

**PROPOSALS MADE BY THE  
ALL PARTY REPRESENTATIVES COMMITTEE  
TO FORM THE BASIS OF A NEW CONSTITUTION**

**EDITED BY  
R YOGARAJAN M.P  
AND  
M NIZAM KARIAPPER**

## **APRC Final Report**

His Excellency The President Mahinda Rajapaksa on 11<sup>th</sup> July, 2006 at the All Party Conference (APC) decided to appoint a committee of representatives of the parties at APC called the All Party Representative Committee (APRC) and mandated it to formulate a draft proposal for Constitutional reform. The President mandated the APRC to evolve a 'home-grown new constitution' which will provide 'a comprehensive approach to the resolution of the national question'.

The initial members of this Committee are given in Annexure 1

The All Party Representative committee in its first meeting unanimously selected Hon. Professor Tissa Vitharana as its Chairman. All proceedings of this committee have been recorded verbatim. This was done with the assistance of the Hansard reporters of Parliament whose services were made available to the APRC.

The All Party Representative committee since July, 2006 met weekly, almost every week, deliberating more than three to four hours each time.

A panel of experts were also constituted by His Excellency the President to facilitate the APRC process. This panel of experts after deliberating among themselves produced two reports which were made available to the APRC in December 2006.

Based on these two reports the Chairman of the APRC Prof. Tissa Vitharana on 13<sup>th</sup> August, 2007 presented a draft containing the main features to form the basis of a new constitution.

This draft contained 21 Chapters of various aspects of a new constitution and since August 2007 for almost two years APRC discussed each of the chapters separately seeking inputs from political parties through their representatives at the APRC.

These discussions finally came to conclusion in June, 2010 (completing 128 meetings) by which time the committee reached consensus in respect of

almost all the chapters. And it was agreed based on this consensus that a final report be compiled by the chairman. Accordingly a final report was compiled and presented to His Excellency the President.

We in the APRC expected that the President will commence a dialogue with the main opposition United National Party and the Tamil National Alliance, which parties were not part of the said APRC process, based on the final report of the APRC and then will present a proposal for a new constitution.

Though it was reported in the Media a final report was submitted to the President by the Chairman, we found there had not been a release of this final report either to the members of the APRC, main opposition political party, the United National Party or the Tamil National Alliance or to the public.

It is in these circumstances we, R. Yogarajan (presently a Member of Parliament representing United National Party) who represented the Ceylon Workers' Congress at the APRC till its conclusion and M Nizam Kariapper who represented the Sri Lanka Muslim Congress in the APRC decided to compile the final report based on the final draft discussion papers on each subject presented by the Chairman and amendments made by the APRC at the final APRC meetings with the help of the proceedings that were made available.

The final report is attached in Annexure 2.

We are confident that this final report compiled by us reflects correctly the decisions taken by the APRC and should be in conformity with the final report submitted by Prof Tissa Vitharana Chairman of APRC.

**R Yogarajan**  
Member of Parliament

**M Nizam Kariapper**  
Deputy Secretary General  
Sri Lanka Muslim Congress

Dated 19<sup>th</sup> July 2010

## **Salient features of the said Final Report are set out here for easy access**

### **Nature of the State:**

The Republic of Sri Lanka is a Unitary State in the sense in which it shall be deemed to be an undivided and integrated state structure where the state power shall be shared between the Centre and the Provinces

### **Form of Government:**

Sri Lanka should adopt a Parliamentary form of government at the centre.

### **Status of Buddhism:**

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while according to all religions the rights guaranteed by Articles 10 and 14 (1)(e) of the 1978 Constitution.

### **Official Languages and National Languages:**

Sinhala and Tamil the National Languages, shall be the Official Languages of Sri Lanka.

### **Use of the English Language:**

English may be used for official purposes.

### **Supremacy of the Constitution:**

The supremacy of the Constitution shall be recognized, and protected by a Constitutional Court, which would be part of the existing Court structure but separate from the Supreme Court. All acts of commission or omission of the Centre and of the Provinces inconsistent with the Constitution shall be void.

### **Safeguards against secession:**

There should be in-built mechanisms to discourage secessionist tendencies and to preserve the unity, sovereignty and territorial integrity of the State. The Provinces and local authorities shall be constitutionally mandated to preserve national unity and the indivisibility of the Republic.

**Electoral system:**

The APRC accepts that there shall be a mixed electoral system which combines the first past the post system (FPP) on an electorate basis and proportional representation system (PR) on a party basis with two ballot papers, in which the system of proportional representation prevails.

**Power sharing:**

The powers of the people will be shared at three tiers of the government namely at the Central Government, Provincial government and Local government. Each tier will have separate lists of powers provided through the Constitution.

**Senate:**

A Senate will be created by which the Provinces will be able 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.

It is proposed that each of the Provinces is represented by seven Senators, making up a total of 63, elected on the basis of a single transferable vote system by the Members of the Respective provincial legislatures. In addition, there shall be 10 Senators selected by the community Councils (one for the Muslims living outside the North and East, and the other for the Indian Tamils). The President of the Republic nominates two persons to represent unrepresented community groups.

**Community Council:**

There shall be two Community Councils, one for Indian Tamils and one for Muslims, outside the North and East without territorial focus to serve the development needs of the members of the communities wherever they may be living in Sri Lanka outside the North and the East.

**Distribution of powers between Central and Provincial:**

The distribution of powers should be explicit and devoid of ambiguity. The concurrent list is abolished and the said powers distributed between the

central list and provincial list appropriately. A third list has been compiled expressly stating the powers of Local Authorities.

**National and Provincial Higher Appointments Council:**

There should be a National Higher Appointments Council to ensure the independence of the state services and that of the judiciary of the Republic.

The Higher Appointments Council shall consist of The Prime Minister, The Speaker, The Leader of the Opposition in Parliament, and six persons appointed by the President on the nomination of a Committee of Parliament proportionally composed of all parties represented in Parliament which should include three persons to represent minority interests appointed in consultation with Members of Parliament who belong to the respective minority communities. The speaker shall be the Chairman.

A Provincial Higher appointment Board will also be constituted comprising Chief Minister, Chairman of the Council, Leader of the Opposition and six other distinguished persons appointed by the governor nominated by a Committee of Members of the Council representing all political parties.

The composition of the Provincial Board shall as far as possible reflect the ethnic composition of the province.

**Amendment Procedure:**

The substance of Articles 82 (5) and 83 of the 1978 Constitution shall be retained.

A Bill to amend the Constitution or replace it with a new Constitution should be approved by 2/3 of the members of each House of Parliament sitting and voting separately.

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**Representatives of Political Parties  
at  
All Party Representatives Committee**

1. Lanka Sama Samaja Party	Hon. Prof. Tissa Vitharana M. P
2. Sri Lanka Freedom Party	Hon. Prof. Viswa Warnapala M.P
3. United National Party ( Dem group)	Hon. P Dayaratne M. P
4. Communist Party of Sri Lanka	Mr. Rajah Collure
5. Ceylon Workers' Congress	Mr. R Yogarajan
6. Sri Lanka Muslim congress	Mr. M Nizam Kariapper
7. National Unity Alliance	Mr. Abdul Kalam
8. Jathika Hela Urumaya	Mr. Udaya Gammanpila
9. Mahajana Eksath Peramuna	Prof. Nalin de Silva
10. Upcountry Peoples Front	Mr. S Vijesandiran
11. All Ceylon Muslim Congress	Mr. Y L S Hameed
12. National Congress	Dr. Adambawa Uthumalebbe
13. Western Peoples Front	Dr. N Kumaragurubaran
14. Ealam People's democratic Party	Mr. S Thavarajah
	Ms. Maheshwary Velautham
	Mr. Sivathanan
15. Thamil Makkal Viduthalai Puligal	Ms. Sivageetha Prabakaran



**MAIN PROPOSALS TO FORM THE BASIS OF  
A FUTURE CONSTITUTION**

**1. THE PEOPLE, THE STATE AND SOVEREIGNTY.**

The following shall be contained in the Constitution:

1:1 Sri Lanka is a Free, Sovereign and Independent State and shall be known as the Republic of Sri Lanka.

1.2 The Republic of Sri Lanka is a **unitary** State in the sense in which it shall be deemed to be an undivided and integrated state structure where the state power shall be shared between the Centre and the Provinces (agreed compromise).

[1:2 Original positions of political parties:

(a) The Republic of Sri Lanka is a **unitary** State (supported by SLFP)

or

(b) The Republic of Sri Lanka shall be one, free, sovereign and independent State in which the institutions of the Centre and of the Provinces shall exercise power in the manner provided for in the Constitution (supported by UNPD, CWC, UPF, DPF, SLMC, APMC, NUA, NC, EPDP, TMVP, LSSP, CP). ]

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 Sri Lankan society.

1.4 The People of Sri Lanka is composed of the Sinhala, Sri Lankan Tamil, Muslim, Indian Tamil, Malay, Burgher 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 while strengthening the common Sri Lankan identity. This shall not in any way be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of the Republic.

5 In the Republic, Sovereignty is in the People and is inalienable.

6 Sovereignty includes the power of government, fundamental rights and the franchise and

shall be exercised in the following manner:

- a) The legislative power of the People shall be exercised, directly by the People at a Referendum, by Parliament and by Provincial Legislatures to the extent and in the manner provided in the Constitution.
  
- b) The executive power of the People shall be exercised by the President of the Republic

acting on the advice of the Prime Minister and the Cabinet of Ministers, and by the Governors of the Provinces acting on the advice of the respective Chief Ministers and the Provincial Boards of Ministers.

