anti-politics: a political formation with no real autonomy and no right to dissent, but used by the LTTE to claim popular support. It was built from parties with quite different histories and relationships to the LTTE and the armed struggle. Some member parties – Tamil Eelam Liberation Organisation (TELO) and Eelam People's Revolutionary Liberation Front (EPRLF) – were ex-militant groups, former LTTE rivals but not opposed to violence. The TULF and the All Ceylon Tamil Congress (ACTC), on the other hand, were longstanding democratic parties; TULF members in particular were often uncomfortable with LTTE tactics and control. Some TNA politicians were genuinely supportive of the LTTE; others followed it under duress.[40]

think there is a necessity to go beyond that". "Gotabaya hits out", *Daily Mirror*, 8 August 2011.

[37] The lowering of the bar began most clearly with the Indian government's January 2008 statement recognising the APRC's "interim" proposal for implementing the thirteenth amendment as "a welcome first step". "In response to a question on the recommendations of the All Party Representatives Committee in Sri Lanka", external affairs ministry, 24 January 2008. The implicit endorsement of the minimal plan helped undercut any chance that the APRC might produce something that went beyond existing minimalist devolution. See P. Saravanamuttu, "APRC: The Year of the Rat has begun", Groundviews.org, 30 January 2008.

[38] With the sole exception of the TNA, the Rajapaksa government has encouraged and exploited damaging splits in the two major opposition parties – the UNP and JVP – and in two ethnic minority parties, the Sri Lanka Muslim Congress (SLMC) and the Tamil Makkal Viduthalai Pulikal (TMVP).

[39] Among the scores of Tamil politicians killed by the LTTE were Tamil United Liberation Front (TULF) leader A. Amirthalingam, in 1989, and TULF parliamentarian and constitutional scholar Neelan Tiruchelvam, in 1999.

[40] TNA politicians during LTTE rule over the north and east faced a deadly dilemma: their lives at risk from the LTTE if they failed to follow its dictates and from the government if

Many have criticised the TNA for doing the LTTE's bidding and publicly recognising it as the Tamil people's sole representative.[41] In the 2005 presidential election, the LTTE enforced a Tamil boycott. Many Sinhalese remain deeply suspicious of the TNA; to ensure its democratic commitments, it will need to reject the Tigers' legacy more clearly than it has, however hard this will be with many of its voters.[42]

With the defeat of the LTTE, many, including some TNA leaders, had hope of new space for democratic political debate and organisation and greater openness to compromise.[43] To some extent this has come true. Despite immense pressure from the government, including physical attacks on candidates and other obstruction, the TNA has won all three elections it has contested: the April 2010 parliamentary elections, the local authorities elections held throughout 2011 and the September 2012 eastern provincial elections.[44] Led by R. Sampanthan, head of its largest party, the Illankai Tamil Arasu Katchi (ITAK),[45] it also currently includes the EPRLF of Suresh Premachandran and TELO of Selvam Adaikalanathan, as well as more recent additions, People's Liberation Organisation of Tamil Eelam (PLOTE), headed by D. Siddharthan and the TULF of V. Anandasangarree. The ACTC left in the run-up to the April 2010 parliamentary elections, after Sampanthan removed from the candidates list all legislators whom the LTTE had brought into the party.[46]

For now, the 79-year-old Sampanthan firmly controls the alliance, respected as its elder statesman and valued for his international credibility.[47] There are tensions, however, and in the absence of tangible improvements for Tamils, especially in the north and east, divisions could grow, with real risk of a split after his retirement or death.

The most serious challenge to TNA unity is along party lines.[48] Sampanthan has tried to institutionalise the dominance of ITAK, to the dismay of other parties' leaders. The EPRLF's leader, Premachandran, in particular, has complained publicly about the refusal of Sampanthan and ITAK to register the TNA as a separate party, which would give the heads of the smaller members more power.[49] The leaders of all four non-ITAK TNA parties have reportedly written to Sampanthan again demanding such registration and complaining about what they con-

they did. Three sitting TNA members of parliament were murdered in the final years of the war: Joseph Pararajasingham, shot in Batticaloa, Christmas eve 2005; Nadarajah Raviraj, shot in Colombo, 10 November 2006; and K. Sivanesan, killed by a roadside bomb near LTTE-controlled Killinochchi. 6 March 2008. While all three killings have yet to be adequately investigated, human rights groups alleged that government forces or pro-government militias were responsible. The government has denied the allegations. Tamil politicians who resisted the LTTE, on the other hand, had to live under government protection and make other serious compromises. In March 2011, there was a reported attack on TNA legislator S. Sritharan. "TNA MP Sritharan narrowly escapes assassination in Anuradhapura", Tamil Net, 7 March 2011.

[41] In advance of the April 2004 general election, the TNA announced: "Accepting the LTTE's leadership as the national leadership of 'Tamil Eelam' Tamils and the Liberation Tigers as the sole and authentic representative of the Tamil people, let us devote our full cooperation for the ideals of the Liberation Tigers' struggle with honesty and steadfastness. Let us endeavour determinedly, collectively as one group, one nation, one country, transcending race and religious differences, under the leadership of the LTTE, for a life of liberty, honour and justice for the Tamil people". Quoted in Shamindra Ferdinando, "LTTE/TNA alliance and a damning EU statement", *Island*, 27 July 2012. The same election saw the LTTE accused of intimidating non-TNA candidates. "Sri Lanka Parliamentary Elections, European Election Observation Mission, Final Report", 2 April 2004.

[42] See the important criticisms of the TNA by Dayapala Thiranagama, "Solitude in Jaffna and the silence of a city", *Island*, 21 September 2012.

[43] Crisis Group interview, senior TNA leader, Colombo, July 2009.

[44] The TNA gained 14 seats in parliament in 2010 and won control of almost all local councils in the north and in Tamil majority areas in the east in 2011 elections. For a detailed analysis of the 2012 eastern province elections, see Section V.B.2 below.

[45] At the TNA's establishment in 2001, Sampanthan was part of the TULF. Unhappy with the TNA's close ties to the LTTE, TULF's V. Anandasangaree refused to allow it to contest the 2004 parliamentary elections under the TULF banner, at which point Sampanthan and the other TULF members in the TNA resurrected ITAK. Literally translated from the Tamil as "Lankan Tamil State Party", it was known in English as the Federal Party and was the dominant Tamil party from the 1950s until the 1970s, when it became the main constituent of the TULF.

[46] The Tamil National People's Front (TNPF) was launched on 28 February 2010, with the ACTC as its main constituent party. Headed by ACTC leader Gajen Ponnambalam, it includes former TNA Jaffna district parliamentarians Selvarajah Kajendran and Pathmini Sithamparanathan, both of whom were brought into the TNA by the LTTE.

[47] Crisis Group interviews, political analysts, September, October 2012.

[48] Another potential fault line is ideological. Some TNA parliamentarians, eg, S. Sritharan from the Vanni, hold significantly more nationalist, perhaps separatist, positions. For now these differences are submerged. The more nationalist TNPF/ACTC's lack of success in the 2010 parliamentary elections persuaded most Tamil politicians their only chance at winning rights was via the TNA.

[49] Registering the TNA as a party "would give [Premachandran] a greater role, as he'd be an office-bearer in the party, rather than part of a loose alliance in which his party runs under the banner of ITAK, over which he has no power". Crisis Group phone interview, Muslim activist close to SLMC, October 2012.

sider his autocratic style.[50] "Post-Sampanthan, what's in store for TNA? It doesn't look good", said a lawyer who works closely with the party.[51] There is no one else with the stature or support to bring its constituent parties together, which may help explain the lack of urgency with which the government has approached negotiations with it.[52]

2. Pro-government Tamil parties

The government also hopes friendly Tamil parties will undercut TNA support by delivering patronage and other practical benefits. The Tamil Makkal Viduthalai Pulikal (TMVP) has proven a weak ally for Colombo in the east.[53] Neither its chief, former eastern province chief minister S. Chandrakanthan (aka Pillaiyan), nor its founder, now senior-SLFP leader V. Muralitheran, better known as Karuna, has a wide following. Both are more likely to be denounced by Tamils for abandoning the national cause and for the many serious human rights violations of which their followers are accused.[54]

The northern province, and in particular Jaffna district, may be more fertile ground for the government, given the long-established presence of Douglas Devananda's Eelam People's Democratic Party (EPDP) and its ability to deliver significant benefits to supporters.[55] While most Tamils are highly critical of Devananda and the EPDP, which is accused of numerous murders, disappearances and other crimes,[56] they undeniably have some support in Jaffna. The party's relative success in municipal elections on the Jaffna peninsula, particularly in Jaffna town, suggests it could pose a limited challenge to the TNA in northern provincial elections.[57]

"The EPDP has a solid base of support of about 20 per cent of the vote in the north. This is partly a factor of caste politics. Douglas has put a lot of work over the years into helping some of the discriminated castes in Jaffna. He's generally a good ward politician", said an analyst. In the longer-term, the Rajapaksa government will probably try to weaken, split and marginalise the TNA, while giving the EPDP enough material and institutional support to gain a bigger foothold. "Patronage politics will continue to eat into the Tamil polity slowly", added another Tamil analyst.[58]

B. TNA'S MODERATE APPROACH: YET TO BEAR FRUIT

Since the end of the war, the TNA has made clear its willingness to work with the government to address both the immediate needs of the war-affected population in the north and to negotiate a political settlement well short of the separate state for which the LTTE fought. Sampanthan has repeatedly said its goal is "a political solution within the framework of [a] united and undivided country that will enable the Tamil people to live in security and dignity, fulfilling their legitimate political, economic, social and cultural aspirations".[59] The TNA has deliberately kept private its specific vision of an acceptable solution to the conflict. Not wanting to box in itself or the government, it has preferred to speak in general principles, defining its goal as:

> … an acceptable durable and reasonable political solution to the Tamil question, based upon the sharing of powers of governance, which will ensure that the Tamil-speaking people can live in security and with dignity, in the areas they have historically inhabited, and which will also ensure the fulfilment of their legitimate political, social, economic and cultural aspirations and rights, through their own initiatives, and without depending upon the mercy of others.[60]

[50] Chris Kamalendran, "TNA splits 4-1 on registration", *The Sunday Times*, 28 October 2012; P.K. Balachandran, "TNA heading for split over registration as political party?", *New Indian Express*, 1 October 2012.
[51] Crisis Group telephone interview, lawyer, September 2012.
[52] Crisis Group interviews, politicians and political analysts, August, September 2012.
[53] In the September provincial elections in the east, the TMVP won a single seat, the TNA eleven. See Section V.B.2 below.
[54] For information on alleged human rights violations by Karuna and the TMVP, see Crisis Group Report, *Sri Lanka's Eastern Province*, op. cit. Both Karuna and Pillaiyan have denied involvement in any crimes.
[55] The EPDP, one of many Tamil militant groups from the 1980s, has been aligned with the government since 1990. It is strongest in Jaffna. Devananda is currently traditional industries and small enterprise development minister.
[56] For information on alleged EPDP human rights violations, see Crisis Group Report, *Sri Lanka's North I*, op. cit. Devananda has consistently denied all such allegations, including those against the EPDP in the report of the government's 2011 "Lessons Learnt and Reconciliation Commission" (LLRC). "Ahinsaka Kolla Douglas to take LLRC to court", *Lakbima News*, 8 January 2012.
[57] The ruling United People's Front Alliance (UPFA), with the EPDP in the lead, won just over half the vote in August 2009 elections to the Jaffna municipal council. Turnout was very low, and the TNA and other opposition parties were not allowed to campaign freely. Feizal Samath and N. Parameswaran, "Mere 18 percent turnout at Jaffna poll", *The Sunday Times*, 9 August 2009.
[58] Crisis Group telephone interview, Tamil academic, October 2012; email correspondence, Tamil political analyst, October 2012.
[59] R. Sampanthan, "Statement on the local authorities elections being held in the north east", 18 July 2011.
[60] "Statement made by R. Sampanthan MP, parliamentary group leader Tamil National Alliance (TNA) and President Ilankai

One can hear in this echoes of the Thimpu principles, but stated in a way that leaves room for adjustment to current political realities, particularly the disproportionate power the government has to define the political terrain and the agenda for negotiations.

1. Patience and compromise in negotiations[61]

A year of negotiations with the government reached a standstill in late 2011. In the three-and-a-half years since the end of the war, the Rajapaksa administration has repeatedly broken promises to Tamil leaders and to the international community – including India and the U.S. – and displayed little interest in reaching agreement. It has consistently refused to formulate and present to the TNA or the public its own proposals for the devolution of power.

Negotiations began in January 2011, after almost a year of intense pressure on President Rajapaksa from India, the U.S. and other states.[62] The TNA tabled a full proposal for a political settlement in March, but the government presented nothing of its own.[63] In frustration, the TNA broke off talks on 4 August. On 11 August, the government tabled a motion in parliament to establish an all-party Parliamentary Select Committee (PSC) tasked with developing constitutional reforms "to enhance the unity of Sri Lanka".[64] The move was seen by the TNA and most observers as a way for the government to avoid presenting proposals and further delay a solution.[65] The TNA's subsequent decision to withdraw from talks until the government presented proposals was overwhelmingly supported by the Tamil community, but the party came under intense pressure from India and other influential states to return to the table.

In the first of three significant and unrequited compromises, the TNA agreed to return to talks on 14 September. This followed an agreement between the president and Sampanthan for bilateral discussions to resume on the basis of a set of constitutional proposals from earlier governments. Once negotiators had reached consensus, the TNA would join the PSC, and the government-TNA consensus position would be jointly presented to the committee as the basis for its discussions.[66] Despite apparent progress in October and November, talks broke down again at the end of the year, when the government delegation demanded the TNA nominate its members to the PSC immediately. The government abruptly cancelled January 2012 meetings scheduled to coincide with the visit of the Indian foreign minister.[67]

Negotiations have remained suspended throughout 2012, with the government insisting the TNA join the PSC and begin all-party talks instead. The TNA has unsuccessfully offered two further compromises regarding PSC participation. In January, Sampanthan agreed to nominate members simultaneously with the recommencement of bilateral

Tamil Arasu Kadchi (ITAK) on the results of the local authorities elections held in the North East", 3 April 2011.

[61] Information for this section comes from Crisis Group interviews in 2011-2012 with diplomats and TNA members. A chronology laid out by TNA parliamentarian Sumanthiran has generally been confirmed by diplomats and others who have followed events closely; the government has not convincingly refuted it. See M.A. Sumanthiran, "Broken promises and the PSC", *Ceylon Today*, 2 September 2012. For discussion of the first six months of negotiations, see Crisis Group Report, *India and Sri Lanka*, op. cit., pp. 12-14. For a valuable analysis of the government's understanding of talks with the TNA, see Jayadeva Uyangoda, "South Africa can Play a Useful Role of Engagement with the Government and TNA", dbsjeyaraj.com, 4 September 2012.

[62] Following April 2010 parliamentary elections in which both the government and the TNA performed well, the TNA called on the government to begin negotiations on constitutional issues and conditions in the north and east. After a series of false starts, these got off the ground on 10 January 2011. The government's negotiating team has been led by Minister Nimal Siripala de Silva (known to be a proponent of devolution); it includes Foreign Minister G.L. Peiris (a constitutional scholar), and parliamentarians Sajin Vaas Gunawardena (a close confidante of the president) and Rajiva Wijesinha. The TNA delegation has comprised Sampanthan, General Secretary Mavai Senathirajah and parliamentarians Suresh Premachandran and M.A. Sumanthiran. Crisis Group interviews, diplomats, August 2012.

[63] With no movement on constitutional issues, talks from April to August focused on TNA proposals to improve conditions for those recently resettled in the north, remove high security zones, disarm pro-government armed groups and release political prisoners and detainees. Other than reducing the size of high security zones in Jaffna, there was no progress.

[64] The initial text of the proposed PSC mandate was to "recommend, within six months, appropriate political and constitutional measures to enhance the unity of Sri Lanka, to empower the people to work as a nation, and to enable the people to take decisions and engage in actions towards their economic, social and political development". "Addendum to the Order Book no. 4 of Parliament", 12 August 2011.

[65] Crisis Group interviews, diplomats and TNA politicians, Colombo, June 2012.

[66] The agreement was finalised and recorded in minutes exchanged at a meeting between the negotiating teams on 16 September 2011. Crisis Group email correspondence, diplomat, August 2012.

