

MAIN PROPOSALS TO FORM THE BASIS OF A FUTURE CONSTITUTION

1. STATE, SOVEREIGNTY, PEOPLE

- 1.1 The name of the State to be “The Republic of Sri Lanka”.
- 1.2 Following from the above, the State shall therefore be described in the Constitution as “one, free, sovereign and independent State”. The State will consist of “institutions of the Centre and of the Provinces which shall exercise power in the manner provided for in the Constitution”.
- 1.3 The State shall be obliged to safeguard the independence, sovereignty, unity and territorial integrity of the Republic and to preserve and advance a Sri Lankan identity, recognizing the multi-lingual, multi-religious and multi-cultural character of the Sri Lankan society.
- 1.4 The People of Sri Lanka shall be described in the Constitution as being composed of “the Sinhala, Sri Lankan Tamil, Moor, Indian Tamil and other constituent peoples of Sri Lanka”. The right of every constituent people to develop its own language, to develop and promote its culture and to preserve its history and the right to its due share of State power including the right to due representation in institutions of government shall be recognized without in any way weakening the common Sri Lankan identity. This shall not in any way be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of the Republic.

- 4.3 A separate Constitutional Court is necessary but it should be within the existing court structure but not as part of the Supreme Court. Only those with specialized knowledge in constitutional matters should be appointed to it, but they can be from within the judicial service or outside. Appointments to the Constitutional Court shall be made by the President on the recommendation of the Higher Appointments Commission. The Constitutional Court shall reflect the pluralistic character of Sri Lanka.
- 4.4 The Constitutional Court shall have the power to strike down Central and Provincial legislation which is violative of the Constitution, notwithstanding the fact that such legislation has been duly certified according to the Constitution. All existing law (other than the respective personal laws) shall be read subject to the Constitution.
- 4.5 Where a question of the interpretation of the Constitution or inconsistency of a law, provincial statute or an emergency regulation with the provisions of the Constitution, or the constitutionality of an act of the President, arises in any proceedings in any court or tribunal, such question could be referred by such court or tribunal to the proposed Constitutional Court.
- 4.6 Appointments to the Constitutional Court should not fall within the age limitation placed upon Supreme Court Appointees.

5. SAFEGUARDS AGAINST SECESSION

- 5.1 There should be in-built mechanisms to discourage secessionist tendencies and to preserve the unity, sovereignty and territorial integrity of the State.
- 5.2 A Provincial Legislature or Provincial Government shall not, by direct or indirect means, promote or otherwise advocate or attempt to promote or otherwise advocate an initiative towards the separation or secession of any Province or part thereof, from the Republic.
- 5.3 Emergency powers for the Centre to intervene in the Provinces in the event of a “clear and present” danger to the unity, territorial integrity and sovereignty of the State and in cases where the Provincial authorities request the intervention of the Centre, shall be clearly spelt out in the

Constitution. Accordingly, the Constitution should provide for the following:-

- 5.3 (a) A declaration of an emergency in a Province, where the President is of opinion that the security or public order of the Province is threatened by armed insurrection, grave internal disturbances or by any act or omission of the Provincial Government which presents a clear and present danger to the unity, territorial integrity and sovereignty of the Republic. This would empower the President to deploy armed forces or the National Police to restore public order and to make regulations in respect of subjects in the National List or in respect of law and order.
- 5.3 (b) There may be instances where the Provincial authorities feel the need to obtain the assistance of the Centre to deal with a situation of emergency in that Province. In such circumstances a declaration of emergency in a Province would be done by the President upon being advised by the Governor, consequent to advice given to him by the Chief Minister. This would empower the President to authorize officials of the Centre to exercise powers in respect of subjects in the Provincial List, and, for the President to make regulations with respect to any matter in the Provincial List as may be specified by the Governor acting on the advice of the Chief Minister.
- 5.3(c) Where the President is of opinion that a situation has arisen in which a Provincial Legislature/Government is promoting an armed rebellion or insurrection, or is engaging in the intentional violation of specified provisions of the Constitution relating to the unity, sovereignty and territorial integrity of the Republic and that the powers of Provincial authorities presents a clear and present danger to the unity and sovereignty of the Republic, the President would be empowered to assume all or any functions of the Province and in a extreme situation, to dissolve in terms of the Constitution the errant Provincial Legislature. The principles of democracy and equity should be upheld and the Constitution held supreme.

- 5.4 The above act of the President shall be subject to Judicial control and Parliamentary control as well. (In this connection see also 3:5 above)
- 5.5 The Centre shall protect every Province against external aggression and internal disturbance and ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution

6. POWER SHARING

6:1 The Centre

- 6:1(a) There shall be a Parliament at the Centre comprising of a House of Representatives elected by the people and the Senate elected by the Provincial legislatures.
- 6:1(b) The Cabinet of Ministers at the Centre shall be comprised of members of both Houses of Parliament, namely the House of Representatives and the Senate, excluding its Chairman.
- 6:1(c) There shall be two Vice Presidents elected by Parliament and they shall belong to two different communities distinct to that of the President; the term of office of each of the Vice Presidents being 3 years.
- 6:1(d) At any given time, one of the Vice Presidents shall be the Chairman (non-voting) of the Senate (Second Chamber) while the other Vice President shall be the Chairman of the Higher Appointments Commission. Parliament shall decide at the time of election, which of the two Vice-Presidents shall occupy which of these posts. There shall be adequate provincial and community representation in the Higher Appointments Commission.
- 6:1(e) The Senate should comprise representatives from the Provinces. (This would enable the Provinces to play a role in the national legislature. It would also act as an in-built mechanism against hasty legislation that may have an adverse effect on the Provinces.

