

Transcript of Interview with Spokesperson for the Tamil National Alliance and MP, M.A. Sumanthiran (November 24, 2016)

What are your thoughts on the sub-committee reports? Are you happy with the contents?

Yes, overall yes. I was involved in the preparation of many of the sub-committee reports as well, and in any case we had them about 2 months ago. A lot of the sub-committees have delved into matters that go well beyond what goes into a constitution but nevertheless if you distill them into what goes into a const. I think a large percentage of that would be very acceptable to Tamil aspirations.

Do you think the Centre-Periphery Relations Sub-Committee (CPR) report takes the constitution beyond the 13th amendment?

This takes it well beyond the 13th amendment. There's consensus on a number of issues regarding devolution with the Steering Committee. Although the interim report containing those items has not been published yet I think I still have the freedom to say a few things. For instance every representation made to the Steering Committee was that the governor's powers should go. There is agreement that the executive presidency must be abolished in total. If the executive presidency is abolished, automatically the governor's executive powers will go.

How do you reconcile that with the fact that a few days ago Ranil made a statement saying that the constitution is not going to go beyond the Sharvananda judgment on the 13 amendment which gives a very narrow definition of unitary?

It can't be a unitary constitution. See he mentioned Sharva's judgment – that's very interesting, because Sharva said it is possible. The original draft 13th amendment was different to the one that was passed. Of the 9 judges, 5 said it contravenes the unitary state – that it can't be passed without a referendum, only 4 said it can be passed without a referendum. Of the 5, one, Ranasinghe, pointed out only 2 provisions, and they amended those provisions and made it 5 for the other way. So they passed it without a referendum. Sharva wrote the judgment for the 4 who approved of the original draft 13A – so he said it doesn't violate the unitary state, even the 2 provisions Ranasinghe found obnoxious to a unitary state, Sharva said that those provisions worked within a unitary state. Those two are two crucial provisions – one being that you can't take away powers granted to the provinces by the central legislature. One of the key features of a federal constitution is that you can't unilaterally take away powers without the consent of the province. So if the PM says that it'll be like Sharva's judgment, then I don't have too much concern because he's going with a judgment that says you can introduce that important federal feature within the label of "unitary".

But doesn't that judgment also say that the 13 amendment doesn't violate the unitary character of the state so long as the subsidiary lawmaking bodies are not supreme,

independent and not subordinate within their own sphere? So how would that fit within a constitution in which you gave the provinces control over certain subjects?

As far as I am concerned, there are 2 very important features of a federal constitution that must go into the new constitution. One is what I just mentioned, that the centre shouldn't be able to take away powers unilaterally without the consent of the periphery. The second feature that I think is of the utmost importance is that the province must be supreme in its sphere of competence, in those subjects that are given to it. And, that is something that we will ensure – those 2 features must be there. Whether it is unitary or federal, however one wants to describe it is not our concern.

So is the position the TNA is taking in the Steering Committee then that the label doesn't matter so long as the substance is there?

We have always said that, I have always said that, even before the general election last year I said that.

Do you think it's likely that in the Steering Committee interim report the unitary label is going to be there?

I can't say what is likely. But we will not allow any label that will be a problem later in interpretation.

Everyone has been relatively quiet on the sub-committee reports, but focusing on the Joint Opposition (JO) for a second, would you interpret that silence as a sign that they're not going to take issue with the reports?