- c) The franchise shall be exercised at the election of Members of Parliament and of Members of Provincial Legislatures and members of Local Authorities and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector, has the citizen's name entered in the register of electors.

## **FORM OF GOVERNMENT**

- 2.1 It is recommended that Sri Lanka should adopt a Parliamentary form of government at the Centre.
  
- 2.2 The executive powers of the Centre shall be exercised by the President who shall act on the advice of the Prime Minister and the Cabinet of Ministers. The President shall appoint as Prime Minister, the Member of Parliament who, in his opinion is best able to command the support of the majority of the members of Parliament:

Provided that where more than one-half of the members of Parliament are members of a single political party or alliance, the President shall appoint the leader of that party or alliance in Parliament as the Prime Minister.

- 2.3 The transfer of executive powers to Parliament shall take place at the end of the current term of office of the President. In the interim period the President shall be deemed to be a Member of Parliament and shall be responsible and answerable to Parliament in regard to the exercise of executive power. Necessary transitional provisions to this effect shall be provided.
  
- 2.4 In this document references to the President, denote the President during the interim period and thereafter the President acting on the advice of the Prime Minister and the Cabinet of Ministers.

- 2.5 At the end of the next term of the President, the new President shall be elected by both Houses of Parliament.
- 2.6 There shall be one Vice President, who shall not be a Member of Parliament and shall belong to a community distinct to that of the President, elected by both Houses of Parliament, and shall hold office for a term of two years.
- 2.7 The office of the Vice President shall be rotated among all communities other than the community to which the President belongs at the time of electing the Vice President.

### **3. INDIVIDUAL AND GROUP RIGHTS**

3:1 The Constitution shall have a comprehensive Bill of Rights that guarantees not only civil and political rights but also group, social, economic, cultural, women's and children's rights. The following provisions should be included in the Bill of Rights:

Every person has an inherent right to life and a person shall not be arbitrarily deprived of life.

A person shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.

All persons are equal before the law and are entitled to the equal protection of the law.

No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds. Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office. Provided further that it shall be lawful to require a person to have a sufficient knowledge of any languages as a qualification for any such employment or office where no function of the employment or office can be discharged otherwise than with a knowledge of that language.

Every person lawfully resident within the Republic is entitled to freedom of movement within the Republic and of choosing such person's residence within the Republic; every citizen shall be entitled to leave and to return to the Republic.

Every person has the right to respect for such person's private and family life, home, correspondence and communications and shall not be subjected to unlawful attacks on such person's honour and reputation.

(h) Every person is entitled to freedom of thought, conscience and religion including the freedom to hold opinions and to have or to adopt a religion or belief of the person's choice.

- (i) Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium.
- (j) Every person is entitled to the freedom of peaceful assembly.
- (k) Every person is entitled to the freedom of association.
- (l) Every citizen is entitled alone or in association with others to enjoy and promote such citizen's own culture and to use such citizen's own language.
- (m) Every citizen is entitled to the freedom to engage alone or in association with others in any lawful occupation, profession, trade, business or enterprise.
- (n) Every citizen is entitled to own property alone or in association with others subject to the preservation and protection of the environment and the rights of the community.
- (o) Pregnant and lactating women shall be provided special care by the society.
- (p) Every child has the right to be protected from maltreatment, neglect, abuse or degradation; to family care or parental care or to appropriate alternative care when removed from the family environment; and, to basic nutrition, shelter, basic health care services and social services.
- (q) Every child between the ages of five and fourteen years shall have access to free education provided by the State.
- (r) A child shall not be employed in any hazardous activity.
- (s) A person shall not be required to perform forced labour.
- (t) Every person has the right to safe conditions of work.
- (u) Every citizen has the right to have access to health-care services including emergency medical treatment; sufficient food and water; and appropriate social assistance.
- (v) A person shall not be evicted from the person's home or have the home demolished, except as permitted by law.
- (w) Where a Proclamation has been duly made under the Public Security Ordinance derogation from the exercise and operation of these fundamental rights to the extent strictly required by the exigencies of the situation and necessary in a democratic society, provided that such measures do not involve discrimination solely on the grounds of ethnicity, class, religion, gender, sex, language, caste, national or social origin, is permitted.

3:2 There shall be adequate machinery for enforcement of these rights 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.

3.2a The Human Rights Commission shall be recognized by the Constitution.

3.3 In respect of disadvantaged communities, clearly defined affirmative action should 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.

3.4 Where a public officer is found by the 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.

## **BUDDHISM**

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while according to all religions the rights guaranteed by Articles 10 and 14(1)(e) of the 1978 Constitution.

## **5. LANGUAGE**

### **5.1 Official Languages and National Languages**

Sinhala and Tamil the National Languages, shall be the Official Languages of Sri Lanka.

### **5.2 Use of the English Language**

English may be used for official purposes.

### **5.3 Languages of Representative Democratic Institutions**

Members of Representative Democratic Institutions (to wit: the Parliament, the Provincial Councils and Local Authorities) should be entitled to conduct business in their institutions in either Official Language, by providing the necessary facilities for their use, and in English where facilities for the same exist.

### **5.4 Mediums of Instruction in Education.**

- (a) Any person should be entitled to be educated in the medium of either national language or in English where facilities are available.

- (b) A person shall be entitled to be instructed in any course, department or faculty of any higher educational institution in any official language of the persons choice or in English if instruction in such language at such institution is reasonably practical.

However if one official language is used as the medium of instruction for a particular course in a university or higher educational institution a similar course should be made available in such university or higher educational institution in the other official language as well, or in the alternative be made available in another university / or higher educational institution.

### **5.5 Use of Languages in the Administration**

Both Sinhala and Tamil should be Administrative Languages of Sri Lanka. In the provinces outside the Northern and the Eastern provinces the language of administration and that of record should be Sinhala.

In the Northern and Eastern Provinces the language of administration and that of record should be Tamil.

Where one Official Language is the administrative language in a province citizens who are not proficient in that language should have the right to communicate with the government and semi government institutions as well as to obtain documents or translations of documents to which they are entitled to as the case may be in either of the other Official Languages or in English wherever facilities are provided.

### **Setting up of a Bilingual Administration**

The fullest implementation of the State Policy on Language requires the establishment of an administration which uses both Official Languages for the purpose. A time frame may be established by law for the purpose.

### **Bilingual Administrative Divisions**

As a transitional first step the government and semi government institutions in divisions where the language of the minority community comprise 1/8 or more of the total population of the division should be required to provide services in both official languages.

### **Provision of Service in both the Official Languages and English**

The ultimate objective should be to develop the administration into one which can provide services in both the official languages as well as in English.

## **Mediums of Admission to Public Services and Language Proficiency of Public Servants.**

A person shall be entitled to be examined through the medium of either Sinhala or Tamil or a language of his choice at any examination for the admission of persons to the Public Service, Judicial Service, Provincial Public Service, Local Government Service or any public institution, subject to the condition that he may be required to acquire a sufficient knowledge of Tamil or Sinhala, as the case may be, within a reasonable time after admission to such service or public institution where such knowledge of Tamil or Sinhala, as the case may be, within a reasonable time after admission to such service or public institution where such knowledge is reasonably necessary for the discharge of his duties. Proficiency in English may be made compulsory for admission to any public service which requires such proficiency. Those who join the public service may be required to attain a requisite level of proficiency in the English language within a reasonable period of time to enable them to enhance the quality of their service.

### **5.10 Languages in the Administration of Justice**

Language of the Courts should be both Sinhala and Tamil. Both Sinhala and Tamil together with English shall be the language of records and proceedings of the Supreme Courts and the Court of Appeal. The Courts in the provinces should maintain their records in the language of the province. When a Court functions in one official language the judges of the court, jurors if any and parties to court actions who are not proficient in that language should be provided with interpretations of the proceedings and translating of documents in the other official language wherever necessary.

The Minister in charge of the subject of Justice should be empowered to direct, with the concurrence of the Cabinet of Ministers, that a language other than an official language be used in relation to the records and proceedings of any Court.

### **5.11 Use of Languages in Notifications etc. under the Law**

All orders, proclamations, rules, by-laws, regulations and notifications made or issued under any written law (including statutes of the provincial councils) by any Provincial Council or Local authority and documents, including circulars and forms issued or used by any such body or any public institution, should be published in both Official Languages with a translation in English.

### **5.12 Languages for use in Enacting Laws**

All laws and subordinate legislation should be enacted and published in both Official Languages with a translation in English. In the event of any inconsistency between any two such texts of any Act, Statute or provision of subordinate legislation, each such text shall be regarded as equally authoritative unless the authority enacting or making such written law shall otherwise provide.

### **5.13 Maintenance of Public Records by National Public Institutions.**

The Official Languages, and where expedient English, should 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 should be able to communicate and transact business with any public institution in any of the Official Languages or in English and to receive response to such communication in the same language.

#### **5.14 Statements to the Police**

A person in any part of Sri Lanka should be able to give information to a police or peace officer in regard to the commission of an offence and make statements when required by a police officer in either of the Official Languages, or English.

#### **5.15 Languages used in Birth, Death and Marriage Certificates**

A person should be entitled to give information as regards any birth, death or marriage in either of the official languages and to receive the original certificate of such birth, death or marriage in the language in which it was given or in the language of record in the area together with a translation in the official language of his choice, or English.

#### **5.16 Teaching of Languages**

Both national languages and English should be subjects in the curricula of all schools in the Republic.

#### **5.17 Promotion of the Learning of Official Languages and English**

State should promote the citizens to gain proficiency in the Official Languages and English.