Such a Senate is found in almost every country where there is substantial devolution of power. A Senate should be considered a unifying mechanism. It would also function as a mechanism to rectify possible imbalances of representation in the House of Representatives. The Senate could also facilitate consensus building amongst interest groups).

- 6:1(f) The members of the Senate shall be elected by the respective provincial legislatures. The election shall be according to the principle of proportional representation in a way that will facilitate the representation of the different Communities and small political parties.
- 6:1(g) In determining the size of the Senate there is the need to maintain a fair balance between the Senate and the Parliament. A *ratio* of 1:3 between the membership of the Senate and that of the House of Representatives is desirable.
- 6:1(h) All legislation, with the exception of Money Bills, can be initiated in the Senate as well.
- 6:1(i) The Cabinet of Ministers should, in principle, reflect the pluralistic character and also be representative of the Provinces of Sri Lanka.
- 6:1 (j) The APRC may consider the desirability of introducing the Executive Committee System into governance at the Centre. This may facilitate the various communities and political parties to participate in the sharing of power in the Centre. This can be done for a limited period.

6:2 The Provinces

- 6:2 (a) Executive power sharing in the Provincial Board of Ministers on a proportional basis has its benefits particularly in post-conflict situations. However a party can opt out of being in the Board of Ministers if it so wishes. Being mindful that a Provincial executive

could become a breeding ground for corruption when there is no official opposition, such an arrangement for power sharing could be in place for a limited period, provided that mechanisms are built in to ensure transparency and political pluralism. There is a place for an Executive Committee system in such a set up.

7. UNIT OF DEVOLUTION

- 7:1 The unit of devolution should, as far as practicable, consist of geographically contiguous territory, be conducive to balanced regional development and be designed to enhance administrative efficiency. Differences in endowments are to be expected among units. Taking into consideration the existing circumstances the appropriate unit of devolution would be the Province.
- 7:2 Factors such as ethnicity and language cannot be excluded in all situations and there may have to be exceptions in order to address security and other concerns of communities. Ideally such exceptions should be limited in time and ultimately, ethnicity should not be the main criterion for the establishment of units. This should not, however, preclude special arrangements being put in place to address such concerns.
- 7.3 Any proposed merger of two or three Provinces, other than the North and East, would not pose any problem if done through referenda in accordance with provisions presently available in the 1978 Constitution and the Provincial Councils Act, No. 42 of 1987.
- 7.4 The APRC may consider the feasibility / desirability of reducing the number of provinces outside the North and East, at the commencement of the new Constitution.
- 7.5 The Tamil political parties have been agitating for a merger of the North and East provinces so as to form a single unit of devolution. The Muslims and the Sinhalese have legitimate concerns about such a move in view of considerations relating to security, cultural and religious rights etc. In view of these competing claims, it is best that the question of unit/s in the

North and East be kept open for discussion at the Peace Talks. It is essential that there should be Muslim representation at such talks.

- 7.6 Colombo and its environs shall form the Capital Territory which shall be a part of the Western Province. However, law and order in the Capital Territory shall be a matter for the Central Government.

8. DISTRIBUTION OF POWERS

- 8.1 For devolution to be meaningful, it is recommended that the majority of the subjects and functions be categorized as belonging to the National sphere or the Provincial sphere. Provision for a Concurrent List consisting of a minimum of subjects and functions, may be considered, but it is best that the areas of concurrency be as few as possible as a means for minimizing tendency for the Centre to over-ride the Provinces.
- 8.2 The distribution of powers should be explicit and devoid of ambiguity. The Parliament shall have no legislative power in respect of subjects and functions in the Provincial List while Provincial Legislatures shall not have legislative powers in respect of subjects and functions in the National List. Where a subject or function not found in any List is ancillary to a subject or function already included in the Provincial List, such subject or function shall be deemed to be an item in the Provincial List. All other subjects and functions not explicitly listed in the three Lists shall be deemed to be included in the National List.
- 8.3 Subjects such as Defence, National Security, Foreign Affairs, Citizenship, Immigration, Communication, National Transportation, International Commerce/Trade, Maritime Zones, Harbours, Ports and Airports (other than Fisheries Harbours without international transportation) and Shipping and Navigation which are necessary to ensure the sovereignty, territorial integrity and economic unity of Sri Lanka shall be reserved for the Centre.
- 8.4 Where national policy or national standards need to be laid down, it should be done through a participatory process with the involvement of the Provinces, culminating in framework legislation passed by

Parliament. Framework legislation in respect of a devolved subject shall not amount to law applicable on the subject within Provinces but Provinces would be required to conform to such framework legislation when passing statutes. The subjects and functions in respect of which national policy or national standards may be laid down should be minimized. Where a Provincial statute or a provision thereof is inconsistent with the framework legislation, such statute or provision may be struck down by the Constitutional Court.

- 8.5 There shall be three lists of areas which shall contain the subject matters within which Parliament and the Provincial Councils may exercise their respective Legislative powers and Executive functions.

These are :

8.5.(a) List I – The National List

There shall be a list of subject areas in which Parliament shall have exclusive powers to legislate and exercise all executive functions pertaining to them.

8.5(b) List II- The Provincial List

There shall be a list of subject areas in which the Provincial Councils shall have exclusive powers to legislate and exercise all executive functions pertaining to them.

8.5 (c) List III – Concurrent List.