[67] Meetings in October and November apparently narrowed disagreement to a few key issues, centring on TNA insistence that the northern and eastern provinces be remerged and provincial councils be given powers over land and policing, as well as expanded powers of taxation. Ibid, and Sumanthiran, "Broken promises", op. cit.

talks, but on condition that PSC sessions would not begin until those talks had reached "substantial agreement".[68]

A second offer – and the third of the TNA's compromises – was apparently accepted by the president in May, thanks to mediation by UNP leader Ranil Wickremasinghe, with Indian support.[69] The UNP and TNA were to name their members, and the PSC would begin by focusing on the non-devolution related governance reforms recommended in the 2011 report of the government's Lessons Learnt and Reconciliation Commission (LLRC).[70] At the same time, TNA-government talks would resume on the set of earlier governments' devolution proposals. Their eventual agreement would be considered by the PSC. However, when the UNP leader presented the proposed agenda in parliament on 24 May, the government rejected it and called on the TNA and other opposition parties to join the PSC immediately, with no preconditions.[71]

The government's refusal to clarify its position on what powers should be devolved to the north and east comes despite repeated public assurances to UN, Indian, and U.S. officials that it would fully implement and then "go beyond" or "build on" the thirteenth amendment as the core of a lasting political solution. Among its better-known promises:

- In a joint statement by the UN Secretary-General and President Rajapaksa, in Colombo on 26 May 2009, a week after the war's end, "President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13th Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka".[72]
- At the conclusion of a May 2011 visit to New Delhi by External Affairs Minister G.L. Peiris, the two governments issued a joint statement in which "the External Affairs Minister of Sri Lanka affirmed his Government's commitment to ensuring expeditious and concrete progress in the ongoing dialogue between the Government of Sri Lanka and representatives of Tamil parties. A devolution package, building upon the 13th Amendment, would contribute towards creating the necessary conditions for such reconciliation".[73]
- At the end of a January 2012 trip to Colombo, Indian External Affairs Minister S.M. Krishna told journalists: "The Government of Sri Lanka has on many occasions conveyed to us its commitment to move towards a political settlement based on the full implementation of the 13th Amendment to the Sri Lankan Constitution, and building on it, so as to achieve meaningful devolution of powers …. I discussed this matter with His Excellency the President this morning. The President assured me that he stands by his commitment to pursuing the 13th Amendment-plus approach".[74] Two weeks later, however, President Rajapaksa denied ever promising the minister that his government would go beyond the thirteenth amendment. He added that all questions on constitutional reforms for "the national question"

[68] Ibid.
[69] Wickremasinghe's involvement reportedly came at the request of the government. Crisis Group interviews, diplomats, Colombo, June 2012. See also Raskia Jayakody, "President – Ranil agree on formula to persuade TNA", *Ceylon Today*, 15 May 2012.
[70] The LLRC, established in May 2010, was the government's response to international calls for an investigation into allegations of serious violations of international human rights and humanitarian law in the final stages of the civil war. The commission was undermined by a limited mandate and serious conflicts of interest in its composition. While its final report, released in December 2011, largely exonerated government forces of war crimes, it contained sharp criticism of current governance practices and wide-ranging proposals for reforms. See Crisis Group's "Statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission", 22 December 2011. The report included a call for "maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre", but its vision of devolution remained vague enough to be interpreted as endorsing both a strengthening and a weakening of powers granted under the thirteenth amendment. The full text of the report is available at http://slembassyusa.org/downloads/LLRC-REPORT.pdf.
[71] S. Marasinghe and I. Range, "Minister thanks UNP for supporting PSC", *Daily News*, 25 May 2012. For the text of the UNP leader's speech to parliament, see "Parliamentary Debates (Hansard)", vol. 208, no. 7, 24 May 2012, pp. 1065-1070. See also M.A. Sumanthiran, "Broken promises", op. cit.
[72] The next day, the UN Human Rights Council passed a resolution largely drafted by the Sri Lankan government that "welcomed", among other things, "the President of Sri Lanka's … commitment to a political solution with implementation of the thirteenth amendment to bring about lasting peace and reconciliation in Sri Lanka". "Assistance to Sri Lanka in the promotion and protection of human rights", UNHRC Resolution S-11/1, 27 May 2009.
[73] www.mea.gov.in/mystart.php?id=530517638, 17 May 2011.
[74] "Remarks by Hon'ble Minister of External Affairs of India Mr. S.M. Krishna at a Media Interaction", Indian High Commission, Colombo, 17 January 2012. www.hcicolombo.org/index.php?option=com_news&task=detail&id=3354706. In a statement to the upper house of the Indian parliament two months later, Krishna described things slightly differently, stating only that the Sri Lankan government had promised a political dialogue "leading to the full implementation of the 13th Amendment to the Sri Lankan Constitution". "Statement by Mr. S.M. Krishna, Hon'ble Minister of External Affairs of India, in the Rajya Sabha on 'The Situation in Sri Lanka'", 14 March 2012.

would be handled by the PSC, as he would be criticised for pre-empting parliament if he spelled out his views.[75]

More serious doubts have been raised about the government's commitment to devolution by a series of statements from the president and other senior officials. In October 2012, Defence Secretary Gotabaya Rajapaksa called for the repeal of the thirteenth amendment, a call later taken up by Sinhalese nationalist parties in the governing coalition.[76] This followed a September Supreme Court ruling temporarily blocking legislation to establish a new government department that would significantly reduce provincial powers over welfare and development policy.[77] The court's ruling that the bill required approval by all provincial councils before it could be considered by parliament triggered a furious government response.[78]

Apparently determined to eliminate the possibility of future obstruction by courts or provincial councils, the government has begun impeachment proceedings in parliament against the chief justice,[79] while the president and senior officials are publicly calling for the replacement of the provincial council system, possibly through a new nineteenth amendment that would further weaken provincial powers.[80] Meanwhile, though three other elections have been held in the north since the end of the war, the president continues to resist holding elections to the northern provincial council, despite repeated promises.[81]

2. Other positive gestures

Mindful of the need for international support, and counselled by India and the U.S. not to give the government additional excuses to resist negotiations, TNA leaders have taken a number of other decisions designed to show moderation and willingness to compromise. In early 2012, Sampanthan was under intense pressure from Tamils inside and outside Sri Lanka, including senior members of the TNA, to lobby in Geneva for a Human Rights Council resolution critical of the government.[82] Not wishing to give the Rajapaksas opportunity to paint the TNA as traitors in league with the "rump LTTE" in the diaspora, the TNA did not go.[83]

A few months, later, Sampanthan again angered Tamil nationalists when he waved Sri Lanka's national "lion" flag at the party's annual May Day rally in Jaffna, held jointly

[75] The denial was made in a meeting of Sri Lankan media executives. See Ravi Ladduwathy, "President denies promising India to go beyond 13-A", *Island*, 31 January 2012. Rajapaksa also expressed his opposition to giving police powers to provinces.

[76] Shamindra Ferdinando "Repeal 13A without delay says Gotabhaya", *Island*, 14 October 2012; Chandani Kirinde, "UPFA partners crank up opposition to 13th Amendment", *The Sunday Times*, 28 October 2012. Senior Minister Basil Rajapaksa has also said the government is considering repeal. "Basil now speaks of 19 A", *Colombo Gazette*, 24 October 2012. For a useful overview of the controversy, see Dharisha Bastians, "From 13 plus to 13 minus", *Financial Times*, 25 October 2012.

[77] For details of how the "Divineguma" department would gain powers given to provinces by the thirteenth amendment, see "Notes on the Divineguma Bill", Centre for Policy Alternatives, September 2012. Critics also charge that the bill grants too much power to the economic development ministry, headed by the president's brother, Basil Rajapaksa, by bringing under its control a number of important and well-funded development and welfare agencies. A particular target of public criticism is a clause preventing employees of the new department from releasing any information about its activities, unless required by a court. See Lasanda Kurukulasuriya, "Divineguma facilitates the concentration of power", *The Sunday Times*, 30 September 2012.

[78] The president summoned the judicial services commission for a meeting, state media attacked the chief justice, and government ministers, including Basil Rajapaksa, took part in public demonstrations against the decision. These actions, including an unprecedented public statement by the Judicial Services Commission, were widely condemned as an assault on the already weakened independence of the judiciary. The secretary to the commission was denounced by the government and on 7 October attacked and badly beaten by armed men. "Sri Lanka's Judiciary: Enter the goons", *The Economist*, 23 October 2012. A subsequent lawsuit by a TNA parliamentarian challenging the authority of the northern governor to approve the bill on behalf of the non-existent northern provincial council further upset the Rajapaksas.

[79] Krishan Francis, "Sri Lankan move to fire top judge stirs fears", Associated Press, 9 November 2012. The motion to impeach the chief justice, signed by 118 UPFA legislators, was presented to parliament on the same day that Sri Lanka's human rights record was under scrutiny at the UN Human Rights Council as part of the Universal Periodic Review process.

[80] In his annual budget speech to parliament on 8 November, the president called for "a change in the provincial council system". The economic development minister, Basil Rajapaksa, later announced that the government's new provincial council system would be presented to the PSC in the form of a draft proposal for a nineteenth amendment. "19th amendment for new devolution package", *The Sunday Times*, 11 November 2012.

[81] Crisis Group telephone interviews, diplomats, September 2012. In an interview in July 2012, the president told an Indian journalist that the government is "working towards" holding elections in September 2013, but that new electoral rolls would be required first, as well as completion of the resettlement of internally displaced residents. R.K. Radhakrishnan, "Northern Province elections in September 2013, says Rajapaksa", *Hindu*, 11 July 2012.

[82] D.B.S. Jeyaraj, "'Going to Geneva': TNA in the eye of a political storm", dbsjeyaraj.com, 9 March 2012.

[83] For the TNA statement on its decision, see "TNA won't exacerbate tensions by attending UNHRC 19th sessions in Geneva", dbsjeyaraj.com, 25 February 2012. Many Tamils in Sri Lanka and abroad criticised the decision, but some supporters maintained the party won points with the government and internationally by not going. Crisis Group telephone interview, September 2012.

in 2012 with the UNP and a coalition of smaller opposition parties. That flag, featuring a roaring lion said to represent the Sinhala people, has long been a symbol of Sinhala hegemony for many Tamils and Muslims. While many Tamils criticised the public acceptance of the flag, the gesture won grudging praise from some Sinhalese newspapers and commentators, but no concrete government response.[84]

3. No progress for Tamils in the north and east

The TNA has also failed to win any concessions in the form of political normalisation in the north and east.[85] Though the government says there has been significant demilitarisation of the northern province, the situation on the ground is very different.[86] Troop levels appear to have been reduced in Jaffna, but not in the Vanni, where the military is omnipresent, with a dense network of checkpoints and camps, continues to attend local government and civil society meetings and routinely interrogates those seen meeting outsiders.[87] The military still runs small shops in the Vanni, as well as larger businesses throughout the north and east.[88] More importantly, both directly and via the presidential task force for resettlement, development and security in the north (PTF), it retains the greatest influence over how the north is being redeveloped and transformed.[89]

Military camps established since the end of the war have displaced thousands of Tamils and Muslims. Despite government insistence there are no more internally displaced persons (IDPs) in Sri Lanka,[90] tens of thousands remain from the final years of the war, and many more tens of thousands displaced prior to 2008 are still in camps or with families.[91] The recent hurried closure of the once-massive Menik Farm IDP camp resulted in the forced relocation of hundreds of its final inmates to jungle land that lacks basic amenities, has not been properly demined and access to which is tightly controlled by the army.[92]

The slow but steady process of Sinhalisation is also continuing, with new families reportedly arriving in the northeast coastal town of Kokilai, and "an increasing number of Sinhalese officials being appointed to district and division level government departments".[93] This ultimately threatens to change the demography, and with it the political dynamics, in the north. Fears that the Tamil character of the north and remaining parts of the east are at risk were strengthened by Defence Secretary Gotabaya Raja-

[84] Gamini Weerakoon, "Ranil and Sampanthan break through 30 year barrier", *The Sunday Leader*, 13 May 2012.
[85] For a detailed assessment of the problems facing Tamils due to government policies in the north, see Crisis Group Reports, *Sri Lanka's North I* and *North II*, both op. cit. See also "No war, no peace: the denial of minority rights and justice in Sri Lanka", Minority Rights Group International, 19 January 2011.
[86] See, for instance, the speech by Sri Lanka's UN Geneva ambassador to the UN High Commissioner for Refugees (UNHCR) stating that "the Security Forces presence in the Jaffna peninsula has been reduced from 50,000 at the height of the conflict, to 15,000 at present, and the military is no longer involved in civil administration in the Northern and Eastern provinces". Ravinatha Ariyasinha, "Downplaying Sri Lanka's post-conflict achievements, a disrespect to those who have suffered", statement to the 63rd Session of the Executive Committee of the UNHCR, 2 October 2012. The government has offered no figures for troop number in the rest of the north and east. According to a report based on documents presented by the army to an August 2012 defence ministry seminar, there are at least 85,000 army troops in the north (not including navy or air force personnel or police). Nirupama Subramanian, "Sri Lankan Army still has vast presence in North & East", *The Hindu*, 19 September 2012. Other analysts, using publicly available information put the figure between 150,000 and 200,000. Crisis Group interview, researcher, September 2012.
[87] "The military's presence is not felt much in urban areas", explained a northern-based NGO worker. "You won't see them in Jaffna town, or very much in Kilinochchi town – not the way we used to see them. But then you step out of the towns and go just a few yards off the A-9 [highway], and you will see the military involvement …. The military is still going to civilian functions – to any government activity, especially in Kili and Mullaitivu". Crisis Group telephone interview, September 2012. A humanitarian worker in the Vanni reported that "any functions, ceremonies, weddings etc, also still need to be reported in advance to the local level army personnel, and [international] NGOs still need to inform of any training programs planned several days in advance. It is rare to have a program happen without the military visiting". Crisis Group email correspondence, September 2012.
[88] An aid worker noted that while most directly military-owned shops have closed, some shops have opened next to the former outlets, so next to military bases, and are owned by Sinhalese families. Crisis Group email correspondence, September 2012.
[89] For details on the make-up and workings of the PTF, see Crisis Group Reports, *Sri Lanka's North I* and *North II*, both op. cit.
[90] "No more IDPs in Sri Lanka – a lesson to be learnt by world countries", northern province governor's secretariat, press statement, 28 September 2012.
[91] Humanitarian organisations in Sri Lanka estimate some 26,000 are currently displaced by military camps, high-security zones and related development projects in the north and east. Crisis Group correspondence, September 2012.
[92] Crisis Group email correspondence, aid workers, September 2012; also Dilrukshi Handunnetti, "Relocated to nowhere", *Ceylon Today*, 29 September 2012, and Ruki, "Menik Farm: The tragic end of a bitter saga, from detention to forced relocation", Groundviews.org, 2 October 2012. The families' own land in the village of Kaeppapulavu is currently occupied by the army. For more on displacement from Kaeppapulavu, see Crisis Group Report, *Sri Lanka's North II*, op. cit., p. 19.
[93] Crisis Group email correspondence, aid worker, September 2012.

paksa's denial that the north should be treated as "a predominantly Tamil place".[94]

TNA calls to address the bitter legacy of the war have been ignored. There has been no progress on accountability for alleged war crimes, and the government has been unyielding on less challenging issues as well, denying space for Tamils to mourn their dead publicly; refusing to make available a full list of detainees, as requested by families of the missing and disappeared; and denying the right of those in the north and east to sing the national anthem in Tamil.[95]

C. Tamil Nationalist Challenges to TNA and the Self-Determination Question

Government policies in the north and east and delaying tactics in negotiations have denied the TNA any tangible benefits from its strategy of moderation and engagement. As a result, it comes under frequent criticism from more nationalist elements, both within Sri Lanka and outside. This could conceivably lead to the eventual fracturing of the party and a greater role for more radical, possibly separatist groups in setting the direction of Tamil politics. The government might welcome both developments, believing it could more easily manipulate a divided Tamil polity as well as argue that it had no genuine and moderate Tamil leadership with which to engage.

1. The Tamil diaspora and Tamil Nadu

Feelings in the diaspora towards the TNA are mixed and frequently ambivalent. It is praised when it takes a tough stance and sharply criticised when it is seen to be too accommodating or backing off from a strongly Tamil nationalist position. Many argue that it is unable to articulate the true feelings of the Tamil people given the high levels of threat faced by critics of the government or anyone seen as pro-LTTE.[96]

The Global Tamil Forum (GTF) has been the only major diaspora organisation to offer public support to the TNA, describing it as "the elected representatives of the Tamil people in Sri Lanka" and approving its attempt to negotiate "a durable, and dignified political solution to the National Question".[97] The influential website Tamilnet frequently criticises the TNA for moderation allegedly imposed by the Indian and U.S. governments.[98] It also provides regular and positive coverage to domestic Tamil nationalist critics, particularly those associated with the TNPF.

More generally, major diaspora voices, while not always openly critical, advocate very different, explicitly separatist policies. The Transnational Government of Tamil Eelam (TGTE), headed by former LTTE-adviser V. Rudrakumaran, is dedicated to "establish[ing] an independent state of Tamil Eelam", and focuses much of its efforts on an international investigation into war crimes and what it claims is an ongoing "genocide" in Sri Lanka.[99] With many pro-Eelam groups in the Indian state of Tamil Nadu, it supports a UN-organised plebiscite for Tamils in the north and east to determine whether "Eelam Tamils" wish to establish their own state or remain within Sri Lanka.[100] Demands for investigations into alleged genocide and for a separate state of Tamil Eelam are at the core of demands of a growing number of Tamil activist groups throughout the world.[101]

A similar agenda is at the centre of increasingly vocal and aggressive activism in Tamil Nadu. Concern with the

[94] Charles Haviland, "Gotabhaya Rajapaksa: Sri Lanka north 'not just for Tamils'", BBC News, 28 May 2012. A former Sinhala government official warned: "What Gota is doing on the ground, through the military and Sinhala GAs [district secretaries], including Sinhalisation, is dangerous. Road-building is to facilitate carpet-bagging, it's not for local people. It's like building railroads to the U.S. west – that wasn't for the benefit of Native Americans". Crisis Group interview, June 2012.

[95] On all three issues, the LLRC report recommended new policies the government has not implemented.

[96] The sixth amendment to the constitution, adopted in 1983, makes it illegal for any individual or organisation to "support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka".

[97] "Global Tamil Forum on government of Sri Lanka and Tamil National Alliance 'talks", press statement, 14 January 2012. According to the spokesman, Suren Surendiran, "we don't prescribe a solution, because we don't think we have the expertise or the knowledge or the right to prescribe to Tamils in Sri Lanka what they should do; but we do have a role and a responsibility to play, since we wouldn't be the diaspora except for what happened in Sri Lanka, which made us leave. But the TNA is elected and is there and has the right to propose solutions". Crisis Group interview, London, September 2012.

[98] See, for instance, "TNA relays US-India paradigm for 'non-descript' model of solutions", TamilNet, 7 November 2011.

[99] In a jointly-issued statement commemorating "the third anniversary of the genocidal events that the Tamils had to endure in Mullivaaikkaal", the TGT and GTF called for "an international and independent investigation on the events of Mullivaakikkaal". "Mullivaaikkaal remembrance message", 17 May 2012.

[100] Visuvanathan Rudrakumaran, "Diaspora Tamils should be part of UN referendum on Eelam", *The Weekend Leader*, 3 April 2012.