No they will take issue. But you see they were members of all the sub-committees. One of them even chaired one sub-committee, which is also the only sub-committee where all the members signed the report as well. In the others, some of them expressed reservations which are noted like in the Fundamental Rights report. But in the CPR report, there were JO members that said they will forward a separate report to the Steering Committee, but they haven't. The Steering Committee invited them and asked them and they said they will but they haven't though they were given time. Two of them were members in the Law & Order sub-committee. Some of the things that they wanted were put into that report – they did not want to send a separate report. But when there was some complaint by the JO Law & Order sub-committee members, we invited those two members to give a separate report but they haven't. Two members of the JO are members of the Steering Committee – they have also agreed to forward the sub-committee reports to the Constitutional Assembly. So up to now, everything has been done with their participation and consent. That is not to say that they're not going to pull out at some stage, obviously they are going to pull out but they have properly participated in all the procedures up until now. In fact, there was another committee appointed by the Steering Committee called an ad hoc committee. There were 3 co-chairs, Sushil Premajayantha, Prasanna Ranatunga (JO), and Dr. Thusitha Vijayanathan. The committee was looking at the relationship between parliament and the Provincial Councils. We have received their report also, so that will also be released along with the

interim report of the Steering Committee. So even in that Prasanna Ranatunge has participated fully. And having been Chief Minister of the Western province for most of his political life, his points were always towards greater powers to the province.

There's no mention of Transitional Justice in the sub-committee reports?

There is in the Fundamental Rights report. It's a Fundamental Right.

A key issue for the diaspora has been foreign direct investment (FDI) and borrowing from foreign sources. There's a provision in the Finance sub-committee report, 18(a)(i) that says that the Provincial Councils can generate revenue. Reading that provision, do you think it can be interpreted as saying that provincial councils can raise FDI without having the investment have to go through the treasury?

FDI is possible, but the borrowing is a slightly tricky issue. There was a view that provincial councils must not be given total freedom to borrow without permission from the centre. That view may have prevailed. We find that internationally a province or a state government is also considered the "government". Therefore, even if a state or a provincial government borrows it's considered a national debt, for which the whole country becomes liable. Not just that state. So, taking that into account, there may have to be a provision where even if the province negotiates a foreign loan successfully, it might have to go through some kind of formal approval at least by somebody like the national finance commission but I think from all of the discussions it has been well recognized that granting powers over various subjects is meaningless if adequate financial arrangements and autonomy is not granted to the provinces to work those powers.

S. 18(a) of the Finance Sub-Committee report also says that the provincial councils can impose taxes, but then s. 3 of the report says that all taxes have to be passed by parliament. How would you interpret that?

You see these sub-committees were not privy to the principles of devolution that were being discussed in parallel by the Steering Committee so they went by the present constitutional provisions, and they were not aware where the Steering Committee would pitch the extent of devolution. So these sub-committee reports have to finally fall in line with the principles of devolution that the Steering Committee decides. That's why there's a disclaimer note that these are recommendations not final.

Looking at the Law and Order Sub-Committee report, is the TNA planning to push back to gain further powers for provincial police and particularly on the fact that the recommendation in that report says that the CID is going to be the premier institution of the Sri Lankan police?

I think about 90% of what is in the Law and Order report will not go into the constitution. For instance, they have suggested 41 instances in which emergency can be declared. Now it's only 3 reasons why emergency can be declared and that's in the Public Security Ordinance not the constitution. A lot of it won't even go into ordinary law it will go into

police ordinances. But in this particular structure because they know there's a CID they have named the CID, it doesn't have to be the CID. There is a capacity issue that I think they discussed quite extensively and I think that is why there is something where the Provincial police chief decides that he doesn't have capacity he can ask, or where the centre decides they lack capacity they can ask to assume responsibility. The details are not all that important – it will serve as the view of the sub-committee which had the security sector making presentations to it in a big way. The former IGP was a consultant to that sub-committee and the solicitor general was a permanent consultant to that sub-committee, so it reflects a particular view. Eventually when the Steering Committee discusses it, it will be taken as such and adjusted to accord with the principles of devolution which the Steering Committee has decided on.

So what are the next steps for this process? The Steering Committee interim report is set to be coming out on December 10th and then what happens after that?

After that a debate will take place at the Constitutional Assembly, on the 9th, 10th and 11th of January. So that'll happen publicly a month after the release of all the reports. So there will hopefully be some discussion around the country about all of these things before then. And then the Constitutional Assembly debates will air various views on these matters. Then taking all of that into account the Steering Committee will draft its final report, and then we will draft a constitution

And has there been a tentative deadline set for that?