8.5(c).i The subjects and functions in the Concurrent List should be as limited as possible, both in scope and numbers. The Concurrent List shall be divided into two Parts A & B.

8.5(c).ii In respect of matters coming under Part A, both Parliament and Provincial Councils shall have legislative power which shall be exercised in consultation with each other. In the event of inconsistency, legislation in acted

by Parliament shall prevail to the extent of such inconsistency.

8.5(c) iii Executive powers relating to subjects and functions in Part A will be a matter for Provincial Councils.

8.5(c.)iv. In relation to Part B, both Parliament and Provincial Councils shall have powers as mentioned in paragraph (2), subject to the difference that the Central Government may assume to itself the execution of legislation as well. Examples of matters that should come under Part B are contagious diseases and environment pollution issues.

8.6 There shall also be separate lists of subjects whose implementation shall be a matter for the third tier, the Local Government institutions, and the fourth tier, the Gam Sabhas/ Urban Ward Sabhas.

9. JUDICIARY

9:1 The institutions administering justice shall be the Supreme Court, the Court of Appeal, Provincial High Courts and other courts, tribunals and other institutions established by the Constitution and by law. The Supreme Court and the Courts of Appeal should reflect the pluralistic character of Sri Lanka. The Constitutional Court shall be a specialized court headed by a President.

9.2 The Court of Appeal shall sit in Colombo and the Provinces. The present appellate, revisionary and writ jurisdiction of the Provincial High Courts shall be transferred to the Court of Appeal and shall be exercised by the Court of Appeal sitting in the relevant Province. It will also have a fundamental rights jurisdiction in respect of alleged violations by Provincial authorities. The Court of Appeal will have Divisions, holding sessions in each Provincial capital and such other places as may be decided by the Chief Justice of the Supreme Court.

9:3 Appointment of Judges

(a) The Judicial Service Commission (JSC) shall consist of the Chief Justice (who shall be the Chairman) and the two senior most

Judges of the Supreme Court and two retired Judges of the Supreme Court or the Court of Appeal, nominated by the Higher Appointments Commission HAC. In making such nominations the HAC shall ensure that at least two of the members constituting the JSC shall have had experience as Judges of the Original Courts.

- (b) Appointments to the Supreme Court and the Court of Appeal shall be from among Judges, unofficial and official bars and from academia. Appointments shall be upon merit, based on a demonstrable knowledge of the law and known ability to contribute to the laws and legal development of Sri Lanka.

10. FISCAL DEVOLUTION AND CENTRE-PROVINCE FISCAL RELATIONS.

- 10.1 The design of fiscal and financial arrangements under the Thirteenth Amendment does not enable one to realize the full benefits of devolution and contribute towards “balanced regional development”. A total redesign may be necessary taking into account the formulation set out in the Constitution Bill of 2000.
- 10.2 The expenditure responsibilities and revenue powers result in a large provincial fiscal gap making Provinces overly dependent upon the Centre. Though the Provinces are guaranteed the allocation of “adequate” funds to meet their “needs” and establishes a Finance Commission to consult with and recommend to Government what those needs are, the allocation of funds from the Annual Budget leaves the decision entirely in the hands of the Central Government. Ambiguities in the assignment of subjects have allowed the Centre to spend in areas of provincial competence and restricting the scope of services provided by Provinces. It is imperative that the resulting duality in the provision of public services is resolved through clear Centre-Province mandates. The substantive role of the Finance Commission is to recommend to the President the basis for the apportionment of such funds allocated from the budget. It is within these limits that any equalization of fiscal capacity to achieve balanced regional development is possible.

- 10.3 The fiscal and financial arrangements for devolution therefore need to be redesigned. These should address the spirit of devolution to enable Provinces to perform as efficient providers of the public services assigned. Basic principles that should underpin such redesigning are the criteria of Provincial Autonomy, Revenue Adequacy, Equity, Efficiency and Predictability. The design of fiscal and financial arrangements should provide for the following:

10:3(a) Clarity in delineating the expenditure responsibilities of the Provinces vis-à-vis the Centre. This is based upon the clarity in the assignment of subjects and functions between the Centre and Provinces and the basis for the treatment of Concurrent subjects and functions. The listing of subjects and functions in the Constitution Bill of 2000 eliminates much of the ambiguity that is present in the Thirteenth Amendment. Any Centre-Province issues in this regard can be taken up at the Council of Chief Ministers or referred to the Constitutional Court.

10:3(b) Availability of adequate revenues to discharge expenditure responsibilities in a manner that meets with the design criteria is sine qua non for the efficient provision of devolved public services. A combination of own sources of revenue and revenue sharing is necessary to provide untied resources at an adequate level. The Constitution Bill provides for excise duties [Article 207 (3) (a)], Taxes on Wholesale and Retail Sales [Article 207 (4) and Taxes on Sales and Income not otherwise provided for [Article 207 (5) (a)] as well as items in the Provincial List as revenue sources. Revenue sharing is introduced by Article 207 (5) (b), but need further clarification as to the modalities for determination of the share of the Provinces. Shared revenues should bring Provincial resources up to an adequate level that allows discretion in making service provision choices and decisions.

10:3(c) Equalization grants will be necessary to address variations in fiscal capacity across Provinces and enable Provinces to move towards providing a standard package of services in bringing about balanced regional development. The Constitutional Bill of 2000

introduces the equalization principle in the apportionment of Excise and Wholesale and Retail Sales Taxes. What is required will be equalization grants that will top up Provincial resources to be adequate for capital expenditure for improving services up to minimum national standards.