[101] See, for instance, "Pongku Thamizh event in Geneva urges global Tamils to uphold struggle", TamilNet, 23 September 2012. The rally prominently featured the LTTE flag. Events in various European and Canadian cities commemorating the third anniversary of the end of the war were visually and rhetorically reminiscent of LTTE-organised events. See, for instance, "Independent international investigation on Sri Lanka called for at London event", TamilNet, 20 May 2012.

situation of Tamils in Sri Lanka has grown since the 2011 return to power of Chief Minister Jayalalithaa and her AIADMK party.[102] The state government has urged New Delhi to increase pressure on the Rajapaksa government on a range of issues, including alleged war crimes and the continued hardships faced by Tamils in the north and east. It has interceded to block training of Sri Lankan military personnel in Tamil Nadu and even sent back a visiting sports team.[103] Jayalalithaa's long-time rival, M. Karunanidhi, has tried not to be outdone, resurrecting his defunct Tamil Eelam Supporters' Organisation (TESO), regularly criticising mistreatment of Tamils by the Sri Lankan government and expressing support for a separate state of Tamil Eelam.[104]

Civil society activism has focused on charges of genocide. Many of the most active groups and leaders were sympathetic to the LTTE, and demands for accountability generally ignore alleged LTTE war crimes.[105] Physical attacks by pro-Eelam protestors on Sri Lankan Christian pilgrims visiting Tamil Nadu in September 2012 provoked a sharp reaction from Colombo and strengthened the longstanding sense of threat many Sinhalese feel from Tamil Nadu.[106]

2. Domestic Tamil critics

The main but still relatively weak challenge to the TNA within Sri Lanka comes from an informal collection of Tamil nationalist civil society activists who periodically write it open letters, as well as those associated with the TNPF, led by former TNA parliamentarian Gajen Ponnambalam.[107] Criticisms from both, which in turn are widely echoed in the diaspora, focus on three main points.

Preserving the nationalist fundamentals. The TNA's nationalist critics accuse it of watering down or abandoning the core of the nationalist movement – the quest for the recognition of the Tamil nation and its right to self-determination in a merged north and east, the "traditional homelands". They argue that attempts to engage with the government from anything but an explicitly nationalist position, including any acceptance of the thirteenth amendment, are bound to fail and play into the hands of a government they believe is seeking to destroy the Tamil nation.[108]

The civil society groups say that self-determination does not necessarily require a separate state. It does require, however, a clear statement that Tamils are not a "minority" deserving "equal rights", but rather a nation deserving "a measure of self-governance".[109] TNPF leader Ponnambalam explains that political engagement needs to:

> … start from the premise that Tamils have the right to govern ourselves. We had that right before and did govern ourselves and then lost that right under colonialism. Yes, we can consider alternatives to separation. There's no reason not to explore these other options, but this must be done on the basis of accepting this sovereignty, so that we freely choose to join in and choose to come together and be governed together with the Sinhalese.[110]

Basic nationalist principles have, for these groups, two crucial corollaries:

Negotiating with the government. This is acceptable only so long as the aim is to go beyond the thirteenth amendment and the unitary state. There is no point in it if the re-merger of the north and east and land and police powers for a north-eastern provincial council are off the table.[111] Talks with no hope of progress on these points

[102] Sri Lankan Tamil issues in Tamil Nadu have for decades been shaped by the rivalry between Jayalalithaa's All India Anna Dravida Munnetra Kazhagam (AIADMK) and M. Karunandhi's Dravida Munnetra Kazhagam (DMK). See Crisis Group Report, *India and Sri Lanka*, op. cit.

[103] See Nita Bhalla, "Rage in India spotlights Sri Lanka's war victims", Reuters, 7 September 2012.

[104] TESO held the "Eelam Tamils' Rights Protection Conference" in August 2012. "TESO meet says India cannot remain silent on Sri Lanka", *The Hindu*, 13 August 2012.

[105] See, for instance, D.B.S. Jeyaraj, "Tamil Resurgence Week in Tamil Nadu organized by Seeman will focus on LTTE armed struggle", dbsjeyaraj.com, 21 November 2011.

[106] "Buses carrying Sri Lankan pilgrims attacked in Tamil Nadu: Reports", *Times of India*, 4 September 2012.

[107] The TNPF, running as the ACTC, received only 7,544 votes in the 2010 parliamentary elections and poses no electoral threat to the TNA. Best known member of the "Tamil civil society" group is the outspoken Catholic bishop of Mannar, Rayappu Joseph. The group's positions are said to have some support within the TNA, including from Vanni member of parliament Sritharan. Crisis Group telephone interviews, Tamil activists and political analysts, September 2012.

[108] "A permanent political solution can only be attained by recognising the right to self-determination of the Tamil people and by recognising Tamil Nationhood. … There is no point in a political process that refuses to acknowledge the above", "Tamil civil society memo to the TNA regarding the Eastern Provincial Council elections", Groundviews.org, 29 July 2011.

[109] "To say that Tamils are a nation entitled to self-determination does not mean that we seek a separate country. We can negotiate the institutional form that will satisfy our aspirations at the negotiating table". "A public memo to members of parliament representing the Tamil National Alliance from the Tamil civil society", 13 December 2011.

[110] Crisis Group telephone interview, August 2012. "Without the explicit recognition of nationhood, there won't be any safeguards to prevent a future government taking things away without the consent of the Tamil peoples themselves. Recognition of Tamils' nationhood would prevent Colombo's unilateral action …. Devolutionary power means by definition that the centre can take back powers. It's different when it's distinct nations first coming together to negotiate".

[111] "A public memo", op. cit.

allow the government to appear open to a solution even as it gains more time to implement destructive policies in the north and east.

Provincial council elections. For similar reasons, the TNA should refuse to contest elections to the northern provincial council – and should have refused to contest in the eastern provinces in September 2012, as it had in 2008. The provincial councils have no meaningful powers, and no political solution can be found from within, or building on, the thirteenth amendment, which is an element of the unitary state. By contesting such elections, the TNA gives legitimacy to the thirteenth amendment, the unitary state and the legal separation of the two provinces.[112]

3. A shift in tone? Return to the language of self-determination

In part because of pressure from the TNPF and nationalist civil society activists, but also frustration with government policies, 2012 has seen a noticeable shift in TNA strategy. The party has begun to engage more regularly in public protests in the north and east, particularly over land issues. These included a June protest in the town of Tellipallai that was obstructed by police and later attacked by government supporters,[113] and a September protest against military seizure of land in Kaeppapulavu, Mullaitivu at which TNA parliamentarians joined TNPF and local activists.[114]

There has also been a shift in the tone and language with which senior leaders articulate their policies and goals. The best known and widely-remarked example is the May 2012 speech Sampanthan, in his capacity as leader of ITAK, gave to the national party convention in the eastern town of Batticaloa.[115] The speech, an English language translation of which was widely distributed by the TNA, sparked heated debate and led to widespread criticism from many Sinhalese commentators. Both the content and the strong reactions it produced reveal the severe political pressures on the TNA, caught as it is between the triumphalist Sinhala nationalism of the government and the continued hold of strong versions of Tamil nationalism among many Tamils.

From the beginning of the speech, Sampanthan reasserted the central message of Tamil nationhood, sovereignty and self-determination. He reminded his audience that ITAK was "was created … for the purpose of establishing self-determination of the Tamil people on this island …. Up to 500 years ago, the Tamil people established their own governments, and governed themselves".[116] As a result, the "solution to the ethnic problem" requires that Tamils be given "unrestricted authority to govern our own land, protect our own people, and develop our own economy, culture and tradition" in "the areas of historical habitation of the Tamil-speaking people" in the north and east.

But while meaningful devolution should go beyond the thirteenth amendment and the unitary state, he said, "we have clearly asked for a solution within a united Sri Lanka, and we are committed to the achievement of such a goal. This solution must be reasonable, acceptable, realistic, and permanent". Since "the destruction of the [LTTE's] bargaining might", Sampanthan argued:

> … the only hope [the Tamil people] has is the interest and involvement of the international community[117] ….

---

[112] "Tamil civil society memo to the TNA", op. cit. The group argues that "the TNA taking over the Northern Provincial Council will be a 'political Mullivaayakal'", referring to where the war's last battles were fought and tens of thousands killed. To resist this temptation "is a historical duty placed on the shoulders of the TNA". "A public memo", op. cit. For the TNPF's more nuanced criticisms, see "TNA should reject PC model, field independents in East elections: TNPF", TamilNet, 15 July 2012. To prevent pro-government parties – especially the EPDP – from controlling the northern council, nationalist critics argue that independents could contest the elections instead of the TNA. "Once in office", explained an activist, "they would pursue a 100-day program of action to test what is actually possible through the provincial council. If the program doesn't work, there would be a mass resignation. This is the platform they would run on, which would be clearly explained to the people". Crisis Group interview, Colombo, June 2012. The TNPF has made similar proposals. See "TNA should reject PC model", op. cit.

[113] "President petitioned to resettle IDPs in their own lands within HSZ", *The Sunday Times*, 24 June 2012.

[114] "Ki'linochchi rises up against resettlement farce and SL military occupation", *Tamilnet*, 28 September 2012.The military's seizure of land in Kaeppapulavu was discussed in Crisis Group Report, *Sri Lanka's North II*, op. cit., p. 19. The TNA's decision to join demonstrations with civil society and TNPF critics suggests both a perceived need to respond better to pressure from below and new-found confidence to confront the government and military even on extremely sensitive issues.

[115] Batticaloa is the stronghold of the pro-government TMVP. The hall for Sampathan's speech had to be changed at the last minute, as the original location was reportedly firebombed days earlier. D.B.S. Jeyaraj, "Sampanthan and Senathirajah re-elected in B'Caloa as President and Gen Secy of ITAK", dbsjeyaraj.com, 27 May 2012.

[116] He added: "Our party symbolises a time in history, until the entire country was, for administrative convenience, ruled as one Nation by colonial powers, during which our people had their own sovereign Tamil governments". This and the following quotations are from R. Sampanthan, "Speech to Fourteenth Annual ITAK Convention", Batticaloa, 27 May 2012. The full English translation from the original Tamil text is available at http://tnamediaoffice.blogspot.co.uk/.

[117] Sampanthan hailed "our victory in the passage of the recent Resolution at the UN Human Rights Council", which he termed

> Exasperated by the failure of the Sri Lankan government to fulfil its promises three years after the conclusion of the war, the international community has begun to exert diplomatic pressure on the government. Now is the time to be patient … [and] act with caution …. If the world begins to perceive us to be extremist, or too rigid, or if they believe that we have a hidden agenda to reignite violence, we will soon be ostracised from the diplomatic exercises in progress.

Nonetheless, he warned, patience would not last forever. "[I]n the event our right to internal self-determination is continuously denied", Tamils retain the option to "claim our right under international law to external self-determination". Today, however, remaining within a united Sri Lanka "is the only realistic solution".

In most ways, Sampanthan's speech was a moderate restatement of longstanding policy, especially when viewed in light of the TNA's current difficult situation and his need to speak simultaneously to multiple, conflicting constituencies. "You need to see the speech in the context of the pressures he's under from more nationalist Tamils", said a TNA adviser. "It was Sampanthan's response to his Tamil critics, who say the government has never given Tamils anything and that the TNA is just another in a long line of Tamil parties who will be duped".[118] The references to the continued possibility of "external self-determination" should be understood in light of the continued appeal of a separate state for many within ITAK, the TNA and Tamils as a whole.[119] He and other moderate TNA members are not strong enough at present to reject this option outright unless the government offers a tangible alternative.

Yet, the speech counselled patience and caution and contained a clear and repeated commitment to non-violence.[120] It also contained a strong and direct message to the Tamil diaspora that it must "respect the political thinking of those living here", and its "political initiatives, and public statements on behalf of the Tamil people in Sri Lanka must not negatively affect the situation here".[121]

What was otherwise a skilful and politically nuanced speech, however, had one major – and for many commentators – fatal flaw. Speaking of the need to "expose the Sri Lankan government that for so many years in the past attempted to describe the ethnic problem as a 'terrorist problem'", Sampanthan argued in a brief passage that Tamils "must prove to the international community that we will never be able to realise our rights within a united Sri Lanka …. [T]he international community must realise through its own experience, without us having to tell them, that the racist Sri Lankan government will never come forward and give political power to the Tamil people in a united Sri Lanka".[122] For many Sinhalese commentators, this passage was the real message to his Tamil constituency and the assurances of moderation and compromise simply cover for the real project, which remains the quest for a separate state.

From this perspective, the opening call for self-determination takes on a threatening character, as it is no longer a question of whether, but when the demand will shift from internal to external self-determination; together, the two passages are seen as making clear what Sampanthan had in mind when he stated: "The current practices of the international community may give us an opportunity to achieve, without the loss of life, the soaring aspirations we were unable to achieve by armed force". On this reading, the LTTE's separatist goal is alive and well. The repeated emphasis on the need to keep the international community on the Tamil side only confirms the fears of Sinhala nationalists, who have long complained that Tamil separatism has relied on international, especially Western, support.[123]

"a condemnation against the Sri Lankan government by the international community". He argued that "India's vote in support of the [March 2012] Resolution presented by the United States at the UN Human Rights Council was an astonishing international development in our favour. This can only be seen as [an] indication of future developments".

[118] Crisis Group telephone interview, October 2012.

[119] See, for instance, the interview in which S. Sritharan, TNA parliamentarian representing the Vanni, made clear his continued support for a separate state of Tamil Eelam. "'Statements may be made by leaders but Eeelam is our ultimate goal'– Sivagnanam Shritharan MP", dbsjeyaraj.com, 11 June 2012.

[120] Tamils have learned, Sampanthan argued, that "it is not realistic for the Tamil people to resort to violent political struggle. … [a] struggle that runs counter to the values of the international community, built only on military might, will not prevail". Moreover, ITAK has gained international recognition in part because it "does not have any history of armed struggle, … has always rejected such struggle, … has a longtime democratic tradition, [and] … has always put forward realistic proposals". Nonetheless, Sampanthan refrained from directly criticising the LTTE and was careful to "remember the Tamil youth who sacrificed their lives in armed struggle, which they resorted to on the failure of their peaceful struggle for the political rights and freedoms of their people", "Speech", op. cit.

[121] "It is the efforts that are made by the people in Sri Lanka, which are made in accordance with the situation in Sri Lanka, and with sensitivity to this situation, that will finally bring about concrete results for the Tamil Nation", ibid.

[122] Ibid.

[123] Ibid. Sinhalese commentators also cite this passage: "The softening of our stance concerning certain issues, and the compromise we show in other issues, are diplomatic strategies to ensure that we do not alienate the international community. They are no[t] indications that we have abandoned our fundamental objectives", ibid. An editorial in the widely-read *Daily Mirror*,

Sinhala nationalists were quick to denounce the speech. A prominent Buddhist monk and parliamentarian with the Jathika Hela Urumaya (JHU) was quoted as saying: "What Sampanthan is now trying to do is to achieve by peaceful means what Prabhakaran [the late LTTE leader] could not achieve through guns, bombs, terror, and bloodshed. He aims for nothing but a separate state …. He is a traitor and should be treated as such". The leader of the Janatha Vimukthi Peramuna (JVP), Somawansa Amarasinghe, saw the speech as evidence that the TNA "are gradually moving towards their goal of forming a separate state".[124]

The severe political and rhetorical constraints the TNA is forced to work within were brought out especially clearly by the reaction of Sri Lanka's ambassador to France and Spain, the outspoken political analyst Dayan Jayatilleka. Known as a proponent of the thirteenth amendment, he launched a series of broadsides against Sampanthan and the party after publication of the speech, arguing that it was now "far too risky to transfer provincial powers through an election to a party which openly declares that it not only dismisses the 13th amendment as a solution; but also dismisses the unitary state as a framework and actually believes that a solution is not possible within a united Sri Lanka". This was especially so, he said, because the northern province lies on Sri Lanka's "strategic frontier, across which is a historically – and increasingly – hostile element": ie, the Indian state of Tamil Nadu.[125]

Like most Sinhalese analysts, Jayatilleka rejects TNA claims of Tamil nationhood and self-determination, arguing they are "a national minority, or at most, a minority nationality", and a self-determination right is only the Sri Lankan people's as a whole.[126] Continued references by TNA leaders to the possibility they might invoke the right of secession if adequate powers are not offered within a united Sri Lanka, he says, are far from reassuring.[127] Even the TNA's more modest demands prove to him that it is anything but moderate. Going beyond the unitary state would require a two-thirds vote in parliament and a majority vote in a referendum – both difficult and possibly explosive hurdles. Tamils, he argues, are in no political position to make such demands, given the continued popularity and power of the president and the potency of Sinhalese fears of separatism. He warns of the risks in provoking even more nationalist and violent forces than those presently in power. The best Tamils can get now, and possibly ever, he says, is devolution within the unitary state, most likely in the form of the only partially implemented thirteenth amendment.[128]

while criticising the government for still not treating Tamils in the north and east as equal citizens, was sharply critical of Sampanthan's repeated appeal for international support. "[T]he ITAK is shrewd", it wrote. "The LTTE lacked the diplomacy, through which the ITAK now seeks 'foreign aid', begging the international powers to intervene in the home affairs. During the times of kings, those who induced external interferences were called traitors". "Editorial – Let the facts be facts", *Daily Mirror*, 31 May 2012.

[124] "Understanding Sampanthan's utterances", *The Nation*, 17 June 2012. Sinhala nationalist diaspora groups joined in, with one condemning Sampanthan's "provocative, divisive and duplicitous statements". "Sri Lanka, One Country for All – SPUR Responds to Sampanthan's Divisive ITAK Speech", Society for Peace, Unity and Human Rights for Sri Lanka (SPUR), 24 June 2012. A Sinhala columnist questioned Sampanthan's and the TNA's honesty: "It is difficult to avoid the conclusion that Sampanthan tends to say different things to different audiences". Lasanda Kurukulasuriya, "Sampanthan's speech and the reconciliation roadblock", *The Sunday Times*, 3 June 2012.

[125] Dayan Jayatilleka, "The 'autonomist-secessionist continuum' in Tamil politics", Groundviews.org, 3 June 2012; "Policy pivot: A two stage solution", *Island*, 26 June, 2012. Jayatilleka had supported northern provincial council elections soon after the war's end. He explained his change of heart in "Tamil self-determination or minority rights", *Colombo Telegraph*, 21 July 2012.