#### **5.18 Use of other Languages**

- (a) State should provide facilities for learning other languages used by Sri Lankan citizens such as Veddah, Malay, Malayalam, Hindi, Urdu, Sindhi, Gujarati, Telugu, Chinese, Portuguese, language and the sign language.
- (b) State should promote Pali, Sanskrit, Arabic and Latin which are used for religious purposes in Sri Lanka.

#### **5.19 Implementation**



The Parliament by law should provide for the implementation of the proposed State Policy on the use of Languages as set out in this document.

## **6. SUPREMACY OF THE CONSTITUTION**

- 6.1 The supremacy of the Constitution shall be recognized, and protected by a Constitutional Court, which would be part of the existing Court structure but separate from the Supreme Court. All acts of commission or omission of the Centre and of the Provinces inconsistent with the Constitution shall be void.
- 6.2 The holder of the office of President should have personal immunity for any executive action taken by him as long as he holds office. However, all executive actions of the President should be subject to judicial review.
- 6.3 Legislation, whether national or provincial, shall be subject to post-enactment judicial review by the Supreme Court which shall have power to declare such legislation void to the extent of inconsistency with the Constitution. To mitigate hardships that may be caused by legal provisions being struck down sometime after enactment, the Supreme Court shall have the power to limit the retrospective effect of a declaration of invalidity in appropriate cases.

## **7. SAFEGUARDS AGAINST SECESSION**

- 7.1 There should be in-built mechanisms to discourage secessionist tendencies and to preserve the unity, sovereignty and territorial integrity of the State. The Provinces and local authorities shall be constitutionally mandated to preserve national unity and the indivisibility of the Republic.
- 7.2 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.
- 7.3 Emergency power 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:-
  - 7.3 (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 the National Police or the armed forces or the to restore public order and to make regulations in respect of any matter in the National List or in respect of defence, national security or law and order.

7.3 (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 authorise 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.

7.3 (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 exercise of powers by the 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 of the functions of the Province and in an extreme situation, to dissolve in terms of the Constitution the errant Provincial Legislature.

7.4 The above acts of the President under paragraph 7.3(a), (b) and (c) shall be subject to Judicial control and Parliamentary control as well. The principles of democracy and equity should be upheld and the Constitution held supreme.

7.5 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.

## **8. THE ELECTORAL SYSTEM**

The APRC is of the view that an electoral system evolved on the principles enunciated below is acceptable for a future Constitution.

8.1 The APRC accepts that there should be a mixed electoral system which combines the first past the post (FPP) on an electorate basis and proportional representation (PR) on a party basis, in which preferably the system of proportional representation prevails.

8.2 There shall be two ballot papers per elector, one to choose the electorate representative and the other to choose the party of his choice, on a district (or national) proportional representation basis.

8.3 Territorial constituencies shall be demarcated so to enable the minority communities to have their equitable share in the House of Representatives. Multi-member constituencies shall be established in areas of mixed populations, where appropriate. A Delimitation Commission with minority representation should be established for

the purpose as soon as possible.

- 8.4 Political alliances shall be recognised if formed and registered with the Elections Commission prior to handing over of nominations for the election.
- 8.5 All citizens who are otherwise eligible to be electors shall be entitled to be registered as voters, even if displaced internally or externally, or, are resident abroad, and should be provided with facilities to exercise the franchise. Sufficient safeguards should be instituted by the Elections Commission to prevent abuses.

## 9. POWER SHARING

The key to fulfilling the mandate given to the APRC by the President, Mahinda Rajapakse to prepare a set of proposals that would form the basis for working out a solution to the ethnic problem is the **empowerment of all citizens equally**. He states that "he proposes to achieve a peaceful political solution to the ethnic problem by **strengthening maximally the powers conferred on every citizen**".

Earlier attempts to solve the ethnic problem sought to achieve a solution by devolving powers to the provinces, under the terms of the 13<sup>th</sup> Amendment to the present Constitution. The failure to adequately devolve power prevented the achievement of the adequate and equal empowerment of all citizens, that is required to solve the ethnic problem. Therefore, working on the principle of subsidiarity that gives maximal power to the citizen at the level of the village and of local government, and gives the residual powers appropriately to the higher levels of governance, the APRC has prepared a system of government that strengthens the powers conferred on every citizen maximally.

Accordingly, there are three tiers of government; Central Government, Provincial Government and Local Government, each tier having a separate list of powers provided through the Constitution. The Local Government tier is based on the Grama Sabha and the Ward Sabha respectively at the village and town levels, and they can make the relevant by-laws. This would enable every citizen to exercise power maximally. By devolving powers to the Provincial Government with the right to frame the necessary legislation, power is brought closer to the people. This is further strengthened by giving maximal administrative powers to the District and Divisions without retaining all of them at the Provincial level. (See Annex 3 for Lists of Powers of the Centre, the Provinces and the Local Government institutions).

### The Centre

#### Parliament

- 9.1 (a) There shall be a Parliament at the Centre comprising of the House of Representatives elected by the People and the Senate elected by the provincial legislatures. Parliamentary control shall be construed to mean control by both Houses of Parliament.

- 9.1(b) The House of Representatives shall, unless sooner dissolved, continue for a period of six years from the date appointed for its first meeting and the expiration of the said period of six years shall operate as a dissolution of the House.
- 9.1(c) There shall be 225 members in the House of Representatives of whom a proportion will be elected from territorial constituencies on a first past the post (FPP) basis. The balance will be chosen by a separate ballot to determine support for individual parties.
- 9.1 (d) The Consultative Committees of Parliament shall be replaced by Steering Committees . A return to an Executive Committee systems is risk possible, but the opportunity should be given to members of Parliament including the opposition to play a more constructive role in framing and implementing Legislation.
- 9.1(e) The Speaker of the House of Representatives shall be the Chairman of the Higher Appointments Committee (currently, the Constitutional Council).
- 9.1 (f) The Senate 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.
- 9.1 (g) In determining the size of the Senate there is the need to maintain a fair balance between the Senate and the House of Representatives. A ratio of 1:3 between the membership of the Senate and that of the House of Representatives is desirable. It is proposed that each of the Provinces is represented by seven Senators, making up a total of 63, elected on the basis of a single transferable vote system by the members of the respective provincial legislatures. In addition, there shall be 10 Senators selected by the Community Councils (one for the Muslims, and the other for the Tamils living outside the North and the East). The President of the Republic can nominate two people to represent unrepresented community groups.
- 9.1 (h) The election of members of the Senate shall be done in a manner that will facilitate the representation of the different communities and smaller political parties. In electing representatives to the Senate, it must be ensured that every district in a Province is represented.
- 9.1 (i) One-third of the total number of Senators shall vacate office every two years. The Senators of the first Senate who shall be required to vacate at the end of two years, and, at the end of four years, shall be decided by drawing lots.
- 9.1 (j) The Senate shall be presided over by the Vice-President of the Republic who shall not have a right to vote but would nonetheless be entitled to a casting vote.
- 9.1 (k) The Chief Ministers who constitute the Chief Ministers Conference, shall be *ex-officio* Senators, and, like the Vice President who is the Chairman of the Senate, will not have voting rights.

9.1 (1) The Senate shall not have the power to initiate Bills.

9.1 (m) The Senate shall have the power to pass all Bills referred to it from the House of Representative, with the power, if the members of the Senate so decide, to refer the Bill back to the House within a period of 90 days, with a request for it to be reconsidered or amended.

9.1 (n) The Senate shall sit in a joint session with the House of Representatives to debate, whenever that House proposes an amendment to the Constitution. However the voting will be done separately and 2/3 of the total number in each chamber should support an amendment before it can be accepted.

9.1 (o) The Senate, jointly with the House of Representatives, shall have the authority to appoint Tribunals to arbitrate any dispute that may arise between the Centre and the Provinces and the Provinces *inter se*.

### National Executive

9.2(a) There shall only be Cabinet Ministers and Deputy Ministers. The number of Cabinet Ministers including the Prime Minister shall not exceed 30, and, the number of Deputy Ministers shall not exceed 30.

9.2(b) After the interim period, the President shall appoint all Ministers and Deputy Ministers on the advice of the Prime Minister.

9.2(c) The Ministers and Deputy Ministers at the Centre shall consist of members of both Houses of Parliament, namely the House of Representatives and the Senate, but excluding its Chairman.

9.2(d) The Cabinet of Ministers should, in principle, reflect the pluralistic character of Sri Lanka and also be representative of the Provinces of Sri Lanka.

### **The Provinces**

#### Provincial Legislature

9.3(a) Each of the provincial legislatures shall consist of the number of members as determined by or under law. The elections to provincial legislatures shall be on the basis of a mixed system of First Past the Post and Proportional Representation.

9.3(b) A Provincial Legislature shall, unless sooner dissolved, continue for a period of five years from the date appointed for its first meeting and the expiration of the said period of five years shall operate as a dissolution of the Legislature.

9.3(c) The Governor of a Province may from time to time prorogue or dissolve the Legislature:

Provided that he shall exercise these powers in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, the support of the majority of the Legislature, except as a result of direction from the President acting under paragraph 7.3(c).

9.3 (d) There shall be Steering Committees in every Provincial Legislature.

9.3 (e) A Province may decide on the design of its own flag and emblem. The design shall be subject to approval by two-thirds majority in the respective provincial legislature.

#### Provincial Executive

9.4 (a) The President, acting on the advice of the Prime Minister, shall appoint a suitable person as the Governor of a Province, provided that the Prime Minister shall have obtained the concurrence of the incumbent Chief Minister of the Province prior to tendering his advice.

9.4 (b) The normal term of office of the Governor shall be five years, but however, he shall hold office at the pleasure of the President.