- 10:4 Institutional arrangements for the mediation of Centre-Province fiscal relations constitute an integral and critical aspect of the fiscal and financial arrangements. The Finance Commission should be revamped to be able to exercise checks and balances on the Centre and become an effective agent of equity. Specific mention should be made providing for the making of recommendations to the President as to the principles on which the sharing and assignment or the assignment of revenue between the Central Government and the Regions should take place. This should be undertaken with a view to ensuring that the agreed measure of finances necessary for effective devolution shall be made.
- 10:5 In addition, the Finance Commission should be required to report on areas of Centre-Province overlap in expenditures as this is a serious issue. Central expenditure in areas of Provincial competence negates the objective of re-distribution to Provinces for bringing about balanced regional development.
- 10:6 Institutional arrangements for Centre-Province consultation on fiscal and Financial matters constitute an important input in the mediation of Centre-Province fiscal relations. Such consultation is to be provided for through a statutorily constituted Finance Ministers Forum.
- 10:7 Financial transfers to Local Authorities and Gam Sabhas / Urban Ward Sabhas must be provided for in Grants to Provincial Governments. The Finance Commission will assess "needs" of Local Authorities and Gam Sabhas/ Urban Ward Sabhas separately and such funds are to be earmarked for transfer through the Provincial Governments.
- 10:8 Where the President is satisfied that a situation has arisen whereby the financial stability or credit of Sri Lanka or of any part of the territory thereof is threatened, he may direct the Finance Commission to issue such

directives to a Provincial Council as are deemed necessary to observe such canons of fiscal and financial propriety and such other directives as may be deemed necessary or adequate for the purpose.

- 10.9 The Commission should comprise five members who have distinguished themselves or held high office in fields such as finance, law, administration among other appropriate fields. The Commission should be appointed by the President on the recommendation of the Higher Appointments Commission.

11. DEFENCE, NATIONAL SECURITY AND LAW AND ORDER

- 11:1 Defence, national security, the raising, establishment and maintenance, as provided for by law, of regular, special and para-military forces and coast guard services shall be subjects reserved exclusively for the Central Government.
- 11:2 National security issues relating to devolved subjects, if any, could be dealt with by the Centre in the exercise of its powers under national security.
- 11:3 Law and order including public order and the exercise of police powers shall be devolved on the Provinces but be reserved exclusively for the Central Government in the Capital Territory (the Colombo City and its environs) and in cases expressly provided for in the Constitution. Further, in this context, consideration may be given to the specific identification of carefully demarcated strategic institutions/installations to be within the control of the Central Government for the purposes of Defence/National Security.
- 11:4 Further, in respect of any Province, where the Central Government is of opinion that the Provincial Police Service is unable to provide adequate security to specified institutions of the Centre such as ports, harbours and airports, it may deploy the National Police Service to provide security.
- 11:5 There shall be a National Police Service and Provincial Police Services. The Constitution shall provide for co-operation between such Services.

- 11:6 The National Police Service shall have exclusive competence to investigate offences laid down in the Constitution. These would include offences against the Republic, offences relating to the National Police, Army, Navy and Air Force, any offence committed against specified persons such as the President, Prime Minister, Ministers, Members of Parliament, Judges of the Supreme Court or the Court of Appeal, any offence prejudicial to national security or the maintenance of essential services, any offence in respect of which courts in more than one Province have jurisdiction, any international crime and any offence committed within the Capital Territory.
- 11:7 Where the Chief Minister of a Province seeks the assistance of the National Police Service to preserve public order within the Province, the National Police Commissioner shall deploy such personnel as are necessary for the purpose.
- 11:8 The National Police Commission and the respective Provincial Police Commissions will be responsible for the appointment, promotion, transfer, disciplinary control and dismissal of officers coming under their purview. They shall also determine the cadres for the National Police Service and the respective Provincial Police Services.
- 11:9 There shall be a single Sri Lanka Police Officers Service (SLPOS) consisting of officers in the grades of ASP and above. The National Service shall consist of grades of the SLOPS and ranks below recruited or promoted at the national level.
- 11:10 The Head of a Provincial Police Service will be the Provincial Inspector General of Police who shall be appointed by the Board of Ministers of the Province. A Provincial Service shall consist of officers seconded from the Sri Lanka Police Officers Service, and ranks below the grade of ASP recruited or promoted at the provincial level or seconded from the National Police Service.
- 11:11 The National Police Commission shall be responsible for the recruitment of ASPs to the Sri Lanka Police Officers Service (SLOPS) and each

Provincial Police Commission shall be responsible for the recruitment to each Provincial Police Service in keeping with the approved cadre.

- 11:12 An attempt shall be made to ensure, as far as practicable, that the National Police Force shall reflect the national ethnic ratios. Each Provincial Police Force should similarly reflect the ethnic composition of the Province. Every Police station should be able at all times to provide facilities for communication in Sinhala and Tamil languages.

12. CENTRE-PROVINCIAL RELATIONS

- 12:1 The Group recognizes the need for mechanisms to encourage and enhance cooperation between the Centre and the Provinces. The concept of the Provinces sharing power at the Centre through the Senate was viewed as a possible mechanism that would generate a sense of participation by the Provinces in legislative and executive decision making at the Centre, and would in turn weaken the tendency towards separation.
- 12:2 A Council of Chief Ministers chaired by the President would be an effective coordinating mechanism. Such a Council should meet quarterly or more frequently if the need arises. The Cabinet Secretariat should service this Council.
- 12:3 In addition to the Council of Chief Ministers, the Group recommends a quarterly Conference of the Chief Secretaries, chaired by the Secretary to the President. This Conference should also be serviced by the Cabinet Secretariat.