[126] Dayan Jayatilleka, "Tamil self-determination or minority rights", *Colombo Telegraph*, 21 July 2012. As Kalana Seneratne pointed out in his valuable contribution to the debate, Jayatilleka thought otherwise in his 1995 book, *Sri Lanka: The Travails of a Democracy*, *Unfinished War*, *Protracted Crisis*, where he endorsed the right to self-determination of the Tamil nation. See Kalana Seneratne "ITAK and the New Chapter in Post-War Politics of Sri Lanka", Groundviews.org, 9 June, 2012.

[127] Dayan Jayatilleka, "A critique of political fundamentalism in Sri Lanka", Groundviews.org, 3 August 2012. Jayatilleka also criticised the TNA's M.A. Sumanthiran and his reference to international law to defend the Tamil nation's right to self-determination. Citing in particular a 1996 Canadian Supreme Court judgment on Quebec, Sumanthiran wrote: "The Tamil People in Sri Lanka have been subjected to discrimination within the model of a unitary state where they have been denied the right to express their right to self-determination within an internal arrangement, such as a federal government. In such a situation the continued denial of the existence of the right to self-determination itself may give rise to the right to unilateral secession as an expression of that right …. Thus it is a sine qua non that the right to self-determination of the Tamil People is recognised and the nature of the state is restructured to enable meaningful exercise of internal self-determination if the right to external self-determination is to be avoided". M.A. Sumanthiran, "Self-determination: Myth and reality", *Ceylon Today*, 29 July 2012.

[128] Dayan Jayatilleka, "A critique of political fundamentalism in Sri Lanka", op. cit. Citing the growing calls to repeal the thirteenth amendment, Jayatillika argued: "There's still space for Sinhala politicians to move further rightward. The TNA doesn't seem to understand this". Crisis Group telephone interview, October 2012.

Such arguments miss two points central to the positions of TNA leaders and other more nationalist Tamils. First, the unitary state has been used to deny Tamils even the most basic form of political autonomy, which in turn has directly contributed to the denial of a broad range of basic democratic and human rights and to support among many Tamils for a separate state. Secondly, current constitutional arrangements have no place for "recognising [Tamils'] status as a distinct people",[129] equal in status to Sinhalese. Until the legal and constitutional order is rearranged to address these issues, Tamils are certain to demand much more, and the appeal of separation will remain powerful for many of them. That said, it remains questionable whether the language of self-determination – particularly when its external version is maintained as an option – is the most politically effective one with which to make these points. Its ambiguities, and the fears it provokes among Sinhalese, provide significant ammunition for attacks by Jayatilleka and others.

[129] M.A. Sumanthiran, "Self-determination: Myth and reality", *Ceylon Today*, 29 July 2012.

IV. THIRTEENTH AMENDMENT: BUILDING BLOCK OR STUMBLING BLOCK?

A. THE PRO-DEVOLUTION CASE AGAINST THE AMENDMENT

From its beginning, there has been virtual unanimity among Tamil politicians and intellectuals, as well as many constitutional experts and reform-minded Sinhalese, that the thirteenth amendment is inadequate, and deeper devolution is needed. Most Tamil nationalists have rejected the amendment on the grounds that it is locked into a unitary and centralised state, so can offer no legal recognition of or power to the Tamil nation or Tamil speakers. Even Tamil allies of the government like the EPDP and staunchly anti-LTTE politicians like TULF's Anandasangaree have repeatedly called for devolution to go beyond the amendment in the form of a federal or quasi-federal system such as India's.[130]

The thirteenth amendment, as interpreted by the courts and implemented by parliamentary legislation, seems to confirm the arguments of its Tamil and pro-devolution critics.[131]

Supremacy of the unitary state. In a response to legal challenges when the amendment was first submitted to parliament in 1987, the Supreme Court determined that it would function within the strict limits of the unitary state. As a result, none of powers granted to provinces are permanent or complete; the president and parliament have numerous ways to control, override and manage provincial councils and administrations. To grant the provinces the substantial powers desired by Tamil nationalists or federalists would require either a new constitution that removes the unitary definition of the state or a constitutional amendment approved by national plebiscite and two-thirds of the parliament.

Delegation, not devolution. The Supreme Court ruling subordinating provincial institutions to the central government means that legislative and administrative powers are delegated, not devolved. Provincial powers can be suspended or taken back by parliament at any time without consultation with or approval by a province. The president also has wide, if temporary, powers to intervene in and even take over the functioning of provincial councils. As a Sri Lankan constitutional scholar concluded,

[130] "'I'm an ahinsaka kolla' – Douglas Devananda", *Lakbima News*, 28 August 2011.

[131] For a more detailed critique of the limitations of the amendment and the provincial council system, see Appendix C.

"there is a glaring impermanency of the powers given under the 13th Amendment".[132]

Limited and ambiguous legislative power. The amendment demarcates three categories of legislative subjects: the provincial list, on which provincial councils have sole power to legislate; the reserved list, on which only parliament can make law; and the concurrent list, on which both can legislate. In practice, provincial councils have not been able to claim exclusive competence even over areas on the provincial list, as parliament has found a variety of means to legislate on provincial topics. Councils have also been largely unable to exercise their concurrent powers, thanks to political obstruction from the centre and lack of administrative resources.

The governor. This official, as agent of the president, has the power to obstruct or override decisions of the provincial council. He can delay, challenge and influence the writing of provincial statutes and summon, prorogue or dissolve the council. He controls the appointment, transfer, dismissal and disciplining of officers of the provincial public service and has extensive financial powers, including de facto veto power over provincial expenditures.

Minimal financial independence and resources. Provincial councils have very limited powers of taxation and no borrowing powers. They consequently depend almost entirely on allocations from the central government.

With such severe limitations on provincial autonomy, rooted in the unitary nature of the state, it is highly doubtful the thirteenth amendment can satisfy Tamil aspirations. It has not given meaningful power to the provinces, and needing to please more senior figures in Colombo, provincial leaders generally have not seen it in their interest to demand more.[133]

The difficulties faced by the first-ever eastern provincial council, elected in 2008, are revealing. Headed by a Tamil chief minister and with mainly Tamil and Muslim members, its majority nonetheless was made up of parties aligned with the government.[134] Its modest attempts to assert independence were obstructed by Colombo, which often worked through the aggressive Sinhalese governor, a retired senior military officer. He delayed by four months the first legislation (to enact basic financial statutes) and blocked the creation of a separate Chief Minister's Fund.[135] Relations were so bad by mid-2009 that the ministers sent the president a list of their grievances against the governor's interference. Some were reportedly in favour of formally requesting the president to remove the governor, but in the absence of unanimity and in fear of angering the centre, the idea was abandoned.[136]

Fear of going counter to the wishes of the centre can also be seen in another aborted initiative of the council. The chief minister repeatedly stated his desire to claim the partial powers over policing and law and order granted by the thirteenth amendment. A draft police statute drawn up in October 2010 was dropped, however, once the central government made clear its opposition to any province assuming such powers. On the other hand, the council's expected objection to the draft local authorities bill in 2010 was enough to dissuade the central government from presenting it to parliament – a rare case of a provincial council blocking legislation.[137] It was not repeated in the case of the controversial 2012 Divineguma bill; provincial councils – all controlled by the ruling UPFA coalition – agreed to the centre recovering certain provincial powers.

Should the TNA eventually take control of the northern provincial council, it would likely face similar interference from the governor, another strong-willed retired general. The council might, with skill and patience, be able to pass some statutes, but given the many ways the president and parliament have to obstruct or undermine a council's autonomy, the contest would be fought on very uneven terms.

B. FROM STUMBLING BLOCK TO BUILDING BLOCK?

Tamil nationalists and many constitutional scholars reject the possibility of building on the thirteenth amendment for understandable reasons.[138] Yet, despite the limited and

[132] Lakshman Marasinghe, "The Thirteenth Amendment", in *13th Amendment: Essays on Practice*, in Lakshman Marasinghe and Jayampathy Wickremaratne (eds.), (Colombo, 2010), p. 6.
[133] This is one reason the central government has been able to get away with not granting police and land powers.
[134] For more on the political dynamics of the eastern province at the time of the formation of its first provincial council in 2008, see Crisis Group Report, *Sri Lanka's Eastern Province*, op. cit.

[135] See Welikala, "Devolution within the Unitary State", op. cit. The bill for a Chief Minister's Fund (a standard practice in provincial councils) was passed by the council in February 2009 and sent back to the council by the governor for amendments the next month. When the council passed it again, the governor sent it to the president in July 2009 for referral to the Supreme Court. It has not been heard of since, despite the chief minister requesting a status update from the governor. Jayampathy Wickramaratne, "The Constitutional Framework", in *Twenty Two Years of Devolution*, in Ranjith Amarasinghe et al. (eds.), (Colombo, 2010), p. 28.
[136] Welikala, "Devolution within the Unitary State", op. cit., pp. 60-62. Ministers were also angry at the governor's regular interference in appointments to jobs in the provincial administration.
[137] Ibid, pp. 41-42 and 30.
[138] In the words of the Tamil civil society group, "'incremental devolution' is a non-workable option within the present status quo …. [S]itting within the 13th amendment framework there is

tenuous nature of the powers it delegates and the centre's systematic undermining of provincial councils, there are still possibilities that could be explored. There are political risks, but should the TNA find in the president a genuine interlocutor willing to make positive changes within the limits of the existing constitution, they would be worth taking. Any positive changes would require the president to be willing to share some degree of power. There is no evidence of this at the moment, but should that change, the following could be done quickly, by executive decision or at most a simple majority vote in parliament. None would require constitutional changes, much less rejection of the unitary state. The president, at times in conjunction with parliament, could:

- hold free and fair elections to the northern provincial council;
- appoint new governors to the north and east who have the confidence of their respective councils. They should not be retired military and should preferably be Tamil or Muslim, without political ties to the government or any party;
- amend the Provincial Councils Act to reduce the governor's power over council procedures, provincial finance and the provincial public service;[139]
- provide adequate financial resources to northern and eastern councils and allow them to raise additional revenues;
- consult meaningfully with the councils when planning and implementing development projects in the north and east;
- refrain from blocking councils' efforts to claim their constitutional powers over state land and police, with proper oversight from a politically independent body;[140]
- decide as a general policy not to exercise executive power in relation to any subject on the devolved and concurrent lists and to make decisions with respect to "national policy" only on the basis of overall framework legislation that requires extensive consultation with, and grants statute-making powers to, provincial councils;[141]
- amend the Provincial Councils Act (consequential provisions) to permit provincial authorities to exercise executive powers over subjects on the concurrent list without having to pass statutes;[142]
- return to provinces their right to control agrarian services and other powers previously taken by the centre without constitutional authority;[143]
- pass legislation placing divisional secretaries and *grama niladharis* [village headmen] – currently the local arms of the central government – under the control of provincial councils;[144] and
- establish inter-governmental bodies to coordinate, troubleshoot and build trust between centre and province.[145]

These changes, and possibly others, would constitute a process of "building on" the thirteenth amendment: a dedicated effort to maximise the current constitutional powers of the councils in order to give Tamils and Muslims a meaningful political stake in the north and east and to build trust between all three major communities – but with the expectation it would be a step toward going beyond the unitary constitution. Used wisely and effectively by a TNA-majority council in the north, and perhaps eventually in a coalition with Muslim parties in the east, such powers could ultimately help build the trust and political support among Sinhalese needed for a government in Colombo to enhance constitutional powers for provincial councils. Increased Sinhalese support for devolution would be more likely if the reforms sketched out above were applied to all councils, including those in Sinhala-majority areas.

Such a scenario is unlikely in the near future, given the hostility of the current government to sharing power with any other institutions. Nonetheless, should it decide to take even the first few of the proposed reforms – new governors, greater resources and meaningful cooperation on development policy – this might help begin to overcome the deep distrust between the Rajapaksas and the TNA and

no way that you can push for incrementalism – there is no such space within the 13th amendment. Nor can the 13th amendment be an interim solution. Given that the 13th amendment has nothing in it which will help resolve the day to day problems of the Tamil people this will be a fruitless exercise". "A public memo", op. cit.

[139] For more details on how the governor's powers could be usefully limited, see Welikala, "Devolution within the Unitary State", pp. 72-73.

[140] Establishing a truly independent supervisory authority over provincial police services would be best done through the re-establishment of the national police commission, which functioned briefly under the seventeenth amendment but was in effect dismantled by the eighteenth amendment in September 2010.

[141] *13th Amendment: Essays on Practice*, op. cit., p. 70.

[142] Ibid. It might ultimately be preferable, as many past proposals for constitutional reform have recommended, to eliminate the category of concurrent powers, thus making clearer which powers belong to which level of government and reducing the ability of the centre to interfere with or take back provincial powers. Abolishing the concurrent list would require constitutional amendment.

[143] Ibid.

[144] Welikala, "Devolution within the Unitary State", op. cit., p. 74.

[145] Ibid, p. 75.

set the stage for gradual implementation of the rest of the reform package.

A different, more likely, way of building on the amendment and one that some in the TNA are contemplating would see the party contesting elections to the northern council and then trying to make the most of its powers, though with the expectation the government would not cooperate. The failed attempt to make something of the provincial councils would then be strong evidence for the international community that real and sustainable devolution of power, significantly beyond the thirteenth amendment, is needed.[146]

Tamil nationalist critics of the TNA, however, feel each scenario carries serious dangers and should be avoided. "The thirteenth amendment is just too muddy and contradictory to be reformed", argued a Tamil lawyer. "You need to start from scratch. It certainly can't be built upon to create federalism. The state's unitary status and the need for a referendum to change such entrenched clauses will prevent this". "If you use the thirteenth amendment as a starting point", Gajen Ponnambalam of the TNPF asserts, "it won't go any further". In fact, many Tamil activists worry that the TNA would find itself trapped in the provincial councils, unable ever to get someplace better. "The Rajapaksas will tie the TNA in legal and political knots by saying they can't give more powers because of judicial or political opposition", explained the lawyer.[147]

There is also fear TNA politicians would turn out to be like other Sri Lankan politicians and be satisfied with only a little power. Once in provincial councils, they would not push for more. "Already TNA politicians are jockeying to become the chief minister of the northern province – or to see that their family members get it", said the lawyer. "Both the government and the international community are pushing them into 'normal politics'". Ponnambalam added, "by going into the provincial councils, the TNA will be legitimising them and the unitary state", even as control over the councils will offer little tangible benefit for Tamils in the north or the east.[148] The fear is the government and international community would seize on TNA involvement as evidence of real power sharing and that the long-sought political solution had been found. There is also an important question of symbolism. As long as the unitary state denies Tamils independent power to manage their lives, working within the state system would send a powerful message of continued dependence on a government and state controlled by and working for the interests of the majority ethnic group.

All these risks are real, but the TNA has limited options. There is little chance in the short term of generating the fundamental shift in international and domestic political dynamics that would lend support to a more confrontational campaign for self-determination rights. For the foreseeable future, its key international supporters, India and the U.S., will continue urging it to be pragmatic and make the most of what the current system offers, even as it pushes for major constitutional changes.

[146] Crisis Group telephone interviews, TNA advisers, August and September 2012.
[147] Crisis Group interview, lawyer, Colombo, June 2012; telephone interview, Ponnambalam, September 2012.
[148] Ibid.

V. OVERCOMING OBSTACLES TO MEANINGFUL DEVOLUTION

The main obstacle to progress toward a lasting political solution to Sri Lanka's ethnic conflicts is the lack of political will in the president's office and the defence ministry his brother heads. Nonetheless, were this to change – whether due to the Rajapaksas' recalculation of interests, increased international pressure or elections that brought a new administration to power – serious political work would still be needed. To reach the point where it is possible to fully implement the thirteenth amendment, including allowing provincial police and land powers and the re-merger of the north and east, would require addressing the concerns and fears of significant numbers of Sinhalese and Muslims. To move beyond the thirteenth amendment to a federal system would be an even bigger political change, requiring a concerted effort from both the top and below.

A. ADDRESSING SINHALESE RESISTANCE

One reason some supporters give for the Rajapaksas' refusal to implement the thirteenth amendment and negotiate seriously with the TNA is fear of a backlash from their Sinhala constituency. This threat is exaggerated, given the strong hold the Rajapaksas have on parliament and the military. A local political analyst explained:

> Yes, there is a hard core of Sinhala Buddhist ideology driving part of the Sinhala polity, but the current revival of majoritarianism is significantly fuelled by the Rajapaksas' project of cultivating a long-term constituency for the president and his heirs. Rather than driving through a solution using his political capital, [the president] has actively gone about winning the hardliners over and expanding his base. He's being disingenuous in using the hardliners as an excuse for not pushing through the needed solutions.[149]

Nonetheless, the president would clearly lose some, though likely a manageable amount of Sinhalese support if he implemented the thirteenth amendment in the expansive way outlined above, and more if he agreed to go beyond it.[150] While there was significant Sinhalese support for devolution proposals under President Kumaratunga and during the peace process, in the last five years, "there has been a lot of anti-devolution discourse. This has set things back years".[151]

Many Sinhalese have long believed that the thirteenth amendment goes too far: at best creating an unnecessary and wasteful layer of bureaucracy and political positions, at worst, paving the way for a separate Tamil state. In the words of a Sinhala journalist, "it's too expensive and unnecessary for all provinces to have provincial councils. But you can't just give it only to the north and east. That would be the stepping stone to a separate state".[152] While so-called asymmetrical devolution to the north and east makes the most sense as a response to Tamil demands for autonomy, it also is the most politically threatening for Sinhalese.

Many thirteenth amendment opponents argue that India imposed the provincial council system undemocratically and continues to push implementation for its own political reasons, namely to have a client state in the north run by Tamil parties it can control.[153] Some Sinhala critics of devolution call for a referendum on the thirteenth amendment. Others demand its repeal.[154] All critics agree that no

[149] Crisis Group email correspondence, October 2012. Diplomats and political analysts reported increasing unhappiness at senior levels of the government and the ruling SLFP over the Rajapaksas' resistance to devolution and to a deal with the TNA. Crisis Group interviews, Colombo, June 2012, telephone interview, September and October 2012.