9.4 (c) The Governor shall appoint as Chief Minister, the member of the Provincial Legislature who in his opinion is best able to command the support of the majority of the members of that Legislature:

Provided that where more than one-half of the members elected to a Provincial Legislature are members of a single political party or political alliance, the Governor shall appoint the leader of that party or alliance in the Legislature, as the Chief Minister.

9.4 (d) The Governor shall appoint the other Ministers of the Board of Ministers on the advice of the Chief Minister. The number of Ministers inclusive of the Chief Minister of the Province shall not exceed 20 per centum of the total number of members of the legislature of that Province. There shall be no Deputy Ministers in a Province. The Board of Ministers shall reflect the ethnic character of the Province.

9.4(e) There shall always be a Board of Ministers for a Province even after the dissolution of the Provincial Legislature, and hence, the existing Board of Ministers shall continue in office during dissolution of the Legislature and until its successor assumes charge of office except when the Legislature is dissolved under the provisions of section 9.3(c).

9.4(f) If in terms of paragraph 7.3(c), the President assumes all powers of a Province, he shall forthwith appoint a Council of Advisors, consisting of not less than five and not more than seven members to aid and advise the Governor of that Province in the exercise of the executive powers of the Province.

9.4 (g) There shall be an Advocate General for every Province appointed by the Governor on the advice of the Chief Minister. It shall be the duty of the Advocate-General to give advice to the Governor, the Chief Minister and the other Ministers of the Province upon such legal matters and perform such other duties in relation thereto, as may be from time to time referred or assigned to him by the Governor or the Chief Minister.

#### District Council

- 9.5(a) There shall be a District Council for every administrative district of Sri Lanka. The Council shall be constituted by the members of the Provincial Legislature elected from that District and the Chairman or a representative from each local body. The members of a District Council shall elect one amongst them as its Chairman. The Government Agent (to be redesignated as the District Commissioner) of the District shall, *ex officio*, be the Secretary of the Council. Members of Parliament of that District may attend meetings, but they will have voting rights only in relation to approval of Central government projects.
- 9.5(b) The Chairman of the District Council shall be the Chief Executive Officer of the District while the District Commissioner shall be the Chief Administrative Officer of the District.
- 9.5(c) The District Council will form the link between the Provincial Government (and Legislature) and the District including the divisional secretariats and local authorities within that District. The District Council will also perform a Co-ordinating function with the institutions of the Centre.
- 9.5(d) A District Council will provide services to the people, and exercise powers as follows:
- (i) To initiate action in the formulation of any development project relevant to the district in respect of any subject in the Provincial List.
  - (ii) To approve the annual development plan for the district.
  - (iii) To oversee the implementation of approved development projects in the district.

## **UNIT OF DEVOLUTION**

- 10.1 The unit of devolution should, as far as practicable, consist of a 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.
- 10.2 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.
- 10.3 The feasibility/desirability of reducing the number of provinces outside the North and East may also be considered at the commencement of the new Constitution.

Questions of merger of provinces can be considered in accordance with the provisions presently available in the 1978 Constitution and the Provincial Councils Act, No. 42 of 1987.

- 10.5 The cities of Colombo and Sri Jayewardenepura Kotte and their environs shall form the Capital Territory which shall otherwise be a part of the Western Province. However, law and order in the Capital Territory shall be a matter for the Central Government.

## **11. MEETING THE ASPIRATIONS OF MUSLIMS AND INDIAN TAMILS**

### **[11.1 Meeting the Aspirations of the Muslims**

The main concerns and preferred solutions of the four (4) parties representing Muslim interests in the APRC (the SLMC, NUA, National Congress and ACMC) are the following:

- 11.1.1 The safety of the Muslims living in the North and the East.
- 11.1.2 Though the East is now a separate province the merger of the North and East in the future cannot be ruled out.
- 11.1.3 A genuine power sharing mechanism should be established to achieve the political aspirations of the Muslims.
- 11.1.4 There is the need to ensure that there is at least one Muslim majority Devolved Unit in the country.
- 11.1.5 Such unit could be achieved by bringing the 3 adjoining Muslim majority electorates in the East - Kalmunai, Pottuvil and Sammanthurai - along with Muslim majority local bodies of the North and East to be included in one territory with all the powers of a provincial council-legislative, executive and administrative. This would enable the Muslim political leaders to address the needs of a majority of the Muslims in the North and the East.
- 11.1.6 To ensure the safety of the minorities within the devolved unit there should be a Rapid Deployment Force (RDF) of the Centre.
- 11.1.7 In the rest of the country, arrangements similar to that proposed for the Indian Tamils (establishment of a non-territorial Community Development Council) may be suitable for the welfare of the Muslim communities living outside the North and East.

### **11.2 Meeting the Aspirations of the Indian Tamils**

The main concerns and preferred solutions of the CWC, the UPF and the DPF are the following:

- 11.2.1 There should be a genuine power sharing mechanism with a constitutional executive



structure which would ensure that the political aspirations of the Indian Tamils as a community is achieved.

- 11.2.2 There is a desire to have one contiguous territory in which the Indian Tamils could have the powers given to a Provincial Council-legislative, executive and administrative-and a Chief Minister. This Indian Tamil Territorial Council should be based in the areas with a high density of Indian Tamils in the Nuwara Eliya district ( Nuwara Eliya, Maskeliya and Kotmale electorates) and adjoining areas of the Kandy, Badulla and Ratnapura districts.
- 11.2.3 There should either be a separate non-territorial Indian Tamil Community Development Council, made up of the provincial council members of 6 identified provinces (Central, Uva, Sabaragamuwa, Southern, Western and North Western), to directly address education, culture, infrastructure development and personal development needs of members of the Indian Tamil community in the country; or these powers could be exercised through the Indian Tamil Territorial Council.

### **11.3 Response of the other Parties of the APRC to the above Aspirations.**

- 11.3.1 The APRC appreciates the concerns and desires of the parties representing the Muslim and Indian Tamil communities in the APRC to have for each of them a territorially defined power base where the two communities can exercise all the powers given to an existing province to address by themselves their own identity and developmental needs, have an assured Chief Minister of their own and also feel safe.
- 11.3.2 With regard to the issue of the North-East merger, the EPDP had expressed the view that it supports merger while accepting right of the Muslims to have an autonomous arrangement in the merged provinces. This position was supported by CWC, UPF and DPP (formerly WPP). The TMVP had stated that it accepts the verdict of the Supreme Court and it wishes that the people of the East be able to decide whether they should be merged with the North at a Referendum. The TMVP had also stated that such referendum should be held after two years of working within the demerged Eastern Province. Such arrangement to decide the issue of merger by a Referendum is acceptable to all the parties in the APRC. The Muslim Parties, however, insist that irrespective of the way in which a merger is achieved, a separate council with a Muslim majority as stated in paragraph 5 of their "aspirations" has to be accepted. The APRC accepts that the demand of the Muslim parties for a separate council has to be considered in the event of a merger.
- 11.3.3 In defining the boundaries of local government bodies, without a doubt, there has been neglect of the interests of the minorities, in particular the Indian Tamils. These need to be rectified. In establishing the plantation based village committees, and other village committees, and the electorates for the provincial councils and national government due weightage should be given to the minorities. Before elections are

held on the basis of any new Constitution there should be a fresh delimitation process with a Delimitation Commission with minority representation, including the Muslims and Indian Tamils.

- 11.3.4 To ensure the safety and security of each community which is a minority in a province, there should be stationed in that province a unit of the Rapid Deployment Force (RDF) of the Centre, headed by an officer drawn from one of the communities that is a minority in that province. In every Police station in each province there should be at least one officer from each community, and more officers to ensure that the staff at the Police station represents each ethnic community in proportion to its population ratio in the province and the police area.
- 11.3.5 The SLFP and other parties namely JHU, UNP (D), LSSP, CP and MEP however feel that it is best that the creation of two new community based territories ("provinces") in the country is best avoided, as it would tend to increase existing differences among communities, strengthen the tendency to develop each community in isolation from the others, and reduce the move towards the integration of communities. In the circumstance the following alternative arrangements are suggested by these parties:-
- a) A mechanism should be put in place for the parties which represent the minorities to join the administration following a provincial council election and be entitled to ministries as a matter of right based on their electoral strength.
  - b) In determining the number of ministries to be allocated to a minority community one of the following two criteria be used -the proportion of votes received by the candidates belonging to the parties representing that minority or the proportion of candidates elected from that community, taken as a whole.
  - c) The parties of the minority community can make a request to the Governor/Chief Minister of the province to have a separate ministry to serve the cultural and development needs of that community.
  - d) When minority parties join the Government the process of allocation of ministries should not be left to the discretion of the Chief Minister but be based on the application of an objective method like the d'Hondt formula with a predetermined list of ministries.
  - e) Steering Committees should be established modeled on the Executives Committee as stated in Article 135 of the 2000 Draft Constitution, one for each ministry. There should be additional provision to ensure that as far as possible there is at least one representative from each minority group in each Steering committee, and mandatorily in the committee dealing with finance. Where the

number of representatives of a minority is inadequate provision can be made for a minority representative to be in more than one committee, up to a specified limit.

- f) There must be a representative each of the Muslims and the (Indian) Tamils in the Finance Commission.

11.3.6 Most of the minority parties in the APRC, specially those who represent the Tamils, however, feel that such alternative arrangements as stated in para 11.3.5 will only succeed in watering down the executive power resulting from the devolution process in the North and East and will not be beneficial to the Tamils living in those Provinces, whose expectation and demand is for executive authority in their majority area.]