There is no deadline set for that. See even this deadline of December 10th is subject to the Steering Committee agreeing on the interim report. We have a draft interim report that we are now discussing. But we are assuming that we will arrive at a consensus before the 10th of December, but even if we do that on the 9th of December there would be no time for translations to be done. So these deadlines are somewhat elastic for that reason. But for now it has been decided December 10th, and then January 9-11th for debates. I think the January dates will stay but we're not very certain we can keep to the December 10th deadline more for administrative reasons than anything else. But parliament will be in recess from December 10th and then come back on January 3rd.

The timing of all of this has received a great deal of scrutiny particularly in light of calls for local government elections which some speculate may happen in the next 6-8 months which is the same period in which the constitution process is happening. What are your thoughts on timing?

I don't think local government elections can be held – I have said this for over a year but nobody is listening to me. You can't have local government elections.

But is this the view commonly held in parliament?

No people have different views – but I'm saying it can't be held.

At the same time as the constitution?

Yeah to me it's crystal clear you can't hold it. Not only for political reasons, legally it's not possible that that law can be implemented now. We are discussing electoral reform at parliament and there's a view that once that is settled, the provincial council electoral system must reflect that of the central parliament and so should the local government because as it is, it's confusing for people to vote in different ways in different elections. Even if you have some differences, there must be less complicated manners of voting. I think the Local Government Elections Act will be amended in accordance with the new constitution.

But do you think that the leadership of the SLFP and the UNP would be willing to similarly take that position where the local government elections should wait?

If they had any intention of holding local government elections they would have held it by now. They don't have the intention of holding local government elections – it's just they're not saying it but I'm saying it.

Let's say the Steering Committee draft comes out December 10th or whatever the date ends up being and then you have debates January 9-11th – is the TNA planning on having opportunities for the public and the Tamil polity to comment?

Once the interim report is out, even now we've already had a couple meetings with our MPs and provincial council members together to explain what is in the reports. We will expand that with others also and then explain what all of this contains. But after the debates in January, getting to a final report is not going to be all that easy. Even with the interim report we are not sure whether the Joint Opposition will be a part of this process or whether they will quit the process just before the interim report is submitted. They are going to quit at some point - I think many of them think they have overstayed already. I also think that if they are going to oppose it they have overstayed already. I keep telling the others not to make allowances for them because their strategy is to dilute it as much as possible and then quit. So recognizing they are going to quit at some point, there is no point in making allowances to keep them on board. But it's not going to be easy to arrive at a final document, it will take a little more time. Maybe February – at least another month after the interim report. Even if the STC sits every day, I think you would need at least 25 sittings before you can finalize the report.

Are you concerned with the JO's ability to stir up Sinhala nationalist fervor against the constitution allowing for devolution? Is this a concern that's being discussed in Steering Committee meetings and how is the government planning to deal with this?

Not only in those meetings but also in private meetings about how to handle this, we have started talking to the President and Prime Minister. Because the government has to have a strategy to counter this – just after the news of the sub-committee reports, Rajapaksa went to Manal Aru and said the interim reports will pave the way for a Tamil Kingdom to be established. So that's going to be their campaign. I must say that up to now it hasn't worked, but we can't be complacent thinking that the Sinhala fears will not be awakened at any

stage. History shows that anybody whoever it is at that point in time, has succeeded in awakening Sinhala fears, except during Chandrika's time. During Chandrika's time there was no Sinhala fears – just people playing politics. But then she had a number of years to do a campaign around the country. We don't have that luxury of time – and the situation is quite the opposite to the time that Chandrika introduced the August 2000 Bill. The war was on, the country was for all intensive purposes separated, so she said I will end the war through this process, I will unite the country that is actually physically divided. Now is the opposite, there is no war, and the country is not divided on the ground. So the campaign – what will appeal to the Sinhala people will be something very different. I think we are in a better position now because this will be far more genuine than doing something just to stop the war or to get back the land that they have lost. This will be far more genuine. But there is no campaign among the Sinhala people though the President has started it – he has been saying things starting with in Jaffna when he was there to hand over those houses. Then in his interview to the Hindu and so on. So he's sort of leading that. But I of course think we also have a huge role to play.