13. MEETING THE ASPIRATIONS OF INDIAN TAMILS

The Indian Tamil population, having its main base in the plantation sector, (largely in the Central, Uva and Sabaragamuwa Provinces), is an underprivileged community that needs to be given special attention in order to be uplifted economically, socially and culturally. To empower the community and to ensure its effective advancement, the following mandatory measures are recommended:

- 13:1 A Cabinet Minister in charge of Indian Tamil Affairs

- 13:2 A Minister in charge of Indian Tamil Affairs in each of the following Provinces – Central, Uva, Sabaragamuwa.

This Minister shall be given powers in respect of subjects relevant to the advancement of the community such as Tamil medium schools, health, vocational education, agricultural development, animal husbandry and cultural affairs.

- 13:3 The implementation of statutes passed by the Provincial Council in respect of the aforementioned subjects shall be a matter for the local authorities within which there is a significant Indian Tamil population. eg. the Nuwara Eliya, Ambagamuwa, Deraniyagala, Lunugala and Panwila Pradeshiya Sabhas, and the Hatton, Dickoya and Talawakelle-Lindulla UCs and the Nuwara Eliya MC. Such authorities shall have the power to make any relevant by-laws.
- 13:4 The Gam Sabhas and Urban Ward Sabhas can implement the aforementioned statutes in addition to activities that come within their purview.
- 13:5 All Members of Parliament and Provincial Councilors from the different Provinces, belonging to the Indian Tamil community shall be members of the Indian Tamil Cultural Council (ITCC). In addition, there shall be provision for five nominated members. All members of the ITCC shall be appointed by the President of Sri Lanka.
- 13:6 Mechanisms for Coordination between the said local authorities shall be established. The ITCC shall be a consultative body in the application of such mechanisms.

14. LOCAL GOVERNMENT

- 14:1 Local authorities should be recognized by the Constitution as a tier of Government and given much more powers than at present. The implementation of Provincial Statutes relating to subjects listed in a Schedule to the Constitution would be a matter for local authorities. Local

authorities would not have legislative power. They would, however, have power to make by-laws which should be laid before the Provincial Legislature but, in view of local authorities being a tier of Government, would not need Legislature approval.

- 14:2 Such an arrangement would help in the empowerment of the people in their own localities. Further, this would also enable localized ethnic communities to be in better control of their living and working environment, and its improvement. This empowerment can be strengthened through the fourth tier of Government the Gam Sabhas/ Urban Ward Sabhas.
- 14:3 The elections to local authorities should be based on wards. The elected representative should be drawn from the fourth tier, that is the Gam Sabhas/ Urban Ward Sabhas. The Chairman of each Gam Sabha/Urban Ward Sabha should be the member representing the people in the Pradeshiya Sabha and the Municipal /Urban Council respectively. This arrangement would ensure that the interests of the people in the village or street will be properly looked after at the local government level. The Pradeshiya Sabha should be served by the Divisional Secretariat with the Divisional Secretary as the Chief Executive. There should be statutory provision to ensure that adequate funds are made available to both the local government tier and the Gam Sabha / Urban Ward Sabha tier.
- 14:4 Gam Sabha (GS)/Urban Ward Sabha(UWS) tier. (See annex 1 & 2). Peoples participation in governance will be through the Jana Sabhas which will consist of about hundred families at Village level and about two hundred families at the Street level in the Urban areas. It is at Jana Sabha meetings that the local needs will be listed and prioritized and subsequently monitored and audited. Each Jana Sabha will elect a five person committee whose Chairperson shall represent them in the Gam Sabha (GS) Ward and the Veedi Sabha (VS) of the Urban Ward Sabha (UWS).

- 14.5 The APRC should consider whether election from the Jana Sabha should be made a political, as in the Indian Panchayat system. The introduction of the right of recall after a representative has completed half his term for poor performance or errant behaviour can also be considered.
- 14.6 A Gam Sabha will consist of two or three Gram Niladhari Divisions which are divided into Wards, each Ward being made up of about hundred families who form the Jana Sabha. There will be an Urban Ward Sabha for each Municipal /UC Ward. This Urban Ward Sabha will be made up of Veedi Sabhas so that there will be one Veedi Sabha for about two hundred families, which form the Jana Sabha.
- 14.7 Each Gam Sabha / Urban Ward Sabha will have a Secretariat which is headed by a graduate with administrative training and will include the various officials who are operating at that level e.g. the Grama Sevakas, Samurdhi Niyamakas etc.

15. THE PUBLIC SERVICE

- 15:1 The Public service in a devolved system of governance must be organized at the national, provincial and local levels. Under current arrangements, the Provincial Councils Act 42 of 1987 provides for a Provincial Public Service. However the implementation of these provisions was provided for administratively through "National Policy" and effected within the structure of the centralized public service. As a result provincial staffing was determined by the Centre seriously undermining the role and functions of the provincial and local tiers. To remedy this situation, it would be necessary to provide for :-
- 15:1(a) Providing for the staffing of public positions required at each tier of government according to the service delivery needs in relation to the functions assigned.
- 15:1(b) Staffing levels of the provincial and local tiers to be agreed upon over the medium term (i.e. a period of three years) as a tri-partite arrangement between the National Public service Commission, the

Finance Commission and the respective Provincial Public Service Commissions.\

15:1(c) Re-defining the role and functions of the Public Service

Commission(s) to focus more on public employment and less on public personnel functions with the latter being delegated to Ministries and Departments.