#### **11.4 Community Councils**

11.4.1 There is a recognition of the need for an institutional mechanism to address directly the development needs of the Indian Tamil community and the Muslims living outside the North and East since they have no prospects of independently administering at the Centre or in any of the Provinces. The people of Indian Origin and Muslims outside the North and East aspire for a mechanism to directly intervene to address development issues particular to the communities.

11.4.2 There shall be two Community Councils, one for Indian Tamils and one for Muslims, outside the North and East without territorial focus to serve the development needs of the members of the communities wherever they may be living in Sri Lanka outside the North and the East.

11.4.3 The functions of the Community Councils shall be:

Implementation of policies, plans and programmes in respect of the communities, proposed by the Community Councils using the existing administrative machinery of the Centre, the Provinces and of the local authorities, for implementation of projects coming within the subjects under each of the levels.

Development of the socio economic infrastructure directly in relation to the communities.

c) Formulation of proposals and strategies for the provision of infrastructure facilities in areas inhabited by the said communities in subjects such as education, health, housing, water supply, roads and power for the improvement of the living conditions of the people; and in particular in areas of-

- > Education
- > Arts, culture and religion
- > Vocational training
- > Socio economic development

- > Health, relief rehabilitation and social service
- > Housing
- > Personal development and grants (land, Samurdhi, scholarships etc)  
infrastructure development in the areas inhabited by the ethnic

group.

Act as the co-ordinating and monitoring authority to ensure the implementation of the above development proposals by the relevant implementation agencies.

- 11.4.4 The Community Councils shall be constituted from the elected Provincial Council Members of the said communities. In whatever Province in which a substantial number of a community live but are unable to elect a member to the Provincial Council, the Governor shall nominate one person who is most representative of that community from among those who contested at the Provincial Council election to serve as a member of the Community Council.
- 11.4.5 The Community Councils shall have a Chairman who shall preside at meetings of the Council.
- 11.4.6 The Chairman shall be elected by the Council by a simple majority.
- 11.4.7 The Chairman of the Community Council shall be an observer at the Chief Minister's Council for co-ordinated decision making at the National level upon a consultative basis.
- 11.4.8 The Community Councils shall function directly in association with the Minister of Finance.
- 11.4.9 The period of office of a member of a Community Council shall be the same as his period of membership of a Provincial Council.
- 11.4.10 Notwithstanding any vacancies that might for whatever reason may occur, the Community Council shall continue to function during that interim period.
- 11.4.11 The Finance Commission shall make recommendations for funding the activities of the Community Councils and for implementation of programmes and projects formulated by the Community Councils taking into consideration the needs and extent of finances required to service the subject for which powers have been granted to the Community Councils also considering the population, the present development and the need for the future with the idea of bringing the communities on par with the National levels.

## **12. DISTRIBUTION OF POWERS**

- 12.1 For devolution to be meaningful, it is proposed that the subjects and functions be categorized as belonging either to the National sphere or to the Provincial sphere.
- 12.2 The distribution of powers should be explicit and devoid of ambiguity. The Parliament should have no legislative power in respect of subjects and functions in the Provincial List while Provincial Legislatures should 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 two Lists shall be deemed to be included in the National List.

- 12.3 Subjects such as Defence, National Security, Foreign Affairs, Citizenship, Immigration, Communication, National Transportation, International Commerce/Trade, Airports, Maritime Zones, Harbours and Ports (other than 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.
- 12.4 Where national policy, national standards and national plans need to be formulated, 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 a Province would be required to conform to such framework legislation when passing statutes. Where a Provincial statute or a provision thereof is inconsistent with the framework legislation, such statute or provision may be struck down by the Supreme Court.
- 12.5 There shall be two Lists which shall contain the subject matters regarding which the Centre and the Provinces may exercise their respective Legislative powers and Executive functions. These are:
- (a) List I- National List (see Annex III)
  - (b) List II- Provincial List, (see Annex II)
- 12.6 Parliament shall have exclusive powers to legislate and exercise all executive functions in respect of List I, while the Provincial Legislatures shall have exclusive powers to legislate and exercise all executive functions in respect of List II.
- 12.7 There shall also be another list of subjects, List III, whose implementation shall be a matter for the local government institutions, the Pradeshiya Sabhas and Grama Sabhas and the Municipal/ Urban Councils and the Urban Ward Sabhas. Municipal/ Urban Councils and Pradeshiya Sabhas shall have the power to make by-laws on subjects in this List consistent with the statutes of the Province.
- 12.8 A Pradeshiya Sabha or an Urban Council or a Municipal Council may delegate any of its functions for implementation to all Grama Sabhas or Urban Ward Sabhas in the area of its authority, as the case may be, transferring the appropriate financial provision along with that delegation.

### **13 LAND AND WATER**

- 13.1 The Centre shall succeed to State land used by or assigned to the Central Government and its institutions in respect of subjects and functions in the National List at the commencement of the Constitution.
- 13.2 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.

- 13.3 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 held by the Centre at that time 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.
- 13.4 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 held by the Province at that time 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.
- 13.5 There shall be a Land and Water Commission (LWC) 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 such as irrigation engineering, waterworks engineering, hydropower engineering, geology, soil chemistry, botany, zoology, environmental science and surveying, and shall not be serving public or judicial officers.
- 13.6 The LWC 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. The Commission shall monitor land use and ensure compliance with policy and recommendations so formulated.
- 13.7 The LWC shall also formulate national plans relating to inter-provincial irrigation, water supply and hydropower projects, in consultation with the relevant Provinces, and make recommendations to the Central and Provincial Governments with regard to their design, implementation and operation.
- 13.8 Priority in a land settlement scheme in a province shall be accorded first to needy persons of the District, then of the adjoining Districts within the Province, and then to needy persons of the Province, paying attention to the needs of all the communities, particularly the minorities of the District and of the Province and lastly to needy persons outside the Province. The selection of the allottees shall be the responsibility of the Province.
- 13.9 The alienation of State land under inter-provincial irrigation schemes, like the Mahaweli scheme, shall be on the basis of the national ethnic ratios (1981 census). Priority shall be given to persons who are displaced 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.
- 13.10 The LWC shall determine and intimate to the provinces the number of allotments available for alienation to residents of the relevant districts and Provinces covered by an inter-provincial irrigation scheme. The selection of the allottees shall be the

responsibility of the Province.

13.11 Where the members of any ethnic community did not, or were unable to take their entitlement of allotments from any such inter-provincial irrigation 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.

13.12 The distribution of allotments in 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.

## **JUDICIARY**

14.1 The institutions administering justice shall be the Constitutional Court, Supreme Court, the Court of Appeal, Provincial High Courts and other courts, tribunals and other institutions established by the Constitution or by law.

14.2 There shall be established a Constitutional Court.

14.2 A The Jurisdiction of the Constitutional Court shall be :

- (a) To hear and determine appeals arising out of decisions rendered by the Supreme Court on questions that raise matters pertaining to Constitutional Law.
- (b) If at any time it appears to the President of the Republic or to the Speaker of the Parliament or to the President of the Senate that a question of law or fact has arisen or is likely to arise which is of such nature and of such public importance that it is expedient to obtain the opinion of the Constitutional Court upon it, they may, at their discretion refer that question to the Court for consideration and the Court may, after such hearing as it thinks fit, within the period specified in such reference or within such time as may be extended by the President, of the Republic, Speaker or the President of the Senate report to the President its opinion, thereon.
- (c) Notwithstanding paragraph (b), the Court shall not have original jurisdiction in any matter whatsoever.

14.2 B(a) Appeals to the Constitutional Court shall be made with leave from both the Supreme Court and from the Constitutional Court,

or

- (b) With leave only from the Constitutional Court where the Supreme Court had declined an application for leave to Appeal to that court.

14.2 C The Court shall be constituted with the appointment of not more than 12 judges, of whom one of them shall be appointed as the President of the Court.

14.2 D When the Court has a full compliment of 12 judges, the Court shall sit in three separate chambers, at all times, where each will be presided by three judges; so that there will be a group of three judges always not sitting and always making themselves available to write judgments required to be delivered by them.

Provided that where the Court for some reason had not been constituted with its full compliment of 12 members, the President of the Court has a power to decide upon the number of chambers of the court that would sit at any one time, so as to provide the litigants with th most effective and timely manner in which the matters on appeal may be heard and disposed of.

14.2E Depending on the availability of suitable persons for appointment, the Constitutional Court may be constituted whenever it becomes necessary with a lesser number of judges.

14.2 F The President of the Court shall be a person who could administer the effective functioning of the Court and provide intellectual leadership to the rest of the Court.

14.2 G Whenever it is found that there had arisen conflicting judgments in the Court, the President may on his own, or at the request of Counsel or parties to the appeal or for any other reason constitute a Bench of five, seven or nine judges of the court to resolve such conflicts.

14.2 H(a) The Constitutionality of the Pre-legislative Bills may be subjected to judicial scrutiny under the provisions of Article 121 of the Constitution. The matter shall be heard and determined by the Supreme Court as a court having both original and final jurisdiction from which there shall be no appeal any further to the Constitutional Court.

(b) The Constitutionality of the post-legislative Status may be subject to judicial scrutiny at any time after its enactment whether or not it had previously been determined under paragraph (a) of this Article, and notwithstanding the fact that it had at that hearing being found to be intra vires the constitution and therefore valid.

(c) Where the Supreme Court determines under paragraph (a) of this Article that the pre-legislative Bill was ultra vires the Constitution, that determination remains final and conclusive with regard to that Bill, and may not be reconsidered thereafter by any other court, including the Constitutional Court.

14.2 I The group of persons from whom appointments to the Constitutional Court may be made are from the following:

(a) Academics who have a specialised knowledge in Constitutional Theory.