[150] The loss could almost certainly be offset by increased Tamil and Muslim votes, though this would require the Rajapaksas to begin governing in new, more consensual ways.

[151] Crisis Group interview, Muslim politician, Colombo, June 2012. Nonetheless, polls conducted in 2009 and 2010 showed considerable Sinhala support for increased devolution of power to the provinces under a unitary state, along the lines suggested by the unofficial final report of the APRC. See Colin Irwin, "'War and Peace' and the APRC Proposals", May 2010 and Colin Irwin, "The APRC Proposals and 'Winning the Peace'", June 2009, available at www.peacepolls.org.

[152] Crisis Group interview, Colombo, June 2012. Responding to Sampanthan's statement that ITAK's compromises do not mean "we have abandoned our fundamental objectives", a Sinhalese diaspora organisation wrote: "This is a form of deception similar to the 'Little Now, More Later' policy for separatism of S.J.V. Chelvanayagam which makes any nation-building discussions with the ITAK and similar race-based political parties such as the Tamil National Alliance (TNA) a totally unproductive exercise". "Sri Lanka, One Country for All", op. cit.

[153] "The Government is hamstrung by India's persistence for the full implementation of 13A, and the call for elections to the Northern Provincial Council. We have said this before, and say it again, the reason for this demand is patently clear. India would like an unofficial eighth union territory under the control of its proxy, the TNA". "Hold referendum on PCs and 13A", *The Sunday Times*, 5 August 2012. "The implementation of the 13th Amendment has been the persistent chant of the country's enemies since the defeat of Prabhakaran". Gunadasa Amarasekera, "The beginning of the end?", *Island*, 28 September 2012.

[154] "Prior to revisiting 13A and the Indo-Lanka Accord, the Government might well consider holding a Referendum to ascertain the views of all Sri Lankans on 13A, the Accord and the Provincial Council system". "Hold referendum on PCs and 13A", *The Sunday Times*, 5 August 2012. "It is time for the members of the UPFA to get rid of this obnoxious piece of legislation im-

land and police powers should be given to provincial councils. In the words of a well-known Sinhala intellectual, the aim of India and the U.S. is "to force Mahinda Rajapaksa to implement the 13th amendment giving police and land powers. It would open the flood gates for the rest to flow".[155]

Sinhala nationalists object particularly strongly to Tamil demands for the north and east to be re-merged into a single province. For the same reasons it is important for Tamil nationalists – as a way of recognising the nation and homeland – it is threatening to many Sinhala nationalists, whose longstanding position is that the devolution unit should be the district, not province, much less a united north-eastern province.[156] This position is often, though not always, underpinned by stronger Sinhala nationalist ideas – recently articulated by Defence Secretary Gotabaya Rajapaksa and regularly argued by the JHU and National Freedom Front (NFF) – that deny the Tamil character of the north and east.[157]

Neither the TNA nor any other Tamil party is likely ever to convince a majority of Sinhalese to support strong devolution. Nonetheless, there are things the TNA could do to weaken the hold of these beliefs among at least some Sinhalese. One useful step, as a Tamil academic argued, would be for the TNA to:

> … take a stronger line distancing itself from the LTTE. They should say it was a mistake to be so closely aligned to the LTTE. At the very least, ITAK could be saying it, and those in parties that were killed off by LTTE. They could gain a lot in the south by saying what everyone knows, which is that they were forced to follow their line and that it was a mistake".[158]

This would be hard, but the longer it fails to address the destructive legacy of the LTTE and its previous silence about the Tigers, the easier it is for critics to question its motives and credibility.[159]

The TNA should also avoid asserting an abstract and legalistic principle of national identity and the right of self-determination. Instead, the emphasis should be on the practical problems, injustices and denial of rights suffered by Tamils, especially but not only in the north and east, and how they could best be addressed through specific and practical changes in policies and state structures.[160] In particular, there needs to be a clear argument, directed at Sinhalese, for why a specific set of devolved powers are required to solve these problems and how the TNA would use them. This is something that the LTTE was never interested in doing and never allowed other Tamils to do safely.

Without abandoning their assertion of Tamil identity and nationhood, the TNA needs to devise creative and practical ways to affirm and protect the Tamil character of the north and east without triggering the fear of separatism.[161]

posed on us by India with the connivance of the Western countries …. Now that the LTTE has been defeated, there is no reason why the Thirteenth Amendment should be part of the Constitution. The government should have taken steps to abolish it soon after the LTTE terrorists were defeated three years ago". Nalin de Silva, "Abolish the thirteenth amendment", *Island*, 26 September 2012.

[155] "The Sinhala people … will oppose devolution of police and land powers to the Provincial councils and definitely to a so-called thirteen plus. What they could finally agree with is a thirteen minus, and if the West or anybody else thinks that they could ignore the majority opinion, then they have not learnt any lessons". Nalin de Silva, "Thirteen minus not thirteen plus", *Island*, 18 January 2012. Amarasekera, "The beginning of the end?", op. cit.

[156] "[P]ublic resistance to giving more powers to the provinces … does not mean", argued *The Sunday Times* editors, that "devolution as a means of administrative necessity must be ruled out in its entirety. If devolution of powers in the context of any 13+ is a 'no-no', the District Councils as the unit of devolution and certain administrative powers, including limited land and police powers being decentralised, is a 'can-can'. "The intricacies of the Indian factor", *The Sunday Times*, 22 April 2012.

[157] Charles Haviland, "Gotabhaya Rajapaksa", op. cit. These positions lend credence to the belief of many Tamils that "the basic problem isn't fear of separation. The problem is a desire to preserve the status quo and more deeply establish the highly centralised Sinhala Buddhist state. There's a distinct agenda of Sinhala Buddhist hegemony and there's 60 years of evidence to show that the Sinhalese won't change". Crisis Group telephone interview, Gajen Ponnambalam, August 2012.

[158] Crisis Group telephone interview, October 2012.

[159] For example: "The TNA/ITAK not only endorsed the Liberation Tigers of Tamil Eelam (LTTE) as the 'sole representatives of the Tamil People' but directly benefitted from the violence perpetrated by the LTTE on Tamil political opponents. In particular, the Sri Lankan General Elections of 2004 saw unprecedented vote rigging by the LTTE in favour of TNA/ITAK candidates …. The ITAK never condemned the LTTE for its terrorism, ethnic cleansing, Tamil child conscription, extortion from Tamils people and the holding Tamil civilians as 'Human Shields'…". "Sri Lanka, One Country for All", op. cit.

[160] The TNA's recent revival of self-determination language has offered no detailed explanation of why or how the Tamil nation requires the full autonomy being demanded nor how it would work. Instead, it has combined a retelling of the history of Tamils' political disempowerment and denial of rights with an assertion of an inherent right to wide powers given the Tamils' status as a nation equal to the Sinhalese. The use of the distinction between internal and external self-determination has, for many of its audience, further tainted the positive aspects of the more modest version with the threat of separation.

[161] Should Sinhalese leaders ever be interested, there are many practical options for responding to Sinhalese fears: independent

This should be part of a thorough re-thinking of the grounds of Tamil nationalist claims, taking fully into account the distinctiveness of Muslim self-identity and the fact that a large portion of Sri Lankan Tamils – and certainly more than half of the Tamil-speaking community as a whole – lives outside the north and east.

B. Engaging Muslims Politically

1. Addressing Muslim concerns and crafting a new relationship

Muslims and Tamils, particularly in the north and east, share many concerns and threats, ranging from the routine denial of their language rights as Tamil speakers, to land grabs by the politically connected and attacks on religious sites and identity.[162] Both communities feel increasingly insecure in the face of the aggressive assertion of Sinhala and Buddhist identity. Even the powerful Muslim politicians in government have proven unable to offer adequate protection. Nonetheless, many Muslims, especially in the east, have major worries about the further devolution of power, particularly on the basis of a merged north-eastern province. Widespread fears of being a minority trapped in a Tamil-dominated region have spawned proposals for a separate Muslim administrative district in the north and east.[163] Such fears are due in part to the brutal experience of the LTTE's 1990 expulsion of Muslims from the north as well as its massacres of Muslims in the east.[164] These wounds are still raw, and Tamil organisations have done little to address them.

Some TNA and other Tamil politicians are aware of the need to strengthen Tamil-Muslim relations. The TNA reportedly made overtures to the Sri Lanka Muslim Congress (SLMC) to contest the eastern provincial council elections as a coalition.[165] Sampanthan's ITAK convention speech stated: "Any solution to the ethnic problem concerning the sovereignty of the Tamil people must also be acceptable to the Muslim community in Sri Lanka. The structure of government in Sri Lanka must also allow the Muslim community to fulfil their social, economic and political aspirations".[166]

Nonetheless, TNA and other Tamil efforts to build a common political front with Muslims face serious challenges. Since at least the 1980s, Muslims have resisted Tamil leaders' efforts to include them within the larger "Tamil-speaking people" they claim leadership over, arguing that this framework ignores Muslims' specific identity and interests.[167] Muslim political alienation has been deepened by the violence and mistrust during the decades of Tamil militancy and the lack of serious and sustained efforts to repair relations since then.[168]

Both legacies need to be addressed. Tamil leaders still have a worrying tendency to speak of Muslims as part of the "Tamil-speaking people" without any consideration of how the constituent elements of that people – sometimes referred to as "peoples" – fit and can work together.[169]

national and provincial police commissions to monitor the use of police powers; a dedicated body to monitor and ensure the protection of the rights of the Sinhala minority in the north and east; strong powers to the centre to prevent separation; even the right of voters in provinces to disestablish their own councils and return to fully central administrative control, if they choose.

[162] See Crisis Group Report, *Sri Lanka's Eastern Province*, op. cit.

[163] For a discussion of these proposals, see Crisis Group Report, *Sri Lanka's Muslims: Caught in the Crossfire*, op. cit.

[164] For a discussion of the continuing impact of LTTE violence, see Crisis Group Reports, *Sri Lanka's Muslims*, and *Sri Lanka's Eastern Province*, both op. cit.

[165] Crisis Group interview, political analysts, Colombo, June 2012 and telephone interviews August 2012.

[166] ITAK speech, op. cit., p. 5. In an earlier statement, Sampanthan said, "it would be our Endeavour to ensure that any solution would also be as acceptable to our Muslim brethren as it would be to the Tamil people. We reiterate without prejudice to the legitimate rights of our Sinhalese brethren that as Tamil-speaking people who have historically inhabited the North and East, we have common concerns in regard to our identity, our Security, resources in these areas, and our economic, social and cultural well- being". "Statement on elections scheduled to be held on 8th October to the Municipal Council Kalmunai", 5 October 2011. Other Tamil organisations also say they are interested in working collectively with Muslims. TNPF leader Gajen Ponnambalam explained: "We would like to negotiate with Muslims to establish a single Tamil-speaking territorial unit, in which Muslims are satisfied through some kind of federal arrangement. If this were achieved, then together we would negotiate with the Sinhalese. If this doesn't work, then we'd work out something through a three-way negotiations", Crisis Group interview, August 2012.

[167] There is a long tradition of Muslim leaders preferring to align with the government, first as part of national, majority-Sinhala parties, later in the form of the Sri Lanka Muslim Congress and since the early 2000s, by means of a series of splinter parties created in large part by offers of ministries and state patronage for abandoning the SLMC.

[168] See Crisis Group Report, *Sri Lanka's Eastern Province*, op. cit., pp. 6-7; also, more generally on Tamil-Muslim relations, Dennis B. McGilvray and Mirak Raheem, "Muslim Perspectives on the Sri Lankan Conflict", East-West Center Policy Studies no. 41, Washington DC, 2007.

[169] See, for instance, this passage from Sampanthan's ITAK speech, where "Tamils", "the Tamil people" and "Tamil-speaking peoples" are used apparently interchangeably: "The Tamil National Alliance provides strong leadership to all Tamils. When considering issues of development and deterioration of the Tamil people there can be no division of the Muslim, Hindu or Christian communities … bringing together Tamil speaking peoples of the Hindu, Muslim and Christian communities to join in our journey to freedom must be a priority".

Muslims are unlikely to sign on to a joint political project without first being confident they will be treated as equals and their distinct identity will be respected once they have "join[ed] under the umbrella of Tamil-speaking peoples".[170] They need to be given a central role in devising a strategy for a workable and just devolution of power. Developing this kind of shared strategising will take time. It will also require prominent Muslims to take the political risks of engaging seriously with Tamil leaders.

Muslims are also unlikely to work with the TNA in serious numbers until there has been a real acceptance of and reckoning with the LTTE's crimes against them. There is a bitter history of violence and betrayal to work through, with many Tamils feeling they, too, have been wronged, by the many Muslims who sided with the government. Many Muslims are still waiting for Tamil political leaders to apologise for – or otherwise publicly recognise – the pain caused by the LTTE's expulsion of northern Muslims and violence in the east.[171]

Much work must be done at the local level, where Muslims and Tamils in the north and east all too often find themselves fighting over scarce land and livelihood opportunities, rather than working together to rebuild their lives and claim their rights.[172] Some Muslim activists complain that the TNA's public campaign to call attention to the litany of problems northern and eastern Tamils face mostly ignores the similar problems faced by thousands of Muslims, many returning home after two decades of displacement.[173]

Both communities will need to develop new strategies to avoid zero-sum battles over resources and prevent the government from using its divide-and-rule strategy, which relies on control over government-aligned Muslim and Tamil politicians in the north and east. Just as Tamil leaders need to begin advocating more clearly and strongly for the rights and interests of Muslims, so too Muslim community leaders need to challenge their own politicians, who, while serving in key government positions, have prioritised personal political survival over addressing the needs of their community.

2. Political realities: the case of the 2012 Eastern Provincial Council elections

The serious challenges facing any attempt to form an alliance of Tamil-speaking parties – centred on the TNA and SLMC – can be seen from the results and aftermath of the 8 September 2012 eastern provincial council elections.[174]

As always in Sri Lankan provincial elections, the government coalition was at a distinct advantage, with voters knowing that a council controlled by the opposition would have much less access to resources than one aligned with the ruling party in Colombo.[175] Not surprisingly, the ruling UPFA coalition, with 32 per cent of the vote, received the most seats, fourteen, on the 37-member council. The TNA was close behind, with 31 per cent, but only eleven seats, as the party with the highest percentage is granted two bonus seats. The SLMC, a constituent member of the central government but standing on its own in the east, won 21 per cent and seven seats. The UNP won 12 per cent and four seats; the National Freedom Front (NFF), a small Sinhala nationalist party in the ruling coalition in Colombo, won one seat.

[170] Ibid.

[171] Crisis Group interviews, Muslim activists, June and October 2012. In a public statement, a group of Tamil academics and members of civil society organisations condemned the expulsion and called for a broader accounting within the Tamil community for injustices committed against Muslims. See "An appeal to the Tamil Community and its civil and political representatives", *Island*, 6 January 2012. This was followed by a similar appeal by members of Muslim civic groups urging "politicians and civil society groups of all ethnicities to acknowledge the suffering of their ethnic others and to develop processes of engagement towards reconciliation". Statement on Reconciliation by Muslim Civil Society Individuals, transcurrents.com, 17 February 2012.

[172] For a detailed analysis of how struggles for land and other resources in the north and east can easily lead to Tamil-Muslim tensions, see Crisis Group Reports, *Sri Lanka's Eastern Province*, op. cit., pp. 17-19 and *Sri Lanka's North I*, op. cit., pp. 27-31.

[173] Crisis Group interviews, Muslim activists, June and October 2012.

[174] According to government figures released in April 2012, the eastern province has a population of 1,551,381. Ampara is the largest district, with 648,057, while Batticaloa district has 525,142 and Trincomalee 378,182. Sri Lankas Tamils accounted for 39.6 per cent of the provincial population, Sri Lankan Moors (Muslims) were 36.7 per cent and Sinhalese 23.1 per cent. In the 2012 district-level ethnic breakdown, Ampara was 43.6 per cent Muslim, 38.7 per cent Sinhalese and 17.4 per cent Sri Lankan Tamil; Batticaloa was 72.6 per cent Sri Lankan Tamil, 25.5 per cent Muslim and 1.2 per cent Sinhalese; and Trincomalee was 40.4 per cent Muslim, 30.6 per cent Tamil, and 27 per cent Sinhalese. "Population by ethnic group according to districts, 2012", Sri Lanka Department of Census and Statistics, www.statistics.gov.lk/PopHouSat/CPH2011/index.php?fileName=Activities/Tentativelistof Publications. For national-level ethnic population figures, see note 2 above.

[175] The campaign was also marked by serious violations of election law, including the large-scale misuse of state resources and offers of state patronage by government ministers and government candidates, but also serious incidents of violence and intimidation against candidates and supporters of the TNA, SLMC and UNP. For the views of election monitors, see Camelia Nathaniel, "Neither free nor fair", *Ceylon Today*, 11 September 2012.

The results clearly established the TNA as the choice of the Tamil people in the east. The only other Tamil candidate to be elected was the former chief minister, S. Chandrakanthan (alias Pillaiyan); otherwise, all members of his pro-government TMVP party were defeated.[176] Nonetheless, TNA leaders were disappointed that they did not win one or two additional seats.[177] Many had reported unusually high levels of enthusiasm among voters during the campaign, with some calling it a "celebration" that reminded them of the excitement generated by the TULF in the 1977 general election.[178] Hopes among TNA members and supporters were high in the final weeks before the vote. Hundreds of volunteers from Colombo, Jaffna and Vanni reportedly campaigned for the TNA in the east.[179] Yet voter turnout in Tamil-majority areas was not as high as some had hoped, perhaps in part because of government intimidation, or fear of violence on election day.[180]

With no party receiving a majority, jockeying to form a post-election alliance with at least nineteen seats was intense. The TNA had wooed the SLMC throughout the campaign and long hoped that a joint council could be formed. Immediately after the results were announced, Sampanthan invited the UNP and SLMC to join the TNA to form a working majority and offered the chief minister post to the SLMC. The UNP accepted, but the SLMC hesitated, its leadership split.