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15:1(e) Resolving the inefficient duality in the public service at the sub-national levels.

- 15:2 Devolution of powers to the Provinces would not result in an unhealthy duplication of positions and offices in the public service. Giving emphasis to the All Island Services would immensely contribute not only towards emergence of economical and effective services but also services built on national unity and integration.
- 15:3 Devolution of powers has not only to be effective but also devoid of duality. For this purpose, we propose that the district administration has to be restructured so as to form part of the provincial administration. Thus the Government Agent/ District Secretary and the Divisional Secretary should also belong to an All Island Service and hold the rank of a Head and Deputy Head of Department respectively, in the provincial administration. All Grama Niladharis in a Province should also be absorbed into the Provincial Public Service of that Province.
- 15:4 To eliminate duality of service at the divisional level, the Divisional Secretary should also assume the role of Secretary to the Pradeshiya Sabha of his Division.
- 15:5 In order that the Centre continues to be present at the provincial level, an office called the Provincial Commissioner-General (at the rank of an

Additional Secretary) should be established as the focal point for the performance of national subjects and functions. Constitutional provision will also be made to enable the Centre to entrust through this officer, or otherwise, central functions (such as, customs, elections, census and gun licensing) to the Government Agent, Divisional Secretary, Grama Niladhari, and other officers, as agency functions.

- 15.6 There should be public services categorized as All Island Services, National Public Service and Provincial Public Services. Parliament may declare by law any national public service to be an All Island Service. This shall not preclude a Province in establishing provincial services for all or any of the disciplines. The All Island Services shall include services such as the Sri Lanka Administrative Service, Sri Lanka Engineering Service, Government Medical Officers Service, Sri Lanka Police Officers Service (ASP upwards) and the Sri Lanka Teachers Service.
- 15.7 Officers of the All Island services shall be recruited nationally and provincially (on a delegated basis) and be deployed in the national and provincial public services on release by the National Public Service Commission. The release of All Island Service officers to the provincial public services shall be as agreed to with the respective provincial Public Service Commission. Every officer of an All Island Service recruited to the cadre of a Province shall at the outset serve a minimum of 3 years in that Province and a total of not less than 10 years in that Province however aggregated.
- 15.8 There should be a National Public Service Commission consisting of not less than 7 members and not more than 9 members. [Article 194 (1) modified] and a Provincial Public Service Commission for each of the Provinces consisting of not less than 3 members and not more than 5 members [similar to Article 200 (1)] whose membership shall reflect the ethnic composition at the national and provincial levels respectively. Nearly as may be, one-half of the membership of any of the public service commissions shall be persons who shall have had a minimum of 10 years experience as an officer under Government.
- 15.9 The National Public Service Commission and the Provincial Public

Service Commissions are empowered to determine the cadres to their respective services, including the All Island Services, It shall be the responsibility of the Provincial Public Service to provide the necessary administrative staff to the Pradeshiya Sabhas, and to other local authorities.

- 15.10 All appointments, transfers, promotions, dismissal and disciplinary control of national public officers should vest in the National Public Service Commission. It may delegate all or any of its functions in respect of specific categories to a Committee of the NPSC or to any public officer and where appropriate to the provincial public service to the Provincial Public Service Commission. An officer of an all island service released to a provincial public service shall have the right of appeal to the national Public Service Commission. A Provincial Public Service Commission may delegate all or any of its functions in respect of any category of public officers to any public officer.
- 15.11 Committees of the NPSC shall be independent and shall function under the direct supervision of the NPSC. There shall be a minimum of 3 members in each such Committee, one of whom shall be a member of the NPSC, who shall also be the Chairman of the Committee. The other two members shall not be serving public officers or judicial officers.
- 15.12 There shall be equitable representation of the different ethnic communities of Sri Lanka in the public services. Recruitment to a public office shall be on merit. Promotion of public officers shall be based on seniority and on merit.
- 15.13 The President shall appoint all Secretaries to national Ministers and other public officers required by the Constitution. The appointment, promotion, transfer, dismissal and disciplinary control of all Additional Secretaries to Ministers and Heads of National Departments including the National Inspector General of Police vest in the Cabinet of Ministers.
- 15.14 The Governor of a Province shall appoint the Chief Secretary, the Principal Secretary to the Chief Minister, the Secretary to the Governor and other Secretaries to Provincial Ministers on the advice of the Chief

Minister of the Province. The appointment, promotion, transfer, dismissal and disciplinary control of all Head of Provincial Departments of a Province including the Provincial Inspector General of Police and the Government Agent (District Secretary) would vest in the Board of Ministers.

- 15.15 The appointment, dismissal and disciplinary control of Advisors and Consultants is vested in Cabinet of Ministers and the Board of Ministers of the respective Province.
- 15.16 There should be a Public Services Appeals Tribunal.
- 15.17 There should be a Forum of Chairpersons of Public Service Commissions as contained in the Constitutional Bill of 2000.

16 INDIVIDUAL AND GROUP RIGHTS

- 16:1 The Constitution shall have a comprehensive Bill of Rights that Guarantees not only civil and political rights but also group, social, economic, cultural and children's rights. The South African Constitution and Chapter III of the 2000 Draft Constitution are commendable in this regard. A provision similar to section 29 (2) of the Soulbury Constitution as a group right should be included.
- 16:2 There shall be adequate machinery for enforcement at national and provincial level. In addition to the Supreme Court, the Court of Appeal sitting in the Provinces shall have a fundamental rights jurisdiction for enforcement of fundamental rights. The National Human Rights Commission shall be recognized by the Constitution. In addition, and without prejudice to the powers of the National Human Rights Commission, Provinces may have their own human rights mechanisms.
- 16:3 In respect of disadvantaged communities, clearly defined affirmative action could be considered. Such affirmative action should be time-bound and should be subject to periodical review to ensure that they do not go out of hand.