(b) Members of the legal profession who are currently practicing in the Sri Lanka Courts, predominantly in Constitutional Theory and Human Rights.



- (c) Retired judges who have excelled themselves in Constitutional theory as determined by their judgments.

14.2 J There shall be a selection Committee of Experts comprising of:

- (a) the most senior academic of the Faculty of Law of University of Colombo and of the Departments of Law of the Universities of Jaffna, Peradeniya and of the Open University, one of whom to be chosen by the Higher Appointments Council.
- (b) one member from the Committee of Vice-Chancellors, chosen also by the Higher Appointments Council provided that such a person so chosen is not a person who may be considered as one who is learned in the law.
- (c) The Legal Draftsman, ex officio.

14.2 K The Selection Committee mentioned in Article 14.2 J, shall be established by the Higher Appointments Council and that committee shall be chaired by a person chosen from among its members and by its members who shall report the Committee's findings to the said Council.

14.2 L The Higher Appointments Council shall convey through a person designated for that purpose, its decision to the President of the Republic who may appoint the person or persons chosen by that Council by administering the oath, and by warrant under his hand.

14.2M The proceedings of the Selection Committee shall be conducted in accordance with the Roberts Rules of Procedure.

14.2N The Selection Committee to which Article 14.2 J and K refers will be responsible to provide the Higher Appointments Council to consider for appointment as judges of the Constitutional Court, including the person who is deemed to be most suitable to be appointed as the President of the Court from among those listed.

14.2O The same procedure as set out in Articles 14.2J to 14.2 N and any other necessary Article shall apply for filling vacancies that may from time to time occur in the Court.

14.2P The Higher Appointments Council shall make the final decision for appointment as judges or as a judge, of the Constitutional Court, as the case may be.

14.2Q The President shall have no discretion in the appointment of judges to the Constitutional Court upon receiving the recommendation of the Higher Appointments Council.

14.2R The provisions of Article 107, 110 (2); 110 (3) shall apply to the judges of the Constitutional Court in the same manner as they would apply to the Judges of the Supreme Court; and the Court of Appeal as if they had been expressly there mentioned and included in the contents of those three Articles.

14.2S Articles 118, 119 and 120 in particular and any other relevant Article of the 1978 Constitution shall apply with suitable amendments so as to accommodate the Constitutional Court as the

Apex Court in all matters, raising points of Constitutional law of "exceptional importance", which is to be determined ultimately by the Constitutional Court itself.

- 14.2 T A judge of the Constitutional Court or the Court itself may be required by the President of the Republic to perform or discharge any other duties or functions suitable and appropriate to the role of a judge of that Court, or appropriate to the standing of the Court, which role the Court and its judges are deemed to play under the Constitution.
- 14.2 U Judges of the Constitutional Court shall be appointed initially for seven years and shall be eligible for re-appointment for the full period of seven years or for a portion of that period as is deemed fit and suitable by the Higher Appointments Council.
- 14.2V There shall be no age limit for appointment or for holding office as a judge of the Constitutional Court other than the appointees' mental and physical ability to perform the tasks required of him in his capacity as a member of that Court.
- 14.2W Every judge of the Constitutional Court shall hold office for a period of seven years from the date of his appointment, unless he earlier vacates office by death, resignation made in writing to His Excellency the President or is removed under the procedure laid down in Article 107 of the Constitution.
- 14.3 Appointments to the Supreme Courts 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. The Supreme Court and the Court of Appeal should reflect the pluralistic character of Sri Lanka.
- 14.4 The Supreme Court shall consist of the Chief Justice and not less than ten and not more than sixteen other judges appointed in accordance with the Constitution.
- 14.5 The Court of Appeal shall consist of its President and not less than thirty and not more than thirty five judges who shall be appointed in accordance with the Constitution.
- 14.6 There shall be a single Court of Appeal sitting in each of the nine provinces with an all Island Jurisdiction.
- 14.7 The Court of Appeal shall rank immediately below the Supreme Court.
- 14.8 All judges of the Court of Appeal shall rank with equal status and shall be chosen by the President of the Court of Appeal to sit in different Provinces for different periods of time.
- 14.9 The Court of Appeal shall sit in benches comprising of at least two judges, and shall replace the Provincial Civil Appellate High Court.
- 14.10 The Court of Appeal shall hear and determine appeals and matters in Revision arising out of decisions made by the High Courts and the District Courts of the Provinces, while Appeals and Revisions from Magistrates' courts and other tribunals shall continue to be heard by the Provincial High Courts.
- 14.11 The Court of Appeal shall be possessed of original Jurisdiction over violations of fundamental

rights arising out of an infringement, or an imminent infringement, by provincial executive or administrative action.

14.12 The Judicial Service Commission (JSC) shall consist of the Chief Justice (who shall be the Chairman), and two senior Judges of the Supreme Court nominated by the Higher Appointments Committee (HAC) and appointed by the President.

14.13 Notwithstanding the above mentioned provisions, all provisions of the 1978 Constitution which are applicable to the Jurisdiction of the Supreme Court and to the Court of Appeal which do not conflict with the provisions contained in this part of the document, shall continue.

## **15. 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 provincial public services. 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:-

- (a) Staffing of public positions required at each tier of government according to the service delivery needs in relation to the functions assigned.
- (b) Staffing levels of the provincial and local tiers to be agreed upon over the medium term (a period of three years) as a tri-partite arrangement between the National Public Service Commission, the National Finance Commission and the respective Provincial Public Service Commissions.
- (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 of both the Centre and the Provinces.
- (d) Re-defining the role of the All Island Services.
- (e) Resolving the inefficient duality in the public service at the sub-national levels.

15.2 Devolution of powers to the Provinces should not result in an unhealthy duplication of positions and officers 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 There should be public services categorized as All Island Services, National Public Services and Provincial Public Services. Parliament may

declare by law any 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.

- 15.4 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 any All Island Service officers to the provincial public services shall be 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.
- 15.5 There should be a National Public Service Commission (NPSC) consisting of not less than 7 members and not more than 9 members and a Provincial Public Service Commission for each of the Provinces consisting of not less than 3 members and not more than 7 members whose memberships 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.
- 15.6 The National Public Service Commission and the Provincial Public Service Commissions shall determine the cadres to their respective services, including the All Island Services. It shall be the responsibility of the Provincial Public Service Commission to provide the necessary administrative staff to all local authorities.
- 15.7 All appointments, transfers, promotions, dismissal and disciplinary control of national public officers shall 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 Commissions. 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.
- 15.8 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 or judicial officers.
- 15.9 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 and the Divisional Secretary should 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.

- 15.10 In view of the importance attached to the districts and divisions in the implementation of provincial plans, the Government Agent of a District shall be redesignated as the District Commissioner (DC) while the Divisional Secretary shall be redesignated as the Divisional Commissioner (Div C). The DC who has to report to the Provincial Secretary in charge of Home Affairs shall have the rank of an Additional Provincial Secretary.
- 15.11 Constitutional provisions should be made to enable the Centre to entrust central functions such as, customs, elections, census, national identity cards, gun licensing etc to the District Commissioner, Divisional Commissioner, Grama Niladhari and other provincial officers as agency functions. A sub-secretariat in each of the District Secretariats (Kachcheris)/ Divisional Secretariats will have to be set up under a senior officer to provide services to the public in respect of central functions entrusted to the District Commissioners/ Divisional Commissioners.
- 15.12 There shall be equitable representation of the different ethnic communities of Sri Lanka in the public services. Since Sri Lankan Tamils, Moors and Indian Tamils are under-represented in the public service, suitable affirmative action should be taken to remedy the situation. An affirmative action shall be for an interim period to restore the ethnic balance in the public services, and, will be reviewed every five years.
- 15.13 The principle for recruitment to the public service shall be merit. However, in view of the ethnic imbalance in the public service, recruitment to public office may be based on provincial or national ethnic ratios, as the case may be, and on merit within a particular community, taking into consideration the actual needs based on linguistic criteria.
- 15.14 Promotion of public officers shall be based on seniority and on merit based on objective criteria among serving officers within a particular service.
- 15.15 The President shall appoint the Secretary to the President, the Cabinet Secretary, the Principal Secretary to the Prime Minister, all Secretaries to National Ministries and other public officers required by the Constitution, on the advice of the Prime Minister or on the recommendation of the Higher Appointments Commission, as the case may be. The appointment, promotion, transfer dismissal and disciplinary control of all Additional Secretaries to Ministries and the Heads of National Departments shall vest in the Cabinet of Ministers.
- 15.16 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 Ministries on the advice of the Chief Minister of the Province. The appointment, promotion, transfer, dismissal and disciplinary control of all Heads of Departments of a Province including the District Commissioners (Government Agent) shall vest in the Board of Ministers.

- 15.17 There shall be a Public Services Appeals Tribunal.
- 15.18 There shall be a Forum of Chairpersons of Public Service Commissions consisting of the Chairpersons of the National Public Service Commission, the Police Service Commission and the Provincial Public Service Commissions.
- 15.19 The Forum will recommend criteria for the appointment, promotion, transfer, dismissal and disciplinary control of public officers and police officers with the view to ensuring uniformity of practice and adherence to minimum standards, and, to make recommendations for improving the quality and efficiency of the services.
- 15.20 The appointment, dismissal and disciplinary control of Advisors and Consultants shall vest in the Cabinet of Ministers and the Board of Ministers of the respective Province, as the case may be.

