

## **PRINCIPLES OF FEDERALISM IN GERMANY AND THEIR RELEVANCE FOR SRI LANKA**

**(Address by Mr. Dietmar Kneitschel, Resident Representative of the Friedrich Ebert Stiftung at the inauguration of the CWD / FES "Peoples' Forum on the Process of Federalizing the State-Challenges and Prospects" (Jaffna University , 18<sup>th</sup>-19th January 2003)**

1. On the 5<sup>th</sup> December, during the third round of talks between the Government of Sri Lanka and the LTTE, both parties agreed *"to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking people, based on a federal structure within a united Sri Lanka."*

The parties also acknowledged *"that the solution has to be acceptable to all communities."*

And *"guided by this objective the parties agreed to initiate discussions on substantive political issues such as but not limited to power sharing between the centre and the region as well as within the centre."*

2. With this agreement, there exists now a basis for a meaningful discussion on a reform of the Sri Lankan state and its constitution, aiming at a democratic federal arrangement that could be acceptable for all ethnic, linguistic and religious communities of Sri Lanka.

But there is a need to provide substance to the still vague concept of federalism, and many fears and doubt have to be removed.

At the moment, several delegations with representatives of the LTTE and political parties from Sri Lanka are touring Europe in order to study the existing federal systems in European countries. They will certainly take back to Sri Lanka valuable new experiences and insights.

But the discussion on federalism is nothing new in Sri Lanka .There are already a lot of research papers and recommendations for a federal system in Sri Lanka which were made in the past , but which were ignored or rejected because of intransigent or unprincipled positions, political polarization and the obstructionist political culture. The discussion about a federal arrangement should not be left to the politicians alone, but should involve the whole society and especially scholars - Sinhalese, Tamils, and Muslims- which have already worked for years on those issues.

And it should be an unbiased open discussion, without taboos, without dogmas and without all - or - nothing - positions.

Old dogmatic positions should be replaced by new creative proposals and the vision of a democratic multi-ethnic federal Sri Lanka that would guarantee to all its citizens their individual and collective political, social and cultural human rights.

So that's the basic idea of this workshop which has been organized by the Centre for Women and Development of Jaffna with the support of the Friedrich-Ebert-Stiftung.

3. And since Friedrich Ebert Stiftung is a German organization, I would like to tell you something about the German experience with federalism, and especially the basic principles of our federal system.

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4. Germany is a federal state; the official name is “Federal Republic of Germany”.
5. Federalism was introduced in Germany 135 years ago-in 1867- by Bismarck in the North German Confederation and in 1871 in the German Empire.  
When Germany became a republic in 1918, this republic was also based on federal principles.  
But the federative structures of the so called “Weimar republic” were rigorously eliminated by the Nazis when they came to power in 1933 and set up an authoritarian centralized state based on enforced political conformity. It was the end of political pluralism and democracy and the beginning of a totalitarian fascist state which lasted until the end of World War II in 1945.
6. Germany (or more correctly: West- Germany) then became again a federal state in 1949 with the adoption of the new democratic constitution.
7. The development in East Germany was different: there, in 1949, the German Democratic Republic was created as a federal State, but already in 1952 - in line with the centralist communist policy approach- it was transformed into a centralized state, with 14 districts which were not autonomous units, but merely administrative structures of the unitary state.
8. After the collapse of East Germany in 1990, a few months before the German unification, the former eastern states were reestablished by the East German parliament, and then those 5 states joined the already existing Federal Republic of Germany (FRG). Now the FRG consists of 16 states.
9. The basic idea of our federation is to guarantee unity in diversity by power sharing between the center and the regions.
10. The main feature of the German federal state is the vertical separation of powers between the federation and its constituent member states.  
In the unitary or centralized state, there is the classical separation of state authority into executive, legislature and judicature, which is a horizontal division.  
The federal democratic state has in addition a vertical division, that is to say, state authority is divided between the central state authority and the constituent states. So there is a double division of authority.  
By definition, a federal state lies between the poles of a confederation and a unitary state.
11. One basic element of our federal system in Germany is the so called **homogeneity requirement**.  
This homogeneity requirement prescribes certain similarity of the constitutional principles and basic institutions of the federation and the constituent states, the so called “Laender”.  
Homogeneity is based on four principles
- a) **the republican principle:**  
both the federation and the “Laender” must have “republican” constitutions.
  - b) **the democratic principle:**  
the people are the source of public authority. The will of the nation passes from the people to the institutions of the state, not from the institutions of the state to the

people. People must possess active civil rights and political equality.

The democratic principle demands also political pluralism in all constituent states. The German constitution says: "*All Germans in every Land must be free to develop and express their political opinions*", and that includes of course the right of opposition and dissent.

In line with the democratic principle, opposition and dissent are not only tolerated, but actively promoted as a necessary element of a democratic culture and political progress. So one party rule is incompatible with democratic federalism.

The political minority of today must have the possibility to become the majority of tomorrow by free and fair elections.

c) **the social-state principle:**

both the federation and the "Laender" must have a social constitutional order and must seek to put the principle of social justice into practice. It requires for instance to reject and actively try to remove any serious discrimination of particular groups or sections of the population.

d) **the rule-of-law principle:**

the essential elements of the rule of law principle are citizens' basic rights, equality of the law, the division of powers, and parliament's submission to the provisions of the constitution.