The election campaign revealed serious and growing unhappiness among many Muslim voters with the government, with much of the criticism focusing on the lack of action to prevent or punish those responsible for the April 2012 attack on the Muslim mosque in the central town of Dambulla, led by Buddhist monks and tacitly condoned by the prime minister and other senior ministers.[181] Many SLMC candidates were actively critical of the government.

Despite having Muslim ministers in Colombo and on the Eastern provincial council, many eastern Muslims feel their resource needs and grievances have not been adequately addressed and that they remain politically marginalised.[182] Nonetheless, SLMC officials are in the Rajapaksa government, including the party leader and justice minister, Rauff Hakeem. The leadership was loath to risk these positions by going into opposition in the east. The government reportedly threatened to buy off additional SLMC members of parliament at the centre, having earlier helped create the splits that led to the formation of the All Ceylon Muslim Congress (ACMC) and National Congress (NC).[183] Their leaders also hold cabinet posts in Colombo and have important power bases in the east.[184]

While the SLMC is often referred to as electoral "kingmakers", regularly making and breaking governments in Colombo, the leadership's apparent desire to remain in power at all costs has put it at the mercy of the government's ability to use threats and promises of resources and positions to weaken and even break the party.[185] The TNA was reported to be under similar pressure, with the government said to be working hard to coax at least four newly elected members to cross over to the UPFA side.[186] In the end the SLMC stayed with the government and joined the

[176] The TNA, then still beholden to the LTTE, chose not to contest the 2008 elections, so the TMVP was the only significant Tamil party to participate. It won 6 seats, and its party head, Pillaiyan, was named chief minister after a major internal UPFA struggle with Muslim UPFA parties, which demanded a Muslim be made chief minister.

[177] Crisis Group telephone interviews, lawyers and activists close to the TNA, September 2012.

[178] Crisis Group telephone interview, Tamil activist, September 2012.

[179] Crisis Group interviews, TNA and Tamil activists, August and September 2012.

[180] The TNA stronghold, but heavily militarised, polling district of Padiruppu, in Batticaloa, had a turnout of only 58.5 per cent. Otherwise, totals across the province ranged from 61 to 67.5 per cent, and averaged out to 65.6 per cent. According to one analysis, more than 120,000 Tamils in Batticaloa alone did not vote; the real total is likely to have been 90,000-100,000. See D.B.S. Jeyaraj, "TNA trying to form eastern administration with UNP support under Muslim chief minister", dbsjeyaraj.com, 9 September 2012.

[181] Kishali Pinto Jayawardena, "Stirring a dangerous cauldron of religious hatred", *The Sunday Times*, 6 May 2012.

[182] For instance, there has never been a Muslim district secretary in Ampara or Trincomalee, despite Muslims being in a clear plurality in each district: 44 and 45 per cent respectively. Mirak Raheem, "Muslims and the Eastern Provincial Council Elections in Sri Lanka: Kingmakers or Pawns?", Groundviews.org, 6 September 2012.

[183] Crisis Group telephone interviews, political analysts, September 2012. Threats by the government to persuade a number of other SLMC parliamentarians to cross over were reportedly central to the Hakeem and SLMC decisions to join the government in 2010.

[184] The ACMC is headed by Rishad Bathiudeen, from the northern town of Mannar, but is represented in the east by former Batticaloa-based parliamentarian Ameer Ali. The National Congress is led by N.L.M. Athaulla, whose power base is the town of Akkaraipattu, in Ampara district. The two UFPA Muslim parties contributed seven of the UPFA's twelve elected council members. Fifteen of the 35 provincial council members elected in 2012 are Muslim: seven in the SLMC, seven in the UPFA, one in the UNP.

[185] For a valuable analysis of these dynamics, see Mirak Raheem, "Muslims and the Eastern Provincial Council Elections", op. cit.

[186] Crisis Group interview, human rights activist, September 2012. D.B.S. Jeyaraj, "Military Intelligence Operatives 'Pressure' TNA Eastern Councillors Into Supporting UPFA Administration", dbsjeyaraj.com, 14 September 2012.

UPFA in the east.[187] This could ultimately cost it dearly, as many of its voters are deeply angry with the government. In the words of an activist close to the party, "when there is an overt expression by the people of their wish for the party to take a pro-active stance towards the betterment of minority communities, the leadership's decision not to risk earning the wrath of the Rajapaksas poses a question as to their commitment … to serve the interest of the community".[188]

C. THE FORGOTTEN COMMUNITY: UPCOUNTRY TAMILS

Any political project to defend rights and better institutionalise Sri Lanka's multi-ethnic character will need to engage with the interests and concerns of the Upcountry Tamils, who constitute more than a quarter of all Tamils in the country and a sixth of its Tamil-speaking population.[189] The TNA would be wise to reach out to the community, which has long been Sri Lanka's poorest and most politically marginalised, and show that the party understands and has plans for addressing Upcountry Tamils' specific problems. To do so will be a challenge, especially given the tradition of the major Upcountry Tamil parties joining the government, as well as the history of class and caste-based discrimination against the community by its cousins from the north and east.[190] Nonetheless, the shared experience of discrimination, particularly on the basis of language, and the self-interest of all Tamils in increasing their political leverage, suggests the importance of working more closely together.

The TNA should learn from the mistakes of an earlier generation of Tamil leaders and make determined efforts to build alliances with those Upcountry Tamil politicians and activists willing and able to challenge government policies.[191] It would do well in particular to work with and learn from the experiences of Colombo-based politician Mano Ganesan. He is nearly unique in what a Tamil activist called his efforts to create "a pan-Tamil political solidarity while also asserting his Sri Lankan identity and participating in struggles along with the southern political parties and civil society groups on Sri Lankan issues. This multiple identity is the reality for many plantation and southern-based Tamils". The TNA needs to find ways of recognising this, without abandoning its classic concern with territorial-based devolution in the north and east.[192]

[187] The chief minister position was given to long-time SLFP politician Najeeb A. Majeed, rather than to a member of one of the three Muslim parties in the governing coalition. "Sri Lanka's Eastern Province gets new chief minister", PTI, 18 September 2012.

[188] Crisis Group interview, Muslim activist, October 2012.

[189] The community is also known as "Plantation" or "Indian" Tamils, thanks to its origin in indentured labourers from southern India brought by the British in the mid-1800s to work on the coffee and tea plantations in the central hills. 2012 figures from the Sri Lankan census show there are 842,000 "Indian Tamils", 4.2 per cent of the population, though scholars argue that increasing numbers of Upcountry Tamils list themselves as "Sri Lankan Tamils" on the census and government forms. "Population by ethnic group", op. cit. A. Lawrence, *Malayaha Tamils: Power Sharing and Local Democracy in Sri Lanka* (Colombo, 2011); Daniel Bass, *Everyday Ethnicity in Sri Lanka: Up-country Tamil Identity Politics* (New York, 2012).

[190] Beginning with its founding in 1950 by S. Thondaman, the largest party representing Upcountry Tamils, the Ceylon Workers Congress (CWC), has traditionally joined whichever government is in power and used its leverage to win limited benefits for the community. Its rival, the Upcountry People's Front (UPF), is also part of the government. Only from 1970 to 1975, when the CWC joined the Tamil United Front (TUF), has an Upcountry Tamil party worked with Tamil parties from the north and east as part of a larger political struggle. On discrimination and political marginalisation faced by Upcountry Tamils and proposals for assuring their equal citizenship, see *Malayaha Tamils*, op. cit.

[191] A founding mistake of post-independence Tamil politics was the decision of the community's then leading party, the Tamil Congress, then in coalition with the ruling UNP, to support legislation that denied citizenship and voting rights to the nearly one million plantation Tamils of "recent Indian origin". Many, though born in Sri Lanka, were ultimately "returned" to India. For an analysis of the politics behind the disenfranchisement of Upcountry Tamils, see Rajan Hoole, et al., *The Broken Palmyrah* (Claremont, CA, 1990), pp. 1-7.

[192] Ganesan is the leader of the Democratic People's Front, a small party that appeals mostly to Upcountry Tamils based in the western province, and an active campaigner against enforced disappearances. Crisis Group email correspondence, Tamil activist, October 2012. *Malayaha Tamils*, op. cit.

VI. PREVENTING THE WORST, BUILDING ALLIANCES, EXPANDING THE FOCUS

In addition to the long-term work of rebuilding and reframing relationships with other ethnic communities, Tamil leaders and others working for sustainable peace face short-, medium- and long-term challenges. The immediate aim, requiring sustained international support, should be the demilitarisation and democratisation of the north. This should be followed quickly by a negotiated deal on expanded devolution within a unitary state. There are only a limited number of years the 79-year-old Sampanthan can continue as party leader, and "it will be impossible for the TNA to continue to pursue moderate positions without getting either political concessions or some concrete improvements for Tamils on the ground".[193] Without significant changes in the way Tamil areas are governed, a post-Sampanthan TNA is likely to split, or adopt more strongly nationalist positions.

Constitutional changes beyond the unitary state will almost certainly have to wait until there is a government in Colombo more amenable to real negotiations and meaningful power sharing. With its two-thirds parliamentary majority and credentials as the conquerors of the LTTE, the Rajapaksa government is in an ideal position to gain support for a constitutional deal on devolution. It seems to have little interest, however, in power sharing and no intention to make bold moves. The goals of any engagement with the government in the near term thus should be to reverse the over-centralised and militarised governance of the north and east, while laying the legal and political groundwork for a future process of mutual trust-building that can lead to meaningful power sharing.

A. IMMEDIATE PRIORITIES

Strong messages need to be delivered consistently by all possible international actors that the government's current policies in the north are unacceptable. Continued high troop levels in the Vanni, tight military control over the population and civil administration, land grabs, Sinhalisation, suppression of political activism and serious human rights abuses are all in direct violation of the letter and spirit of the March 2012 Human Rights Council resolution. Government claims to have reduced the role of the military in the north should be rejected as the propaganda they are, and government plans for long-term demographic change and continued militarisation should be resisted.

Donors, both multilateral and bilateral, have an important responsibility to monitor and report on the situation in the north and east. They should insist that at least minimal democratic conditions be put in place before implementing their projects. The governments of Japan, India, the U.S. and the European Union (EU), in their individual roles and together with other contributing states to the World Bank, Asian Development Bank and International Monetary Fund, need to work cooperatively and urgently to ensure financial and development assistance does not further contribute to the consolidation of an undemocratic, unjust and ultimately volatile political regime in the north and east.[194]

One minimal but essential democratic condition in the north is an elected provincial council. While the powers of the provincial council are extremely limited, control of that institution would give the TNA and northern Tamils a new set of tools with which to monitor, highlight and challenge militarisation and other inequitable policies in the north. The government should be told clearly that successful northern elections need to be held by early 2013 and that this will be an important marker of compliance with the Human Rights Council's resolution.[195]

B. MEDIUM-TERM STRATEGY

Meanwhile, the TNA and influential foreign governments should keep pressing Colombo, as a first step, to allow provinces, particularly the north and east, to enjoy the maximum possible devolution allowed under the thirteenth amendment. Implementing the administrative and legal changes detailed above would in principle allow the northern and ultimately perhaps the eastern province to test what it is possible to accomplish without undue interference from Colombo.

[193] Crisis Group interview, former government official, June 2012.

[194] For more detailed analysis of how donors and development and humanitarian agencies can better ensure their work in the north and east respects principles of conflict sensitivity and democratic governance, see Crisis Group Reports, *Sri Lanka's North I* and *North II*, both op. cit.

[195] Some analysts worry that in postponing the election until September 2013, the government may be planning to make significant changes to the electoral list in order to weaken the TNA. "The government may be relying on soldiers stationed in the north and their families who would be able to vote. If they do that before May 2013, these people would be on the new electoral list for any election post-June. Unfortunately, no one in the TNA is thinking about how to counter Sinhalese votes in the northern province". Crisis Group telephone interview, lawyer, Colombo, September 2012. Commonwealth governments should also make clear to the Sri Lanka government that the successful functioning of the northern provincial council will be a factor in deciding on their attendance at the heads of government meeting in Colombo in October 2013.

Though no constitutional changes would be needed, the government would likely insist that all issues concerning devolution and political reforms, even those within the existing constitution, be considered through its favoured vehicle, the parliamentary select committee (PSC). If so, the TNA and governments with influence should insist that a) the PSC be a time-bound process; b) it have a formal agenda that builds upon bilateral discussions between the government and the TNA, perhaps through consideration of a package of reform proposals from earlier governments; c) its outcomes be recognised as an interim solution, and more devolution or other forms of power sharing may be needed; and d) the functioning of the PSC not be allowed to delay elections to the northern provincial council.

C. The International Factor

Both the TNA and Tamil organisations in the diaspora have made it clear they are relying on international pressure on the government to increase their bargaining power and help win their rights. While careful and consistent support for a just political settlement is crucial, there is a real risk of overreliance on the international community.[196] Tamils in and outside Sri Lanka need to understand and work from political realities, even as they try to change them.[197] These include no international support for a separate state, continued hostility to the LTTE and that concern with and attention to Sri Lanka will likely remain limited and intermittent. However important international lobbying and international institutions are, sustainable progress in the country will mostly have to be built from difficult domestic work.

For Tamil diaspora organisations, this should mean increasing their support for the TNA and accepting, however critically, its leading role in setting the Tamil political agenda. Diaspora activism in its current form, particularly on accountability for war crimes, as often as not plays into the hands of the government and Sinhalese hardliners and weakens the negotiating position of the TNA. So long as groups push accountability issues without serious attention to LTTE crimes, while waving LTTE flags and maintaining an explicitly separatist agenda, their interventions will feed deeply-held Sinhala fears of foreign-backed separatism. This will shrink what little space there is within Sri Lanka for building the broad political support needed for a fair political settlement.

Governments concerned with sustainable peace in Sri Lanka also need to be careful that their desire for constructive engagement does not end up facilitating Colombo's intransigence and delaying tactics. A quiet, multi-pronged initiative currently underway by South Africa and civil society organisations – designed to help restart TNA-government negotiations and support other potential avenues for reconciliation – brings with it risks that need to be particularly carefully managed.[198] While the South African experience of constitutional negotiations and political reconciliation potentially has much to teach post-war Sri Lanka, Colombo likely hopes to use the South African initiative to buy time and reduce the pressure and scrutiny set in motion by the March 2012 Human Rights Council resolution. The South African government and international community should recognise that whatever chance of success the initiative has depends on continued strong international pressure for accountability and devolution of power. The Sri Lankan government must not be rewarded simply for engaging in the South African initiative, but only for taking tangible and public steps that prove its commitment to meaningful devolution and negotiations with the TNA, elections to the northern provincial council and respect for basic freedoms throughout the island.

D. Longer-term Priorities

In addition to the longer-term processes sketched out above, designed to build bridges with Muslims and Up-country Tamils and reassure at least some Sinhalese, the TNA and its supporters have two other important long-term challenges.

[196] A diaspora activist worried that some foreign governments are "encouraging what are often unrealistic expectations. Either the Tamil politicians need a more informed, realistic sense of the geopolitics and individual donor interests that will necessarily shape any possible avenues of action, or the I[nternational] C[ommunity] should provide more honest feedback in the dialogue between the two. At the moment it almost appears as if [Tamils] are struggling to be the political version of a "model minority" with high hopes of rewards that may never come". Crisis Group email correspondence, October 2012.

[197] In the words of a Western diplomat: "There's a reality: the LTTE lost the war for independence. The sooner Tamils accept this reality, the sooner they can move on to getting what's possible. It's not realistic to think, at this stage after the end of the war, there will be a federal solution". Crisis Group interview, Western diplomat, October 2012.

[198] Deputy Foreign Minister and senior ANC leader Ebrahim Ebrahim, along with well-known non-governmental advisers Ivor Jennings and Wolf Meyer, visited Colombo in early August 2012 and met with the president and other senior officials. A government delegation visited South Africa in October. The South African team has also had discussions with both the TNA and the Global Tamil Forum. Chamikara Weerasinghe, "Govt will not accept mediators on internal matters", *Daily News*, 20 August 2012; Crisis Group interviews, diplomats, Colombo, June 2012; telephone interviews, diplomats and activists, October, and November 2012. For a positive assessment of a South African role, see Jayadeva Uyangoda, "South Africa can Play a Useful Role of Engagement with the Government and TNA", op. cit.

1. Strengthening the TNA

In order to address the deeper obstacles to successful devolution and state reform, the TNA will need to strengthen its organisation considerably by dealing with a number of important structural weaknesses. Supporters and activists agree that "they have major issues with lack of capacity and resources – a few at the top are clearly overburdened. Everyone wants to talk to them, both international contacts and people in the provinces. You can't expect Sam[panthan] to travel too extensively. I think they realise the capacity issue – but I'm not sure they are really working on it seriously".[199] One supporter argued that "the TNA seems to be reacting more than setting the agenda …. It's hard for them to find the time to step back and think about the big issues. There's a major vacuum. Even the small number of members who are able to deal with these issues don't have the time. They're just running from one fire to another".[200]

The TNA leadership is often criticised for being dominated by Colombo lawyers and lacking a serious grassroots organisation.[201] This has begun to be addressed to some extent by the election in 2011 of more than 250 new local councillors in the north, but there is a long way to go. A supporter said he has urged leaders to "reactivate the party in the universities and wider community, to let people know what they are doing and to get their support". Others worry about Sampanthan's increasing attempts to assert ITAK dominance within the alliance. "Sampanthan and his people need to be careful not to alienate other TNA parties too much", warned a sympathetic Muslim politician. A Tamil activist argued that election results in the east, in which most of the TNA candidates elected were from parties other than ITAK, showed Tamil voters "want to see TNA unity, not separate parties" and do not favour ITAK domination.[202]

Finally, to be seen as a credible interlocutor by most Sinhalese voters, and many Muslims, the TNA will have to address its past and, ultimately, move away more clearly from the LTTE legacy.[203] Doing so will be hard, especially given how deeply rooted the LTTE has been in the Tamil community within and outside of Sri Lanka. It is made even harder by the government's refusal to consider its own or the Sinhala community's share of responsibility for Tamil suffering. Nonetheless, it is important for the party to begin working through the legacy and the wounds it has left, both within the Tamil community, where many, including TNA members, were victims of LTTE violence, as well as in discussions between Tamil, Muslim and Sinhala community leaders.[204]

2. Redefining the national question, engaging with a southern reform agenda

To be successful, the Tamil struggle for rights and justice cannot depend primarily on international support. Tamil politicians and civil society will have to engage more directly in political debates beyond devolution and the north and east and build alliances with southern civil society organisations and parties interested in promoting democratic reforms. Without abandoning specifically Tamil concerns, the TNA and Tamil activists need to acknowledge and communicate more clearly to other ethnic communities, including Sinhalese, their shared vulnerability to state abuse, shared interest in democratisation and shared need for state reform. Even as the TNA and Tamil activists articulate clearly and forcefully to other communities the extent of the rights they have been denied and what changes are needed for them to be equal citizens, they also need to make clear their commitment to a common struggle to renew and enhance democratic rights for all.