- 16:4 Where a public officer is found by Supreme Court or the Court of Appeal to have violated a fundamental right of a person, such finding shall trigger off disciplinary action against such officer.

17 LANGUAGE

- 17:1 Provisions of chapter IV of the present Constitution provides for the use of Sinhala and Tamil as the official languages of Sri Lanka. They also provide for the rights of ordinary persons in any part of the country with regard to the use of Sinhala, Tamil or English in communicating with officials of the Government and receiving responses thereto, and, for the rights of persons to give information with regard to the commission of an offence to a police or peace officer in any of the three languages.
- 17:2 The lack of staff capable of working in the Tamil language had been the main cause of non-implementation of the provisions of the Constitution with respect to Language, and consequently, Tamil speaking persons (i.e. Tamils and Tamil-speaking Muslims) have been encountering difficulties in their interaction with the Government.
- 17:3 Further, such a situation has also arisen partly from the fact that the format of Chapter IV, and the words used therein leave much to be desired with regard to clarity, giving rise to uncertainty with respect to the application of the provisions.
- 17:4 Although the provisions of Chapter IV of the 2000 Constitution Bill in respect of Language is an improvement on Chapter IV of the current Constitution, they also suffer from similar lack of clarity in some of the Articles. In view of this complexity, the Panel proposes that the new Constitution should meet the following requirements with respect to Language, in addition to incorporating other specified provisions in the 2000 Constitution Bill:
- Sinhala and Tamil shall be official languages and languages of administration, while Sinhala, Tamil and English shall be the national languages, of Sri Lanka.

- Sinhala shall be the language used for the maintenance of public records by national and provincial institutions and by local authorities in the Capital Territory and in all the Provinces other than the North and East, where Tamil shall be so used.
- Sinhala shall also be used as the language of public records in administrative divisions of the North and East wherein the Sinhala-speaking population exceeds one-eighth of the population of the respective division, and, Tamil shall also be a language of record in administrative divisions outside the North-East wherein the Tamil-speaking population exceeds one-eighth of the population of the respective divisions.
- Sinhala and Tamil, and where expedient, English shall be used for the maintenance of public records by national Ministries and the Head Offices of all national public institutions, irrespective of their locations.
- A person in any part of Sri Lanka shall be entitled to communicate and transact businesses with any institution of the State in any of the national languages and to receive response to such communication in the same language.
- A person in any part of Sri Lanka shall be entitled to give information regarding the commission of an offence to a police or peace officer in any of the national languages.
- A person shall be entitled to give information as regards any birth, death or marriage in any of the national languages, and to receive the original certificate of such birth, death or marriage in the language of record of the area together with a translation thereof in any national language, or, in the official language of the person's choice if both official languages are languages of record of the area, together with a translation thereof in any national language.
- Where a document is executed by an official for the purpose of being issued to a person, that person shall be entitled to obtain such

document in the language of record of the area, or the official language of the person's choice if both official languages are languages of record of the area, together with a translation thereof in any national language.

- A person shall be entitled, if the law recognizes the person's right to inspect or to obtain copies of or extracts of any register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document, together with a translation thereof in another national language.
- Any institution of the State which maintains its records in Sinhala shall be entitled to communicate and to receive communication from and to communicate and transact business with any other institution of the State in Sinhala, if the latter maintains its records in Sinhala or both in Sinhala and Tamil. The same shall apply, *mutates mutandis*, to an institution of the State which maintains its records in Tamil
- Any institution of the State which maintains its records only in Sinhala shall communicate and receive communication from and to communicate and transact business in English with an institution of the State which maintains its records only in Tamil, and vice versa.
- A person shall be entitled to be examined through the medium of any of the national languages at any examination for the admission of persons to any national or provincial service or any public institution, subject to the condition that the person may be required to acquire a sufficient knowledge of either or both of the other two national languages within a reasonable period after admission to such service or public institution where such knowledge is reasonably necessary for the discharge of duties of the person.
- A school imparting primary or secondary education shall ensure that a person educated through the English medium shall also have an adequate knowledge of Sinhala or Tamil, or both.

- (In order to facilitate better communication among the communities and to promote national integration), Sinhala, Tamil and English languages shall be made compulsory subjects at the GCE (O/L) examination. This could be done in a staggered manner in view of resource constraints.
- Sinhala shall be the language of record and proceedings of all courts other than those in the North and East, where Tamil shall be so used.
- The Minister of the Cabinet of Ministers to whom the subject of Justice is assigned, may, with the concurrence of the Cabinet of Ministers, and with the concurrence of the Chief Minister of a Province where applicable, direct that the language of record and proceedings of any court shall also be in a national language other than the language of the court.
- All three national languages shall be languages of record and proceedings of the Supreme Court and the Court of Appeal.

The provisions of Article 34, 38(2), 39, 40, 41, 42(2), 43, 44, 45, 47 and 48 of the Constitution Bill of 2000 should also be incorporated without any material change.