## **16. FINANCE.**

### **16.1 A tax shall not be levied or collected except by or under law or Statute.**

### **16.2 Central and Regional Finances.**

- (1) (a) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to the provinces, all funds of the Central Government not allocated for specific purposes shall form one consolidated fund to be called the Consolidated Fund of Sri Lanka into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues of the Central Government.
- (b) All revenues received by a Provincial Administration and all loans raised by such Administration, and all monies received by such Administration in repayment of loans shall form one consolidated fund to be called the Consolidated Fund of the Province.
- (c) All other public monies received by or on behalf of the Central Government or a Provincial Administration shall be credited to the Consolidated Fund of Sri Lanka or the Consolidated Fund of the Province as the case may be.
- (d) Money out of the Consolidated Fund of Sri Lanka or the Consolidated Fund of the Province shall not be appropriated except in accordance with law or Statute and for the purposes and in the manner provided in the Constitution.

(2) (a) Notwithstanding any of the provisions of this Chapter, Parliament may by law create a Contingencies Fund for the purpose of providing for urgent and unforeseen expenditure.

(b) The Minister of the Cabinet of Ministers in charge of the subject Finance, if satisfied -

(i) that there is need for any such expenditure; and

(ii) that any provision does not exist for such expenditure,

may, pending subsequent approval by Parliament authorize provision to be made therefore by an advance from the Contingencies Fund.

(c) After each such advance, a supplementary estimate shall, within a period of three months, be presented to Parliament for the purpose of replacing the amounts so advanced.

(d) A Provincial Council may by Statute establish a Contingency Fund in the nature of an imprest, to be entitled the Contingency Fund of the Province into which shall be paid from time to time such sums as may be determined by such Statute, and such Fund shall be placed at the disposal of the Chief Minister of Province to enable advances to be made by him out of such Fund for the purpose of meeting unforeseen expenditure and after each such advance, a supplementary estimate shall, within a period of one month, be presented to the Provincial Council for the purpose of replacing the amounts so advanced.

(3) (a) Excise duties as may be prescribed by Parliament on the recommendation of the Finance Commission shall be levied by the Central Government but shall be collected -

(i) in the case where such duties are leviable within the Capital Territory, by the Central Government; and

(ii) in other cases, by the Provincial Administrations of the Province within which such duties are respectively leviable.

(b) The proceeds in any financial year of any such duty leviable within any Province shall not form part of the Consolidated Fund of Sri Lanka and shall be assigned to that Province.

(4) (a) Taxes on wholesale and retail sales (other than sales by

manufacturers) shall be levied and collected by the Central Government but shall be apportioned to the Province in the manner provided in sub-paragraph (b) of this paragraph.

(b) The net proceeds in any financial year of any such tax shall not form part of the Consolidated Fund of Sri Lanka but shall be assigned to the Province within which such tax is leviable in that year in accordance with such principles of apportionment as may be prescribed by Parliament on the recommendation of the Finance Commission.

(c) The Finance Commission shall also formulate principles for determining where a sale or purchase or consignment of goods takes place in the course of inter-provincial trade or commerce for the purpose of sub-paragraph (b) of this paragraph.

(5) (a) Taxes on sales or income not otherwise provided for shall be

levied and collected by the Central Government and shall be distributed in the manner provided in sub-paragraph (b) of this paragraph.

(b) A percentage as may be prescribed by Parliament of the net proceeds in any financial year of any such tax shall be assigned to the Province within which such tax is leviable in that year and shall be disbursed to the respective province in such manner, and from such time, as may be prescribed by the Finance Commission.

(6) Such sums as Parliament may by law provide shall be charged to the Consolidated Fund of Sri Lanka in each year as grants in aid of the revenue of such Provinces as Parliament may determine to be in need of assistance, and different sums may be fixed for different Provinces.

### **16.3 Withdrawals of Sums from Consolidated Fund**

(1) Save as otherwise expressly provided in paragraphs (3) and (4) below, money shall not be withdrawn from the Consolidated Fund of Sri Lanka except under the authority of a warrant under the hand of the Minister of the Cabinet of Ministers in charge of the subject of Finance.

(2) Any warrant under paragraph (1) above shall not be issued unless money has by resolution of Parliament or by any law been granted for specified public services for the financial year during which the withdrawal is to take place or is otherwise lawfully charged on the Consolidated Fund of Sri Lanka.

(3) Where the President dissolves Parliament before the Appropriation Bill for the financial year has passed into law, the President may, unless Parliament shall have already made provision, authorize the issue from the Consolidated Fund of Sri Lanka and the expenditure of such monies as the President may consider necessary for public services until the expiration of a period of three months from the date on which the new Parliament is summoned to meet.



- (4) Where the President dissolves Parliament and fixes a date or dates for a General Election, the President may, unless Parliament has already made provision in that behalf, authorize the issue from the Consolidated Fund of Sri Lanka and the expenditure, of such monies as the President may, after consultation with the Election Commission, consider necessary for such elections.
- (5) Money shall not be withdrawn from the Consolidated Fund of a Province except under a warrant under the hand of the Chief Minister of the Province.
- (6) A warrant under paragraph (5) above shall not be issued unless the money has by Statute of the Provincial Legislature established for the Province, been granted for services for the financial year during which the withdrawal is to take place or is otherwise lawfully charged on the Consolidated Fund of the Province.

#### **16.4 Special Provisions as to Bills affecting Public Revenue of Sri Lanka.**

A Bill or motion, authorizing the disposal of any monies of, on the imposition of charges upon, the Consolidated Fund of Sri Lanka or other funds of the central Government, or the imposition of any tax or the repeal, augmentation or reduction of any tax for the time being in force shall not be introduced in Parliament except by a Minister of the Cabinet of Ministers, and unless such Bill or motion has been approved either by the Cabinet of Ministers or in such manner as the Cabinet of Ministers may authorize.

#### **16.5 Provincial borrowing and investment in the Province**

- (1) (a) the executive power of the Province extends to domestic and international borrowing upon the security of the Consolidated Fund of the Province.  
  
(b) International borrowings by a Provincial Administration shall be subject to such criteria and limitations as may be specified by Parliament and shall require the concurrence of the Finance Commission.
- (2) (a) The limits as regards domestic borrowing and the limitations and criteria as regards international borrowing by each Provincial Administration for each financial year shall, subject to the provisions of sub-paragraph (b) of this paragraph, be laid down by the Minister of the Cabinet of Ministers in charge of the subject of Finance before the thirtieth day of September of the preceding financial year.  
  
(b) In laying down these limits and criteria, the Minister shall take into consideration the requirements of fiscal policy and the demands of monetary stability as well as the repayment capacity of each Provincial Administration.
- (3) Any agreements negotiated and entered into by Provincial Administrations regarding international grants and foreign development assistance shall be in accordance with the national policies on international aid as laid down, from time to time, by the Cabinet of Ministers and approved by Parliament.

#### **16.6 Finance Commission**

- (1) (a) There shall be a Finance Commission consisting of five members who have distinguished themselves or held high office, in the fields of finance, law, administration, business or learning, and who shall be appointed by the President on the recommendation of the Higher Appointments Council.
  - (b) In making a recommendation under sub-paragraph (a) of this paragraph, the Higher Appointments Council shall ensure that the majority community and three communities are represented on the minority.
  - (c) The President shall appoint one of the members as the Chairperson of the Finance Commission.
  - (d) The Secretary to the Treasury and the Governor of the Central Bank should give all assistance to the Commission, without being members of the Commission.
  - (e) There shall be a Provincial Financial Consultative Committee which will work together with the Finance Commission. This will be made up of representatives chosen by Provincial Administrations, one from each Province.
  - (f) There shall be a Provincial Planning Unit in each Province. Each Provincial Planning Unit will prepare a medium term plan for the province covering development activities undertaken by the Central Provincial and Local Government institutions. The Finance Commission must ensure that adequate resources will be made available to the institutions of Local Government, including the village committees. Together with the National Planning Department and the National Budget Department. It will assist the Finance Commission to decide on the allocation to the Provinces on a medium term basis (eg. 3 to 5 years).
- (2) Every member of the Commission, unless the member earlier resigns or is removed, from office, shall hold office for a period of five years.
  - (3) The Central Government shall, on the recommendation of and in consultation with the Commission, allocate from the annual budget such funds as are adequate for the purpose of meeting the needs of the province.
  - (4) Subject to paragraph (5) below, it shall be the duty of the Commission to make recommendations to the President as to -
    - (a) the principles on which such funds as are granted annually by the Central Government for the use of Provinces, shall be apportioned between the various Provinces.
    - (b) the principles on which the sharing and assignment or the assignment of revenue between the Central Government and the Provinces should take place with a view to ensuring the assured measure of finances necessary for effective devolution; and
    - (c) any other matter referred to the Commission by the President relating to provincial finance.

- (5) In making the recommendations under sub-paragraphs (a) and (b) of paragraph (4) above, the Commission shall formulate such principles with the objective of achieving balanced regional development in the country, and shall accordingly take into account
  - (a) the needs of the Province to implement the devolution powers and its capacity to raise revenue.
  - (b) the population of each Province;
  - (c) the per capita GNP of each Province;
  - (d) the need, progressively, to reduce social and economic disparities;
  - (e) the need, progressively, to reduce the difference between the per capita GNP of each Province and the highest per capital GNP among the Provinces;
  - (f) the need to have effective utilization of the monies made available to the respective Provinces by ensuring timely and objective allocations in a definitive and predictable manner.
    - (g) any exceptional expenditure incurred by a Province Administration to meet exigencies such as natural disaster;
    - (h) Special needs of particularly under privileged communities;
    - (i) the returns submitted to the Commission by every Provincial Administration including information relating to expenditure; and
  - (j) the reports of the Auditor-General consequent to the audits of Provincial Administrations and authorities thereof.
- (6) Legislation to empower the Finance Commission to discharge its duties as per the Commission must be passed by Parliament. The Commission shall determine its own procedure appoint its staff and determine their salaries and shall have such power in the performance of its duties as Parliament may, by law, confer on it. The Ministry of Finance shall provide the information requested by Commission.
- (7) The Report of the Finance Commission should be presented for approval to the Council of Chief Ministers, chaired by the President in the presence of the 3 months prior to the presentation of the National and Provincial Budgets. Once adopted the provision of Funds for its implementation should be considered mandatory.
- (8) The Finance Commission recommendations should ensure that there is fair revenue sharing taking into consideration the needs of the three tiers of government the Centre, the Province and Local Government, based on the application of the guiding principles and with due regard to the extent of devolved powers.