In practical terms, this means the TNA should actively support growing demands for constitutional and state reform across Sri Lanka. The aim should be to redefine the "national question", so issues of regional power sharing and ethnic justice are linked directly to other legal and constitutional issues of direct concern to all communities, including the Sinhala majority.[205] In addition to expressing solidarity with struggles for the depoliticisation and demilitarisation of universities and for trade union efforts,[206]

[199] Crisis Group telephone interviews, lawyer, Colombo, October 2012.
[200] Crisis Group telephone interviews, human rights activist, September 2012.
[201] Crisis Group interviews, lawyers, activists, political analysts, Colombo, June 2012. The party leadership is also entirely male. Among other drawbacks, this limits its ability to respond effectively to the many urgent challenges faced by Tamil women, especially in the north and east. See Crisis Group Report, *Sri Lanka: Women's Insecurity in the North and East*, op. cit.
[202] Crisis Group telephone interviews, September and October 2012.
[203] M.A. Sumanthiran was reportedly jeered by a crowd in Jaffna when he mentioned the importance of publicly addressing LTTE atrocities. Crisis Group interviews, TNA advisers, August 2011.
[204] The TNA might consider establishing transitional justice working groups with political/civil society leaders from each community, tasked to work through specific issues affecting each relationship: Tamil-Tamil, Tamil-Sinhala, and Tamil-Muslim.
[205] For an interesting argument along similar lines, though one that downplays the specificity of Tamil grievances, see Kishali Pinto Jayawardene, "Strengthening a common struggle across ethnicities", *The Sunday Times*, 26 August 2012.
[206] An article by the TNA's M.A. Sumanthiran analysed and expressed support for the ongoing strike by university teachers and drew connections between militarisation of universities and

the TNA should be pressing for two key constitutional changes, for reasons of both pragmatism and principle: first, repeal of the eighteenth amendment, to allow return of independent commissions for police, judiciary, human rights and other issues; second, an end to the executive presidency and return to full parliamentary democracy.[207]

Devolution of power under the thirteenth amendment or any replacement that may follow will always be tenuous at best, so long as there is an executive presidency with nearly unlimited powers and no institutions that can hold it accountable. Presidential impunity has grown even deeper since the passage of the eighteenth amendment, which further reduced the already limited independence of the judiciary.[208] A senior constitutional lawyer argued:

> The executive presidency is so strong now, stronger than ever …. Can devolution work under these conditions? Especially with someone like Mahinda [Rajapaksa] who talks one thing one day and another the next? I don't think there can be any positive change under the executive presidency. Abolishing it needs to be the goal of a united opposition – TNA, JVP, left parties and UNP under one banner.[209]

Joining a cross-party alliance for fundamental constitutional change would also allow Tamil leaders to make clearer the connections between their specific demands for state reform and the wider struggle for democratisation and demilitarisation. Perhaps most importantly, a common struggle on democratic principles would offer a unique chance to begin to overcome Tamil-Sinhala mistrust: through working and sacrificing together for a shared political goal. Sri Lanka has seen no serious cross-ethnic political movement since the brief anti-colonial struggle of the 1940s. There is no guarantee that this strategy, or other attempts to reach out beyond the Tamil community, would succeed. Still, it is hard see how the TNA's struggle for Tamil rights can succeed if the party does not expand its agenda and deepen alliances across regions and ethnicities.

Effective and lasting power sharing will almost certainly require removing the unitary definition of the state. But it is clear this will need to be approached in stages. It would only be possible with significantly more Sinhalese support than exists now – enough to make more Sinhala politicians feel they would not suffer too much electorally for supporting it. For this to happen, new political alliances need to be imagined and created by all actors: the TNA, other Tamil parties, Muslim and Upcountry Tamil parties, pro-devolution Sinhalese and internationals concerned with Sri Lanka's democracy and long-term stability. This is their most important collective long-term task.

militarisation in the north. M.A.Sumanthiran, "Solution to education crisis lies in encouraging democratic discourse, dialoguing with FUTA and realigning the budget to reflect constituent values", dbsjeyaraj.com, 30 September 2012.

[207] While some TNA leaders have made public their support for both measures and were some of the strongest critics of the eighteenth amendment, there has been no effort to make these issues central to their campaigns or to argue for the necessity of such changes for achieving devolution. As others have argued, the TNA's formal responses to the LLRC report failed to engage seriously with the host of positive governance reforms it contained. See Asanga Welikala, "Some constitutional aspects of Sri Lanka's post-war reconciliation debate: The LLRC report and the TNA response", Oxford Transitional Justice Research Working Paper Series, February 2012.

[208] According to a constitutional lawyer, "with the judiciary, the situation is quite bad. People are losing faith. One reason is the eighteenth amendment. Mahinda [Rajapakaa] has a two-thirds majority [in parliament] and his manner of working can be quite crude and aggressive. Judges know to be on their best behaviour. He has a kind of intimidating omnipresence throughout the country. People are scared. On any case with political import, lawyers are now telling their clients to proceed only if the case is very strong". Crisis Group interview, Colombo, June 2012.

[209] Ibid.

VII. CONCLUSION

Resolving Sri Lanka's "national question" will require ensuring that the interests, identities and rights of Tamils and other Tamil-speaking peoples are fairly represented within, and respected by, the state. Making progress towards this goal demands both immediate action and patient, long-term work across different communities.

The most urgent task is to reverse the government's current campaign to destroy the political, economic and demographic basis for an autonomous Tamil-speaking region in the north and east. The government must be pressed to reverse the Sinhalisation and militarisation of the north and east and other policies that undermine the ability of Tamils to manage their own affairs in the areas they have traditionally lived in and been the majority within.

At the same time, work must begin for deeper changes in ethnic relations and in how the country's many overlapping conflicts are framed and understood. Such efforts will likely have to proceed against the continued resistance of the government and will require the TNA and other Tamil parties to negotiate and build alliances with other communities. It will also require addressing the needs and defending the rights of the many Tamils who live outside the north and east.

Ultimately, for a lasting peace to be assured, the Sri Lankan state will need to confront the issues of identity and recognition that have always helped drive the modern Tamil political struggle. It will need to devise ways of recognising Tamils as a people equal in status to Sinhalese, with the right to rule their own affairs and enjoy the respect and protection that only comes with having a territory in which the community is a majority. To this end, creative ways will likely need to be found to make possible an effective re-merger of at least parts of the east with the north, without endangering the interests or rights of Muslims or Sinhalese. So long as the government continues to refuse to devolve power to those areas in the north and east where Tamils and Muslims have for centuries been the majority, maximalist, even separatist, demands are likely to be attractive to large numbers of Tamils in Sri Lanka, as well as in the diaspora. This would be a recipe for continued ethnic polarisation and political volatility.

Both the Sri Lankan government and its main international partners – China, Russia, India, the U.S., the EU, Australia and Japan – should recognise that in the absence of any government willingness to share power, the TNA leadership is taking a serious risk with its moderate position. The TNA will find it hard to reduce its demands further without losing credibility with Tamil voters and provoking a return to more militant positions. If its current political project is not adequately supported, if government policies in the north and east continue along current lines, and if the government does not begin to implement the full devolutionary potential of the thirteenth amendment and ultimately go beyond it, the risk of renewed conflict can only grow.

Colombo/Brussels, 20 November 2012

APPENDIX A

MAP OF SRI LANKA

Map No. 4172 Rev.3 UNITED NATIONS
March 2008

Department of Field Support
Cartographic Section

APPENDIX B

PREVIOUS DEVOLUTION PROPOSALS

Among the many proposals for devolution of power or limited regional autonomy, the following have been the most important:

Bandaranaike-Chelvanayakam Pact (1957) and Dudley Senanayake-Chelvanayakam Pact (1965)

The Bandaranaike-Chelvanayakam pact was a compromise between the SLFP leader, Prime Minister S.W.R.D. Bandaranaike, and the head of the Federal Party (FP), S.J.V. Chelvanayakam.[210] Signed in July 1957, it offered Chelvanayakam significant progress towards his goal of a federal state with autonomy for a Tamil-speaking north east, in exchange for an end to the FP's threatened civil disobedience campaign. It would have granted improved language rights for Tamil speakers in the north and east, though not full parity with Sinhala as a national language. It outlined a framework for regional councils, in which the north would have constituted one region, the east two or more; councils would have had the power to join for specific issues. It foresaw councils receiving power over land and government irrigation and settlement schemes. These would have been delegated by ordinary law, not devolved by constitutional change. Bandaranaike abrogated the pact in February 1958 after bitter protest from the main opposition United National Party and much of the Buddhist clergy, which had been an important SLFP constituency.

The 1965 Dudley Senanayake-Chelvanayakam pact was a pre-electoral agreement between the UNP and FP leaders. Less extensive than the 1957 pact, it saw the UNP pledge to establish district rather than regional councils. The exact extent of powers was never agreed, but the councils would have remained in effect under control of the central government and been established only by ordinary legislation. However, the agreement also promised significant land rights to Tamils in the north and east, giving district councils there the ability to prevent further colonisation and demographic change and implicitly recognising the Tamil-speaking character of the area. Like the earlier pact, it would also have granted greater official status to the Tamil language as the language of administration in the north and east. After three years of negotiation and virtual non-implementation, the FP left the government in frustration in 1968.

The Moonesinghe Committee (1991-1993)

In 1991, a parliamentary all-party select committee was established to devise a constitutional solution to the ethnic conflict through devolution.[211] Named for the SLFP chairman, the two-year process saw the two major Sinhala-dominated parties (UNP and SLFP) agree on enhanced powers for provincial councils under a quasi-federal system modelled on India's.[212] Tamil parties rejected the majority report, arguing for an explicitly federal system with greater powers in a permanently merged north-east province (with special protections for its Muslims and Sinhalese).[213]

President Kumaratunga's constitutional proposals (1995-2000)

In 1995, a year after assuming office, President Chandrika Kumaratunga's SLFP-dominated government proposed far-reaching constitutional changes that would have replaced the unitary state with a "union of regions" and granted significantly increased powers to a newly-demarcated "north-eastern region".[214] The proposals were revised three times, with devolution gradually weakened, over five years of complicated negotiations with the main opposition UNP, as well as Tamil and Muslim parties. When a bill to replace the 1978 constitution was eventually presented to parliament in August 2000, UNP opposition denied the reforms the necessary two-thirds majority, and the bill was withdrawn.[215]

[210] For the text and useful analysis of both the Bandaranaike-Chelvanayakam and Dudley Senanayake-Chelvanayakam pacts, see Edrisinha et al., *Power-Sharing in Sri Lanka*, op. cit. pp. 216-228; also Neil de Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford, 2004), chapter five, esp. pp. 102-108 and 130-143.

[211] See Edrisinha, et al., *Power-Sharing in Sri Lanka*, op. cit., pp. 410-413.

[212] Also signing on to the majority report were the Sri Lanka Muslim Congress (SLMC) and two leftist parties.

[213] The committee's majority report also proposed an "apex council" that would allow for the separate eastern and northern provinces to function as a distinct "region" on some issues. See Edrisinha, et al., *Power-Sharing in Sri Lanka*, op. cit., p. 412.

[214] All four proposals – 1995, 1996, 1997 and 2000 – called for abolition of the executive presidency and return to a fully parliamentary system headed by a prime minister.

[215] By the time the draft constitution was presented to parliament, the war had intensified, anti-LTTE sentiment was on the rise, and the proposed level of devolution was too weak to get TNA support but too strong for many in the UNP and even the SLFP. The UNP argued that its opposition was not to the devolution of power, but was based on the president's refusal to agree to abolish the executive presidency with immediate effect, preferring instead to maintain the powers until the end of her six-year term. The episode was taken by many as further evidence

The Norwegian-backed peace process (2002-2006)

This peace process never got to the stage of negotiating new constitutional arrangements, but it did see a number of proposals for interim administrative arrangements for the north and east, including the LTTE's one and only substantive proposal for governing the region.[216] The Tigers' 2003 plan for an Interim Self-Governing Authority (ISGA) would in effect have granted the LTTE control over both provinces for five years, at which point elections would be held.[217] By the time of this proposal, the peace process was already in serious trouble, and the sides never resumed substantive talks.[218]

The All-Party Representative Committee (APRC) (2006-2009)

With a mandate that implicitly assumed the need to go beyond the thirteenth amendment, deliberations quickly produced a potentially important reform package. The December 2006 "majority report" of the multi-ethnic experts committee appointed to advise the APRC proposed a new constitution that would have dropped reference to the unitary nature of the state and guaranteed all its "constituent peoples" a due share of state power, both through deeper and more entrenched devolution and a new upper-house with regional representation.[219] President Rajapaksa quickly distanced himself from the imaginative proposals and ensured that the APRC would not take up the majority report.[220] In January 2008, under pressure from India to show some movement towards a political solution, Rajapaksa pressed the APRC to deliver an "interim" proposal that would lay out the steps needed to maximise devolution under the thirteenth amendment. Its detailed recommendations for administrative and legal changes to maximise devolution under the existing constitution, however, were eventually reduced on presidential orders to just a few pages. The minimalist recommendations – amounting to less than full thirteenth amendment implementation – have not been acted on.[221]

Hampered by non-participation of the TNA, UNP, and JVP – all of which dismissed the process as designed only to satisfy international demands for a political process – the APRC continued to meet for another year-and-a-half. Its final report, supposedly presented to the president in mid-2009, was never released, but a draft prepared by two members and said to be based on a committee consensus was eventually made public.[222]

that any arrangements for power sharing would always be undermined by "ethnic out-bidding" among the mainly-Sinhalese parties. This was especially the case so long as the LTTE refused to discuss constitutional reforms and continued to target Sinhalese civilians. On Sri Lanka's history of "ethnic out-bidding", see *Blowback*, op. cit.

[216] The UNP-led government in 2003 made two separate proposals for interim administrations; both were rejected by the LTTE. See Edrisinha, et al., *Power-Sharing in Sri Lanka*, op. cit., pp. 650-661; also Charan Rainford and Ambika Satkunanathan, *Mistaking Politics for Governance: The Politics of Interim Arrangements in Sri Lanka 2002-2005* (Colombo, 2005).

[217] For the text and an analysis of the ISGA, see Edrisinha, et al., *Power-Sharing in Sri Lanka*, op. cit., pp. 662-675.

[218] In fact, many Sinhalese saw the ISGA as evidence that the LTTE was determined to use the peace process to consolidate its power in the north and east to the point where it could no longer be challenged. The SLFP immediately rejected the proposal, and President Kumaratunga took back substantial powers from the UNP government within days and dissolved parliament in February 2004. In April elections, her coalition won a narrow majority, and the peace process in effect was over, though attempts were made to revive it after the devastating December 2004 tsunami.

[219] The majority report was challenged by committee members whose minority report proposed a much weaker form of devolution. For analysis and text of both reports, see Edrisinha, et al., *Power-Sharing in Sri Lanka*, op. cit., pp. 772-855.

[220] In January 2007, the APRC chairman, Tissa Vitharana, prepared a discussion paper that incorporated much of the majority report, with some elements from the minority report. On its basis, discussions among APRC representatives continued for two and a half years. For the text of the discussion paper, see ibid, pp. 856-876.

[221] The interim report claimed to aim at "fully implementing relevant provisions in the present Constitution, in order to achieve maximum and effective devolution of powers to the provinces in the short term". While it called on the government to "endeavour to implement the 13th Amendment to the Constitution in respect of legislative, executive and administrative powers, overcoming existing shortcomings", it contained no suggestions on how to do so. Instead, it recommended elections in the eastern province, an interim council to be established for the north – a process outside the thirteenth amendment – and language policy reforms. The proposals can be found at www.peace-srilanka.org/index.php?option=com_ccboard&view=postlist&forum=10&topic=5. See Crisis Group Report, *Sri Lanka's Return to War*, op. cit., pp. 7-8; also Rohan Edrisinha, "The APRC process: from hope to despair", Groundviews.org, 3 February 2008.

[222] The government reportedly prevented the two members of the APRC – R. Yogarajan of the UNP and M. Nizam Kariappar of the SLMC – from introducing the report in parliament, so it was published unofficially. The full text can be found at http://groundviews.org/2010/07/22/final-report-of-all-party-representative-committee-aprc/. Yogarajan and Kariappar explained that they had expected the final report to be published and used as the basis for post-war talks between the government and the UNP and TNA. The committee chairman, government minister Tissa Vitharana, is believed to have submitted the APRC's final report to the president in August 2009, who then requested him to submit a new, more acceptable version in early 2010. This much shorter text, just three pages, was leaked after Vitharana presented it to a meeting of leftist parties in September 2010. Some in the Indian and U.S. governments appeared to believe

the Rajapaksa administration's regular promises of the APRC delivering a "political solution" as late as mid-2009; see Crisis Group Report, *India and Sri Lanka*, op. cit., pp. 4-6.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Undersecretary of State and Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters is in Brussels, and the organisation has offices or representation in 34 locations: Abuja, Bangkok, Beijing, Beirut, Bishkek, Bogotá, Bujumbura, Cairo, Dakar, Damascus, Dubai, Gaza, Guatemala City, Islamabad, Istanbul, Jakarta, Jerusalem, Johannesburg, Kabul, Kathmandu, London, Moscow, Nairobi, New York, Port-au-Prince, Pristina, Rabat, Sanaa, Sarajevo, Seoul, Tbilisi, Tripoli, Tunis and Washington DC. Crisis Group currently covers some 70 areas of actual or potential conflict across four continents. In Africa, this includes, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Sierra Leone, Somalia, South Sudan, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Malaysia, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, North Caucasus, Serbia and Turkey; in the Middle East and North Africa, Algeria, Bahrain, Egypt, Iran, Iraq, Israel-Palestine, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, Western Sahara and Yemen; and in Latin America and the Caribbean, Colombia, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development Research Centre, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Instrument for Stability, Finnish Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Swedish International Development Cooperation Agency, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Kingdom Department for International Development, U.S. Agency for International Development.