We as in the TNA or as in the Tamil people?

The Tamil polity. We have a huge role to play in addressing the Sinhala fears in this new setting. It's not like Chandrika telling the Sinhala people I will get back the land we lost. They also need to hear from us quite a bit. And there is a lot that they are hearing from us now that they shouldn't hear from us.

That's interesting you say that, because yesterday or the day before the CM gave a press conference, and in the press conference he again similarly emphasized the need for North-South dialogue.

I think that was a very very useful thing that he did – very necessary at this time. I think the messaging was also quite good. But you know it hasn't been picked up mainstream print media. So the media is also playing a dubious role. And they are reporting what can ignite negative nationalist feelings rather than positive ones. That's reality – it shouldn't be. We need to also be conscious and careful in the messaging therefore.

Various stakeholders over the past year have said what you just said – that the Tamils have to be speaking to the South and that there needs to be a North-South dialogue. Who do you think should be leading that dialogue? What form should that dialogue take? Is it an honest dialogue about what the Tamil aspirations are?

It must be an honest dialogue – what I am saying is that it must be done by persons who have a fair idea of the Sinhala fears. You don't change any of what you say but how you say things may matter a lot. To that extent, I think Mr. Sampanthan and Chief Minister Wigneswaran are ideally placed to do that because they understand the Sinhala psyche quite well and if they are conscious of this factor they can lead that.

Pivoting a little to the transitional justice question, everyone in Sri Lanka is very focused right now on the constitutional question so there's been relative silence

recently on the Human Rights Council and the 4 transitional justice mechanisms. For instance, the OMP Act was passed but nothing has come out of it since then, and it's been a few months now. So what is the conversation right now between the TNA and the ruling coalition about the pillars within the Resolution that were committed to and do you still think we're going to see implementation of the Resolution?

Yes, every provision of the Resolution must be implemented and will be implemented. Of course the sequencing must take into account various factors in order that these are all implemented fully. Because if you get it wrong then everything can collapse. We are also placing a lot of accent on constitution making because that is the root cause. When there is an opportunity to put that right then we should give it all to put that right. We should not be blamed for missing that opportunity – it won't last for too long. If that is done it will take care of the future. But even that opportunity has connection to accountability.

Accountability for accountability's sake must also be done. Although importance has been given to the constitution making process now, it cannot be that you put accountability-related matters/obligations on the back-burner. That must run parallel. We have been asking the government why the OMP – even the commissioners haven't been appointed. I was told they would be appointed in December, but someone else said January. But I spoke to the Foreign Minister recently and urged him that that must be done – there's no need for any delay in that and he agrees with me. The next few steps of a truth commission, office of reparations and the judicial mechanism – those are the ones that need to be done.

Practically speaking, they might have to be done once the constitution process is over, which would mean that the government wouldn't have done 1/6 of what they promised in the resolution last year when March comes around. I don't know what the government would want to do – they'll have to ask for time obviously. By that time in January – February, we will know if the constitution making process is on track or whether it has been derailed. If it's on track then perhaps the Council might be minded to give them more time. But even otherwise they'll be given time to do it, because those have to be done, and the important thing is that the oversight function of the Human Rights Council must continue until all of it is done.

From the TNA's perspective if things are not done by March is the TNA going to push for a rollover of the Resolution so that it continues?

Yes I think the rollover of the resolution is the most obvious option.

And not a new resolution?

Not a new resolution, I don't think that a new resolution is necessary.