So the law restricts the exercise of authority by the state and does not permit him to rule in an arbitrary manner.

12. If any law passed by a "Land" violates any of these 4 fundamental principles it is unconstitutional.

13. Now many people in Sri Lanka fear that a federation could be a stepping stone towards separation. What about Germany?

In Germany, no one has ever seriously considered that option, but the possibility of an attempt for separation may not be completely excluded. Nevertheless, such an option is prohibited by the constitution, based on the "**permanency principle**".

This principle means that our constitution guarantees the permanence of the federal structure: the federation is inviolable; the essence of the federal state may not be altered.

Thus the "Laender" do not have the right to "resign" from the Federal Republic; the federation cannot be dissolved into its individual parts.

At the same time, the sovereign rights of the "Laender" cannot be taken away; the federal state cannot be converted into a unitary state.

So our constitution is providing a double protection: it protects the "Laender" against attempts of centralization, and it protects the federation against attempts of separation.

14. What then about the autonomy of the "Laender"?

The constituent parts of the federation, the "Laender", have the quality of statehood. They are authentic states with sovereign powers of their own which are not derived from but recognized by the federation. So they are not subordinated to the central state authority.

They have their own parliaments, their own governments, and their own Prime Ministers.

But they cannot be equated with independent foreign states. Their independency and their sovereign rights are limited in favor of the federation. Foreign policy, defense

policy, monetary policy and other policies are domains of the federation. So it's a limited and restricted autonomy which is only valid within the federation.

15. And there is another principle: the **federal loyalty principle**. This principle means that the "Laender" are pledged to federal loyalty. They have an obligation to act in a pro-federal manner. All members of the constitutional alliance are required to cooperate with one another in a manner compatible with the nature of that alliance and to contribute to its consolidation.

The principle of federal loyalty is of fundamental significance. It means that the particular interests of the federation and the "Laender" are subject to constitutional restrictions in the interest of the federal state as a whole.

The federal state is more than just a delimitation of the spheres of competence of the federation and the "Laender".

Because it is only that through their interaction and their cooperation that the interests of the country as a whole and its citizens can be secured.

16. By and large, the federal system has served us extremely well in Germany.

17. Can Sri Lanka learn anything from the German federal system?

I don't think that the institutions of the German federal system would work in Sri Lanka, because Sri Lanka has a different history, a different demographic structure and a different political culture. Furthermore, in Germany, it is not so much the pursuit of integration of different ethnicities and of power sharing between them that is the rationale for creating a federation, but the intention to reduce the power of the central state. So it is a system of checks and balances between the center and regional units which are not defined by ethnicity.

18. But certainly the main principles of German federalism would also have relevance for a Sri Lankan federal system, because most of those principles are universally valid principles based on the concepts of democracy and human rights.

19. Anyhow, Sri Lanka needs her own tailor-made model of federalism.

And it will require a lot of un-dogmatic new thinking, creativity and good will by all communities to design such a model.

20. It should be a model that would allow all communities to experience the dignity and integrity of their particular identity while simultaneously developing a new overarching common Sri Lankan identity based on mutual respect, shared democratic values, interdependence and cooperation.

21. I think both government and LTTE still have to make a lot of mutual concessions, before they would be able to agree on a specific federal arrangement for Sri Lanka that would remove all fears and would be acceptable for all communities.

22. But I believe that building a federal Sri Lanka would provide a second chance for nation-building in the island. Everyone agrees that Sri Lanka has failed in promoting a civic national Sri Lankan identity accepted by all ethnic and religious communities as a common identity. Federalism could be the basis for a new beginning in the nation-building process.

That of course would require that all communities are prepared to tame their

exclusionary ethnic nationalisms and to replace them gradually by the conception of an inclusive multiethnic civic nationalism that would unite people instead of dividing them. Such a civic nationalism should stress the common aspirations rather than the differences.

22. Federalism is much more than self-determination plus peaceful coexistence among the constituent parts of the federal state.

-It is both regional self determination and co determination at the centre.

-Regional identity goes in parallel with identification with the federation as a whole.

-Responsibility for the own affairs of the regional unit goes in tandem with responsibility for the joint affairs of the federation.

-Federalism is both self rule and togetherness.

Federalism would not work if only one aspect is emphasized.

There must be a solid fundament of shared values, objectives and responsibilities and a firm commitment by all parts to promote the common interests, but also to respect the differences.

23. So this is big challenge to create a multiethnic accord and an inclusive federal system for Sri Lanka, which would respond at the same time to the particular and the joint interests of all ethnic, linguistic and religious communities.

It would be the decisive step away from the fragile “negative peace” achieved with the ceasefire towards a stable “positive peace.”

24. I have no doubt that the majority of the people in Sri Lanka- Sinhalese, Tamils, Muslims and others - want to live peacefully together. This is clearly shown by the periodic opinion polls conducted by the Center for Policy Alternatives (CPA). The last “Social Indicator” of the CPA which was based on a survey carried out between 10<sup>th</sup> and 14th December in the Jaffna peninsula shows that over 61 % of the people think that all ethnic communities could live together in harmony.

And opinion polls conducted in the South show similar results.

This is very encouraging, because the success of the federalization of the state as a means to solve the ethno - political conflict depends in the first instance on the informed and active support of the people.