18 LAND AND WATER

- 18:1 The Centre shall succeed to State land controlled or used by the Central Government and its institutions in relation to subjects and functions in the National List at the commencement of the Constitution.
- 18:2 Every Province shall succeed to all other State land within the Province, subject to the rights of persons in lawful possession or occupation of such land. A Provincial Government shall be entitled to exercise rights in or over such land, including land tenure, transfer and alienation of land, land use, land settlement and land improvement.
- 18:3 A Provincial Government may, after due consultation with the Central Government, require the Central Government to make available to the

Provincial Government, such State land as may be reasonably required for the purpose of a subject or function in the Provincial List, and the Central Government shall comply with such requirement.

- 18:4 The Central Government may, after due consultation with a Provincial Government, require the Provincial Government to make available to the Central Government, such State land as may be reasonably required for the purpose of a subject or function in the National List, and the Provincial Government shall comply with such requirement.
- 18:5 There shall be a National Land and Water Commission with equal representation of the Central Government on the one hand and the Provinces on the other and with equitable representation of all the major communities. Members of the Commission shall be persons with technical qualifications and experience in the relevant fields and shall not be serving public officers.
- 18:6 The National Commission shall formulate national land use policy and make recommendations to the Central and Provincial Governments with regard to the protection of watersheds, the appropriate amount of forest cover in each Province, conservation of fauna and flora and the protection of the environment. The Commission shall monitor land use and compliance with policy and recommendations so formulated.
- 18:7 The Provincial Minister in-charge of lands in the Province shall set up a Provincial Land and Water Commission with adequate representation of the various communities in the to ensure the proper distribution of land. Priority in land settlement schemes shall be accorded first to needy persons of the District and then to needy persons of the Province, paying attention to the needs of the minorities of the Province within the relevant division. Wherever possible priority within the district should be given to the relevant divisions. (this is a matter for discussion within the APRC).
- 18:8 The alienation of State land under inter-provincial irrigation schemes shall be on the basis of the national ethnic ratio (1981 census). Priority shall be given to persons who are displace by the scheme, needy persons of the district or districts in which the scheme is situated, thereafter to other

needy persons of the relevant Provinces and finally to other needy persons in the country.

18:9 The National Land and Water Commission shall determine and intimate to the provinces the number of allotments available for alienation to residents of the relevant districts and Provinces. The selection of the allottees shall be the responsibility of the Province.

18:10 Where the members of any ethnic community do not, or are unable to take their entitlement of allotments from any such scheme in a particular district, they shall be eligible to receive an equivalent number of allotments in the same scheme in another district, or, in another inter-provincial irrigation scheme.

18:11 The distribution of allotments in inter-provincial irrigation schemes on the basis of the aforesaid principles shall be done as far as possible so as not to disturb very significantly the demographic pattern of the Province concerned and in accordance with the principles of ensuring community cohesiveness in the Province.

19 RESOLUTION OF CENTRE-PROVINCIAL AND INTER-PROVINCIAL ISSUES

19:1 There is a need for a mechanism for the resolution of disputes that may arise between the Centre and the Provinces or among the Provinces,. As a matter of approach in the first instance attempts must be made to resolve the disputes through informal discussions. If these discussions do not lead to satisfactory solutions, the following mechanisms could be utilized for resolution of the disputes:

- Mediation / Conciliation undertaken by the Council of Chief Ministers chaired by the President.
- Arbitration by a Tribunal appointed by the Senate of Parliament.
- Reference to the Constitutional Court.

20 SAFEGUARDS FOR POWERS OF PROVINCES

20:1 Constitutional provisions relating to the powers of the Provinces shall be entitled to special safeguards. Amendments to such provisions shall apply in a Province after passage in Parliament and upon approval by the relevant Provincial Legislature.

21 OTHER

The number of Ministers at the Centre as well as the Provinces be restricted to one-eighth the total number of members of the relevant legislature.

TIERS OF GOVERNMENT

Central Government

- | | | |
|-------------|---|---|
| Legislature | - | House of Representatives (elected by the people) |
| | - | Senate (elected by the Provincial Councils) |
| Executive | - | President acting on the advice of the Prime Minister.
Cabinet of Ministers
(President heads the Cabinet during the interim period). |
| | - | Line Ministries |
| | - | Departments/Institutions |

Provincial Government

Provincial Council

- | | | |
|-------------|---|--|
| Legislature | - | Elected representatives |
| Executive | - | Governor, acting on advise of Chief Minister |
| | - | Board of Ministers |
| | - | Provincial Secretariat |
| | | Line Ministries |
| | | District Secretariats |

Local Government

Pradeshiya Sabhas /Municipal Councils/ Urban Councils

- | | | |
|-----------|---|--|
| Council | - | Headed by Chairman / Mayor
Elected representatives from GS/ UWS |
| Executive | | Headed by Chairman/ Mayor
Divisional Secretariat, headed by Divisional Secretary /
Municipal /Urban Council Administration, headed by
Commissioner / Secretary. |

Gam Sabha (GS) / Urban Ward Sabha (UWS)

A Gam Sabha for 2-3 Grama Niladhari Divisions; divided into Wards; one Ward for about 100 families (a Village?). An Urban Ward Sabha for each Municipal Ward; made up of Veedi Sabhas; one Veedi Sabha for about 200 families. **Jana Sabha** - The 100/200 families will form a Jana Sabha, which will elect a 5 person Committee whose Chairperson shall represent those in the Gam Sabhas/Urban Ward Sabhas in the Pradeshiya Sabha/Municipal Council.

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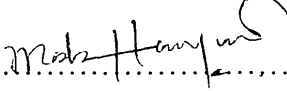
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