

**Submission made by the Tamil Civil Society at the “Exploring Peaceful Options” Conference held in Berlin, 26-27 January 2013 organised by the Berghof Foundation.**

**Introduction**

The following are some preliminary points of discussion submitted on behalf of the Tamil Civil Society, at a conference convened by the Berghof Foundation on ‘Exploring Peaceful Options- Part 2’, held in Berlin 26-27 January 2013.

**1. Resolving the Pre-Constitutional Issue**

It needs to be recognized that there is a ‘pre-constitutional’ question to be settled before Tamils can sit down and debate institutional proposals for a constitutional design. The pre-constitutional question relates to the character of the Sri Lankan state. The ethnic conflict is fundamentally about how we characterize the Sri Lankan state which is at present exclusively Sinhala Buddhist. For Sri Lanka to become a non-Sinhala Buddhist state, the Sinhala Buddhist polity will have to first recognize that there needs to be a new social contract drawn between the different constituent nations in Sri Lanka through which would emerge a new state – a new Sri Lanka. For this the Sinhala Buddhist polity should recognize the Tamil polity’s right to be an equal partner to this social contract. This would mean recognizing Tamil nationhood and their right to self-determination. Needless to say this does NOT mean a separate state. Constitutional institutions built on such a re-envisioning of the Sri Lankan state is the only way in which an (constitutional) institutional design will be implemented in practice. The 13<sup>th</sup> amendment failed not just by the fact that it was set within a unitary framework and because of its flawed institutional design but also because of a conception of a hierarchical state with Sinhala Buddhism at the top. Even a Federal constitution within a Sinhala Buddhist framework would not be workable unless the hierarchical conception of the state is altered. Hence our insistence on the pre-constitutional recognition of Tamil Nationhood and self-determination. This submission, we hope, makes it clear that the Tamil Civil Society’s stance on the recognition of Tamil Nationhood and Self Determination (within a united Sri Lanka) is not a reflection of ideological intransigence but one steeped in experience and a reflection of reality.

**2. On the 13<sup>th</sup> Amendment and a Possible Incrementalist Path to State Transformation**

The 13<sup>th</sup> Amendment to the constitution cannot be a starting point or a reference point for a political solution. We do not want to rehearse the legal arguments as to why the 13<sup>th</sup> amendment would provide for a grossly inadequate basis for a political solution.

The question of approaching the political solution incrementally does not arise given the zero appetite on the part of the Sinhala Buddhist polity towards state transformation. Further incrementalism could be acceptable if there is agreement on what we have articulated above as the 'pre-constitutional issue'. In Scotland for example there is room for incrementalism to work because there is acknowledgment on the part of political parties in England that the Scots have the right to self determine their destiny. In Sri Lanka the Sinhala Buddhist polity resists from identifying the state as pluri-nationalist. It would be dangerous and foolish to agree to an incrementalist process with the Sinhala Buddhist polity on such grossly inadequate foundations such as the 13<sup>th</sup> amendment.

### **3. On the Muslim and Up Country Tamil Question.**

The Muslim Community and the Up Country Tamil Community have charted out distinct politics of their own. It is both undesirable and morally unethical for the Tamils to do politics on behalf of the Muslim and the Up Country Tamil Community. It is for the Muslim and Up Country political parties to articulate the political aspirations of their people. Tamil political parties can and should work with the Muslim Community and the Up Country Tamil Community in solidarity with their political parties. It can also be expressly affirmed that the Tamils will always be responsive to the concerns of the Muslim Community particularly the Eastern Muslim community. It would be desirable for the Tamil parties to come together and release a white paper of sorts on their position *vis-a-vis* the Muslim question.

### **4. On drafting an outline of a proposal for a political solution.**

The Scotland Act of 1998 which set up the Scottish Parliament was an end product of the work done by the Scottish Constitutional Convention. The Scottish Constitutional Convention was a joint project of Scottish Political Parties and Scottish Civil Society groups which engaged in wide spread consultations with the Scottish people leading to a publication of a report which outlined the views of the Scots on a political solution. Tamil Political Parties should come together to form such a forum through which an articulation of our political aspirations could come forth through a bottom-up process. This would empower the people and also provide wider democratic legitimacy for any proposals that the Tamil side put forwards.

### **5. Advocating for a referendum wherein the Tamil people can freely express their aspirations for a political solution.**

World over sub-state entities are holding referendums to provide democratic expression for the choice that their people wish to make regarding their political

future. Tamil political parties should slowly start building a discourse asking for the Tamils to be given an opportunity to be able to freely express themselves in this regard. We could start with a process outlined in (4) above which could then lead to a referendum.

### **Conclusion**

Given that there is a deadlock in the negotiations with the GoSL and given that it is becoming increasingly clear that there is no appetite on the part of the Sinhala Buddhist polity towards genuinely resolving the political solution question it is time for Tamils, their political parties and organisations to creatively look for peaceful, non-violent and democratic alternatives through which pressure could be mounted on the International Community and the Sinhala-Buddhist polity towards arriving at a political solution. The above suggestions have been made in this spirit.