Given everything we've just discussed, what do you think the role of civil society in the constitutional process, particularly in the North-East should be going forward? I think there's some fear that highlighting the positives in the sub-committee reports may draw opposition from the South, but then there are others who feel that not doing so and catering to and making the rhetoric dependent on Sinhala nationalism is also false to the Tamil polity.

I think there must be an open discussion by the people without worrying too much about what it will affect elsewhere. That is with regard to the people having discussions. My previous caution was about political leaders making statements – that is a different thing altogether. Open discussion amongst the people must be open without any restraint. Political leaders should be more cautious in making statements that have no other value than creating a negative reaction from the South. So it must be true and open. If people find the sub-committee reports useful – I find that many in the Tamil polity have been rather surprised by the sub-committee reports - then say it. I don't think there's anything wrong with saying it – I would welcome that pleasant surprise to come out, rather than being surprised then trying to think how they can find reasons to put it down and attribute various causes for it and be negative about it. But like you've highlighted, the negatives must also come out. Concerns must be raised. It's not perfect, so unless we highlight from our polity the negative features, we also won't have the back-up to argue at the negotiating table. But it must be reasoned and within that particular framework that we have agreed to.

About the budget, you made a very strong speech in parliament expressing disappointment with the budget, and I know the debates are ongoing about the budget so what are the main things you are hoping to change through the debates in the budget and do you think it's possible to actually make those changes?

Actually, there is sufficient space within this budget process to build in many useful projects to serve the people in the North and East. There are a few experts who are working on this now who have also advised us that there is space within the allocations. It is for us to find them and to present proposals to actually appropriate those allocations to useful ventures rather than sit back and wait and let them do what they want with the allocation and we do nothing at all. One example is the housing controversy. If we had merely opposed it, that wouldn't have been useful. But here now we have facilitated an alternative proposal which no one can argue against – it's half the cost, for houses that will last 5 times longer and give employment for 13,000 people – so who can argue against that? So we have provided something. For that we had to work with people, negotiate with 5 banks, etc. Like that, there are allocations for animal husbandry, agriculture, fisheries, etc. Now those don't have details – it's for us to develop proposals to suit our areas which are recovering from war devastation – the kind of ventures that will actually benefit the people. It's up to us to come up with those. It's our task now to engage with the services of people who can see this, who can develop this, in the relevant fields who can come up with projects, and so we can go to the government with proposals.

So you think we're beyond the point of trying to change the budget itself?

Not so much to change, we want more, everybody wants more. There is enough which if utilized will make a change and our approach up to now has not been that. We have sat back and said not enough. We should change our approach slightly this time and start engaging in this process and appropriating it for useful purposes. But that requires the services of experts. We had a meeting with the president today which went on for 1.5 hours. We talked about the political solution, constitution, etc. He was very clear in his mind about what

needed to be done for the political solution. All of our TNA MPs were present. They've gone home very happy today because they heard from him directly what his commitment to a political solution is. But beyond that we also talked about development and recovery from war devastation. So he has suggested a particular mechanism, for which he says the first meeting will happen before the 10th of December, and a review of that every 3 months with the relevant ministers, etc. For development of the North-East he asked us why don't we prepare something for the entire North-East.

A plan for the entire North-East?

Yes, he said even it's a mega-plan you do it and give it to us. Or even if it's for whatever sectors. He said you all are the elected representatives from there, we are duty bound to listen to what you say. So instead of just saying "we are not being asked, we are not being asked," he said I am asking, so give your suggestions and we'll implement them.

But with respect to development, aren't the NPC and the EPC already working on something like that? A plan?

We said the elected provincial council members and parliamentarians must be brought into some kind of mechanism. They have district development coordinating committees but they don't really work. We said we have to have a mechanism that works. He said he'll bring in the provincial council members also. I don't know how it's going to work but after the war ended, because of the Rajapaksa era, where we were kept totally in the dark, we have got used to staying in the dark, and it has taken a bit of time to realize we can function slightly differently.