The following institutional and private foundations have provided funding in recent years: Adessium Foundation, Carnegie Corporation of New York, Elders Foundation, William and Flora Hewlett Foundation, Humanity United, Henry Luce Foundation, John D. and Catherine T. MacArthur Foundation, Oak Foundation, Open Society Foundations, Ploughshares Fund, Radcliffe Foundation, Rockefeller Brothers Fund, Stanley Foundation, The Charitable Foundation, Tinker Foundation Incorporated.

November 2012

APPENDIX D

CRISIS GROUP REPORTS AND BRIEFINGS ON ASIA SINCE 2009

Central Asia

Tajikistan: On the Road to Failure, Asia Report N°162, 12 February 2009.

Women and Radicalisation in Kyrgyzstan, Asia Report N°176, 3 September 2009.

Central Asia: Islamists in Prison, Asia Briefing N°97, 15 December 2009.

Central Asia: Migrants and the Economic Crisis, Asia Report N°183, 5 January 2010.

Kyrgyzstan: A Hollow Regime Collapses, Asia Briefing N°102, 27 April 2010.

The Pogroms in Kyrgyzstan, Asia Report N°193, 23 August 2010.

Central Asia: Decay and Decline, Asia Report N°201, 3 February 2011.

Tajikistan: The Changing Insurgent Threats, Asia Report N°205, 24 May 2011.

Kyrgyzstan: Widening Ethnic Divisions in the South, Asia Report N°222, 29 March 2012.

North East Asia

North Korea's Missile Launch: The Risks of Overreaction, Asia Briefing N°91, 31 March 2009.

China's Growing Role in UN Peacekeeping, Asia Report N°166, 17 April 2009 (also available in Chinese).

North Korea's Chemical and Biological Weapons Programs, Asia Report N°167, 18 June 2009.

North Korea's Nuclear and Missile Programs, Asia Report N°168, 18 June 2009.

North Korea: Getting Back to Talks, Asia Report N°169, 18 June 2009.

China's Myanmar Dilemma, Asia Report N°177, 14 September 2009 (also available in Chinese).

Shades of Red: China's Debate over North Korea, Asia Report N°179, 2 November 2009 (also available in Chinese).

The Iran Nuclear Issue: The View from Beijing, Asia Briefing N°100, 17 February 2010 (also available in Chinese).

North Korea under Tightening Sanctions, Asia Briefing N°101, 15 March 2010.

China's Myanmar Strategy: Elections, Ethnic Politics and Economics, Asia Briefing N°112, 21 September 2010 (also available in Chinese).

North Korea: The Risks of War in the Yellow Sea, Asia Report N°198, 23 December 2010.

China and Inter-Korean Clashes in the Yellow Sea, Asia Report N°200, 27 January 2011 (also available in Chinese).

Strangers at Home: North Koreans in the South, Asia Report N°208, 14 July 2011 (also available in Korean).

South Korea: The Shifting Sands of Security Policy, Asia Briefing N°130, 1 December 2011.

Stirring up the South China Sea (I), Asia Report N°223, 23 April 2012 (also available in Chinese).

Stirring up the South China Sea (II): Regional Responses, Asia Report N°229, 24 July 2012.

North Korean Succession and the Risks of Instability, Asia Report N°230, 25 July 2012 (also available in Korean).

South Asia

Nepal's Faltering Peace Process, Asia Report N°163, 19 February 2009 (also available in Nepali).

Afghanistan: New U.S. Administration, New Directions, Asia Briefing N°89, 13 March 2009.

Pakistan: The Militant Jihadi Challenge, Asia Report N°164, 13 March 2009.

Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province, Asia Report N°165, 16 April 2009.

Pakistan's IDP Crisis: Challenges and Opportunities, Asia Briefing N°93, 3 June 2009.

Afghanistan's Election Challenges, Asia Report N°171, 24 June 2009.

Sri Lanka's Judiciary: Politicised Courts, Compromised Rights, Asia Report N°172, 30 June 2009.

Nepal's Future: In Whose Hands?, Asia Report N°173, 13 August 2009 (also available in Nepali).

Afghanistan: What Now for Refugees?, Asia Report N°175, 31 August 2009.

Pakistan: Countering Militancy in FATA, Asia Report N°178, 21 October 2009.

Afghanistan: Elections and the Crisis of Governance, Asia Briefing N°96, 25 November 2009.

Bangladesh: Getting Police Reform on Track, Asia Report N°182, 11 December 2009.

Sri Lanka: A Bitter Peace, Asia Briefing N°99, 11 January 2010.

Nepal: Peace and Justice, Asia Report N°184, 14 January 2010.

Reforming Pakistan's Civil Service, Asia Report N°185, 16 February 2010.

The Sri Lankan Tamil Diaspora after the LTTE, Asia Report N°186, 23 February 2010.

The Threat from Jamaat-ul Mujahideen Bangladesh, Asia Report N°187, 1 March 2010.

A Force in Fragments: Reconstituting the Afghan National Army, Asia Report N°190, 12 May 2010.

War Crimes in Sri Lanka, Asia Report N°191, 17 May 2010.

Steps Towards Peace: Putting Kashmiris First, Asia Briefing N°106, 3 June 2010.

Pakistan: The Worsening IDP Crisis, Asia Briefing N°111, 16 September 2010.

Nepal's Political Rites of Passage, Asia Report N°194, 29 September 2010 (also available in Nepali).

Reforming Afghanistan's Broken Judiciary, Asia Report N°195, 17 November 2010.

Afghanistan: Exit vs Engagement, Asia Briefing N°115, 28 November 2010.

Reforming Pakistan's Criminal Justice System, Asia Report N°196, 6 December 2010.

Nepal: Identity Politics and Federalism, Asia Report N°199, 13 January 2011 (also available in Nepali).

Afghanistan's Elections Stalemate, Asia Briefing N°117, 23 February 2011.

Reforming Pakistan's Electoral System, Asia Report N°203, 30 March 2011.

Nepal's Fitful Peace Process, Asia Briefing N°120, 7 April 2011 (also available in Nepali).

India and Sri Lanka after the LTTE, Asia Report N°206, 23 June 2011.

The Insurgency in Afghanistan's Heartland, Asia Report N°207, 27 June 2011.

Reconciliation in Sri Lanka: Harder Than Ever, Asia Report N°209, 18 July 2011.

Aid and Conflict in Afghanistan, Asia Report N°210, 4 August 2011.

Nepal: From Two Armies to One, Asia Report N°211, 18 August 2011 (also available in Nepali).

Reforming Pakistan's Prison System, Asia Report N°212, 12 October 2011.

Islamic Parties in Pakistan, Asia Report N°216, 12 December 2011.

Nepal's Peace Process: The Endgame Nears, Asia Briefing N°131, 13 December 2011 (also available in Nepali).

Sri Lanka: Women's Insecurity in the North and East, Asia Report N°217, 20 December 2011.

Sri Lanka's North I: The Denial of Minority Rights, Asia Report N°219, 16 March 2012.

Sri Lanka's North II: Rebuilding under the Military, Asia Report N°220, 16 March 2012.

Talking About Talks: Toward a Political Settlement in Afghanistan, Asia Report N°221, 26 March 2012.

Pakistan's Relations with India: Beyond Kashmir?, Asia Report N°224, 3 May 2012.

Bangladesh: Back to the Future, Asia Report N°226, 13 June 2012.

Aid and Conflict in Pakistan, Asia Report N°227, 27 June 2012.

Election Reform in Pakistan, Asia Briefing N°137, 16 August 2012.

Nepal's Constitution (I): Evolution Not Revolution, Asia Report N°233, 27 August 2012.

Nepal's Constitution (II): The Expanding Political Matrix, Asia Report N°234, 27 August 2012.

Afghanistan: The Long, Hard Road to the 2014 Transition, Asia Report N°236, 8 October 2012.

Pakistan: No End To Humanitarian Crises, Asia Report N°237, 9 October 2012.

South East Asia

Local Election Disputes in Indonesia: The Case of North Maluku, Asia Briefing N°86, 22 January 2009.

Timor-Leste: No Time for Complacency, Asia Briefing N°87, 9 February 2009.

The Philippines: Running in Place in Mindanao, Asia Briefing N°88, 16 February 2009.

Indonesia: Deep Distrust in Aceh as Elections Approach, Asia Briefing N°90, 23 March 2009.

Indonesia: Radicalisation of the "Palembang Group", Asia Briefing N°92, 20 May 2009.

Recruiting Militants in Southern Thailand, Asia Report N°170, 22 June 2009 (also available in Thai).

Indonesia: The Hotel Bombings, Asia Briefing N°94, 24 July 2009 (also available in Indonesian).

Myanmar: Towards the Elections, Asia Report N°174, 20 August 2009.

Indonesia: Noordin Top's Support Base, Asia Briefing N°95, 27 August 2009.

Handing Back Responsibility to Timor-Leste's Police, Asia Report N°180, 3 December 2009.

Southern Thailand: Moving towards Political Solutions?, Asia Report N°181, 8 December 2009 (also available in Thai).

The Philippines: After the Maguindanao Massacre, Asia Briefing N°98, 21 December 2009.

Radicalisation and Dialogue in Papua, Asia Report N°188, 11 March 2010 (also available in Indonesian).

Indonesia: Jihadi Surprise in Aceh, Asia Report N°189, 20 April 2010.

Philippines: Pre-election Tensions in Central Mindanao, Asia Briefing N°103, 4 May 2010.

Timor-Leste: Oecusse and the Indonesian Border, Asia Briefing N°104, 20 May 2010.

The Myanmar Elections, Asia Briefing N°105, 27 May 2010 (also available in Chinese).

Bridging Thailand's Deep Divide, Asia Report N°192, 5 July 2010 (also available in Thai).

Indonesia: The Dark Side of Jama'ah Ansharut Tauhid (JAT), Asia Briefing N°107, 6 July 2010.

Indonesia: The Deepening Impasse in Papua, Asia Briefing N°108, 3 August 2010.

Illicit Arms in Indonesia, Asia Briefing N°109, 6 September 2010.

Managing Land Conflict in Timor-Leste, Asia Briefing N°110, 9 September 2010.

Stalemate in Southern Thailand, Asia Briefing N°113, 3 November 2010 (also available in Thai).

Indonesia: "Christianisation" and Intolerance, Asia Briefing N°114, 24 November 2010.

Indonesia: Preventing Violence in Local Elections, Asia Report N°197, 8 December 2010 (also available in Indonesian).

Timor-Leste: Time for the UN to Step Back, Asia Briefing N°116, 15 December 2010.

The Communist Insurgency in the Philippines: Tactics and Talks, Asia Report N°202, 14 February 2011.

Myanmar's Post-Election Landscape, Asia Briefing N°118, 7 March 2011 (also available in Chinese and Burmese).

The Philippines: Back to the Table, Warily, in Mindanao, Asia Briefing N°119, 24 March 2011.

Thailand: The Calm Before Another Storm?, Asia Briefing N°121, 11 April 2011 (also available in Chinese and Thai).

Timor-Leste: Reconciliation and Return from Indonesia, Asia Briefing N°122, 18 April 2011 (also available in Indonesian).

Indonesian Jihadism: Small Groups, Big Plans, Asia Report N°204, 19 April 2011 (also available in Chinese).

Indonesia: Gam vs Gam in the Aceh Elections, Asia Briefing N°123, 15 June 2011.

Indonesia: Debate over a New Intelligence Bill, Asia Briefing N°124, 12 July 2011.

The Philippines: A New Strategy for Peace in Mindanao?, Asia Briefing N°125, 3 August 2011.

Indonesia: Hope and Hard Reality in Papua, Asia Briefing N°126, 22 August 2011.

Myanmar: Major Reform Underway, Asia Briefing N°127, 22 September 2011 (also available in Burmese and Chinese).

Indonesia: Trouble Again in Ambon, Asia Briefing N°128, 4 October 2011.

Timor-Leste's Veterans: An Unfinished Struggle?, Asia Briefing N°129, 18 November 2011.

The Philippines: Indigenous Rights and the MILF Peace Process, Asia Report N°213, 22 November 2011.

Myanmar: A New Peace Initiative, Asia Report N°214, 30 November 2011 (also available in Burmese and Chinese).

Waging Peace: ASEAN and the Thai-Cambodian Border Conflict, Asia Report N°215, 6 December 2011 (also available in Chinese).

Indonesia: From Vigilantism to Terrorism in Cirebon, Asia Briefing N°132, 26 January 2012.

Indonesia: Cautious Calm in Ambon, Asia Briefing N°133, 13 February 2012.

Indonesia: The Deadly Cost of Poor Policing, Asia Report N°218, 16 February 2012 (also available in Indonesian).

Timor-Leste's Elections: Leaving Behind a Violent Past?, Asia Briefing N°134, 21 February 2012.

Indonesia: Averting Election Violence in Aceh, Asia Briefing N°135, 29 February 2012.

Reform in Myanmar: One Year On, Asia Briefing N°136, 11 April 2012 (also available in Burmese and Chinese).

The Philippines: Local Politics in the Sulu Archipelago and the Peace Process, Asia Report N°225, 15 May 2012.

How Indonesian Extremists Regroup, Asia Report N°228, 16 July 2012 (also available in Indonesian).

Myanmar: The Politics of Economic Reform, Asia Report N°231, 27 July 2012 (also available in Burmese and Chinese).

Indonesia: Dynamics of Violence in Papua, Asia Report N°232, 9 August 2012.

Indonesia: Defying the State, Asia Briefing N°138, 30 August 2012.

Malaysia's Coming Election: Beyond Communalism?, Asia Report N°235, 1 October 2012.

Myanmar: Storm Clouds on the Horizon, Asia Report N°238, 12 November 2012.

APPENDIX E

INTERNATIONAL CRISIS GROUP BOARD OF TRUSTEES

PRESIDENT'S COUNCIL

A distinguished group of individual and corporate donors providing essential support and expertise to Crisis Group.

Dow Chemical
Mala Gaonkar
Frank Holmes
Steve Killelea
George Landegger
McKinsey & Company
Ford Nicholson & Lisa Wolverton
Harry Pokrandt
Shearman & Sterling LLP
Ian Telfer
White & Case LLP
Neil Woodyer

INTERNATIONAL ADVISORY COUNCIL

Individual and corporate supporters who play a key role in Crisis Group's efforts to prevent deadly conflict.

Anglo American PLC
APCO Worldwide Inc.
Ryan Beedie
Stanley Bergman & Edward Bergman
BP
Chevron
Neil & Sandra DeFeo Family Foundation
Equinox Partners
Neemat Frem
FTI Consulting
Seth & Jane Ginns
Alan Griffiths
Rita E. Hauser
George Kellner
Faisel Khan
Zelmira Koch Polk
Elliott Kulick
Harriet Mouchly-Weiss
Näringslivets Inter¬nationella Råd (NIR) – International Council of Swedish Industry
Griff Norquist
Ana Luisa Ponti & Geoffrey R. Hoguet
Kerry Propper
Michael L. Riordan
Shell
Nina Solarz
Horst Sporer
Statoil
Talisman Energy
Tilleke & Gibbins
Kevin Torudag
Yapı Merkezi Construction and Industry Inc.
Stelios S. Zavvos

SENIOR ADVISERS

Former Board Members who maintain an association with Crisis Group, and whose advice and support are called on (to the extent consistent with any other office they may be holding at the time).

Martti Ahtisaari
Chairman Emeritus
George Mitchell
Chairman Emeritus
Gareth Evans
President Emeritus
Kenneth Adelman
Adnan Abu Odeh
HRH Prince Turki al-Faisal
Hushang Ansary
Óscar Arias
Ersin Arıoğlu
Richard Armitage
Diego Arria
Zainab Bangura
Shlomo Ben-Ami
Christoph Bertram
Alan Blinken
Lakhdar Brahimi
Zbigniew Brzezinski
Kim Campbell
Jorge Castañeda
Naresh Chandra
Eugene Chien
Joaquim Alberto Chissano
Victor Chu
Mong Joon Chung
Pat Cox
Gianfranco Dell'Alba
Jacques Delors
Alain Destexhe
Mou-Shih Ding
Uffe Ellemann-Jensen
Gernot Erler
Marika Fahlén
Stanley Fischer
Malcolm Fraser
I.K. Gujral
Swanee Hunt
Max Jakobson
James V. Kimsey
Aleksander Kwasniewski
Todung Mulya Lubis
Allan J. MacEachen
Graça Machel
Jessica T. Mathews
Nobuo Matsunaga
Barbara McDougall
Matthew McHugh
Miklós Németh
Christine Ockrent
Timothy Ong
Olara Otunnu
Lord (Christopher) Patten
Shimon Peres
Victor Pinchuk
Surin Pitsuwan
Cyril Ramaphosa
Fidel V. Ramos
George Robertson
Michel Rocard
Volker Rühe
Güler Sabancı
Mohamed Sahnoun
Salim A. Salim
Douglas Schoen
Christian Schwarz-Schilling
Michael Sohlman
Thorvald Stoltenberg
Leo Tindemans
Ed van Thijn
Simone Veil
Shirley Williams
Grigory Yavlinski
Uta Zapf
Ernesto Zedillo