- (9) The President shall cause every recommendation made by the Finance Commission to be laid before Parliament and shall notify Parliament as to the action taken thereon. The needs of the Provinces should be assessed every 3 to 5 years and our economic framework approved by Parliament.
- (10) The Provinces should be empowered to pass laws to raise revenue within the subjects devolved to the Provinces, without any restriction and without abdicating this authority to Parliament. The revenue collecting authorities should credit all revenue to the Consolidated Fund of the Province.
- (11) The Central Bank should distribute funds to the Provinces according to the recommendations of the Finance Commission, without going through the Treasury.
- (12) Any court, tribunal or other institution shall not inquire into or pronounce on, or in any manner entertain, determine or rule upon, any question relating to the adequacy of such funds, or any recommendation made, or principle formulated by the Commission.

#### **16.7 Exemption of income and property of the Central Government and of Regional Administrations from taxation.**

- (1) The property and income of the Central Government shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a Provincial Administration.
- (2) The property and income of a Provincial Administration shall be exempt from taxation by the Central Government, save and except customs duties.

#### **16.8 Auditor General**

- (1) There shall be an Auditor-General who shall be appointed by the President and who shall hold office during good behaviour.
- (2) The salary of the Auditor-General shall be determined by Parliament, shall be charged on the Consolidated Fund of Sri Lanka and shall not be reduced during the term of office of the Auditor-General.
- (3) The office of the Auditor-General shall become vacant -
  - (a) upon death;
  - (b) on resignation in writing addressed to the President;
  - (c) on attaining the age of sixty years;
  - (d) on removal by the President on account of ill health or physical or mental infirmity;

or

- (e) on removal by the President upon an address of Parliament.
- (4) Whenever the Auditor-General is unable to discharge the functions of the office, the President may appoint a person to act in the place of the Auditor-General.

#### **16.9 Duties and functions of the Auditor - General**

- (1) The Auditor-General shall audit the accounts of all departments of the Central Government and of the Provincial Administrations, the offices of the Cabinet of Ministers, the Judicial Service Commission, the National Public Service Commission, the Finance Commission, the National Police Commission, Provincial Public Service Commissions, Provincial Police Commissions, the Parliamentary Commissioner for Administration, the Secretary-General of Parliament, the Election Commission, the Commission for the Investigation of Bribery or Corruption, local authorities, public corporations and business or other undertakings vested in the Central Government under any written law.
- (2) Notwithstanding the provisions of paragraph (1) above, the Minister of the Cabinet of Ministers in charge of any such public corporation or business or other undertaking may, with the concurrence of the Minister of the Cabinet of Ministers in charge of the subject of Finance, and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of such public corporation or business or other undertaking, and where such appointment has been made by the Minister, the Auditor-General may, in writing, inform such auditor or auditors that the Auditor-General proposes to utilize the services of such auditor or auditors for the performance and discharge of the Auditor-General's duties and functions in relation to such public corporation, business or undertaking and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.
- (3) (a) The Auditor-General may for the purpose of the performance and discharge of the Auditor-General's duties and functions engage the services of a qualified auditor or auditors who shall act under the direction and control of the Auditor-General.  
  
(b) If the Auditor General is of opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problem relevant to the audit, the Auditor-General may engage the services of-
  - (i) a person not being an employee of the department, body or authority the accounts of which are being audited; or-
  - (ii) any technical or professional or scientific institution not being an institution which has any interest in the management of the affairs of such department, body or authority, and such person or institution shall act under the direction and control of the Auditor-General.
- (4) (a) The Auditor-General or any person authorized or engaged by the

Auditor-General shall, in the performance and discharge of the duties and functions of the Auditor-General, be entitled -

- (i) to have access to all books, records, returns and other documents;
  - (ii) to have access to stores and other property; and
  - (iii) to be furnished with such information and explanations as may be necessary for the performance of such duties and functions.
- (b) Every qualified auditor appointed to audit the accounts of any public corporation, or business or other undertaking, or any other person authorized by such auditor shall be entitled to like access,
- information and explanations in relation to such public corporation, or business or other undertaking.
- (5) (a) The Auditor-General shall within ten months after the close of each financial year and as when the Auditor-General deems it necessary, submit reports on the performance and discharge of the duties and functions of the Auditor-General under the Constitution, to Parliament, in so far as those duties and functions relate to departments of the Central Government, public corporations, local authorities and business and other undertakings vested in the Government under any written law, and to the Provincial Legislature established for a Province in so far those duties and functions relate to the Provincial Administration of that Province.
- (b) The reports of the Auditor-General relating to the Provincial Administration which are required to be submitted to a Provincial Legislature under sub-paragraph (a) of this paragraph shall be laid before the relevant Provincial Legislature.
- (c) The Auditor General should be required to send his reports relevant to the Provincial Councils to the Provincial Legislature concerned.
- (7) Every qualified auditor appointed under the provisions of paragraph (2) of this Article shall submit the auditor's report to the Minister and also submit a copy thereof to the Auditor-General.
- (8) In this Article, "qualified auditor" means -
- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute; or
  - (b) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute.

## **17 DEFENCE, NATIONAL SECURITY AND LAW AND ORDER**

- 17.1 Defence, national security, shall be subjects reserved exclusively for the Central Government.
- 17.2 Matters connected with National security relating to devolved subjects, if any, could be dealt with by the Centre in the exercise of its powers under national security.
- 17.3 In the exercise of Police powers Law and Order, including public order, shall be devolved on the Provinces as specified hereinafter but be reserved exclusively for the Central Government in the Capital Territory and in addition to those expressly provided for in the Constitution.
- 17.4 In respect of any Province, where the Central Government is of opinion that the Provincial Police Division is unable to provide adequate security to specified institutions of the Centre such as ports, harbours and airports, it may deploy the National Police Division to provide the security.
- 17.5 In a serious breakdown of Law and Order situation/ in a riotous or violent situation, the Minister in charge of the subject of Defence is free to deploy the National Police Division or the Armed Forces in any part of the country and take such other steps as deemed necessary for the preservation of law and order, and for the safety and security of the people, independent of the Provincial administration concerned.
- 17.6 The Inspector General of Police (IGP) shall be the head of the Sri Lanka Police Service. The Sri Lanka Police Service shall be divided into -
- (a) the National Division (including Special Units); and
  - (b) a Provincial Division for each Province.
- 17.7 There shall be a National Police Division headed by an Inspector General of Police (IGP) and Provincial Police Divisions, each headed by a Provincial Deputy Inspector General (PDIG) of the Province who shall be subordinate to the IGP. The Constitution shall provide for co-operation between the National and Provincial Police Divisions. The Inspector General of Police shall be appointed by the President on the advice of the Prime Minister with the approval of the Higher Appointments Council.
- 17.8 The National Police Division shall have exclusive competence to investigate offences laid down in the schedule to Appendix 1 of 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.
- 17.9 Where the Chief Minister of a Province seeks the assistance of the Centre to preserve

public order within the Province, the Minister in charge of the National Police Division shall direct the IGP to deploy such personnel as are necessary for the purpose and they shall be placed under the control of the Provincial Deputy Inspector General (PDIG) of the Province.

- 17.10 The Police Commission (PC) will be responsible for the appointment, promotion, transfer, disciplinary control and dismissal of officers coming under its purview.

The cadres of Police Officers of all ranks of the National Division shall be fixed by the Government of Sri Lanka. The cadre of Officers and other ranks of each Provincial Division shall be fixed by the Provincial Administration with the approval of the National Police Commission, having regard to - (a) the area of the Province; (b) population of the Province; and (c) such other criteria, as may be agreed to or prescribed.

- 17.11 There shall be a single Sri Lanka Police Officers Service (SLPOS) consisting of officers in the grades of Assistant Superintendent of Police (ASP) and above. ASPs shall be recruited nationally and be deployed in the national and provincial police services on release by the National Police Service Commission.

- 17.12 The National Police Division shall consist of the IGP and other officers belonging to the SLPOS and lower ranks recruited or promoted at the national level. The National Police Service shall reflect the pluralistic character of Sri Lanka.

- 17.13 The IGP shall establish special units of the National Police Division reflecting the pluralistic character of Sri Lanka to be kept in reserve for exigencies in the Provinces.

- 17.14 A Provincial Police Division shall consist of officers of the Sri Lanka Police Officers Service released to the Province, and ranks below the grade of ASP recruited or promoted at the provincial level or released from the National Police Division. Each Provincial Police Division shall reflect the ethnic composition of the Province. The Provincial Deputy Inspector General of Police of a Province shall be appointed by the IGP with the concurrence of the Chief Minister of the Province. However, where there is no agreement between the IGP and the Chief Minister, the matter will be referred to the President, who, after due consultation with the Chief Minister, shall make the appointment.

- 17.15 Every Police Station in the country should be able at all times to provide facilities for communication in the Sinhala and Tamil languages.

- 17.16 All Police Officers serving in units of the National Division and Provincial Divisions in any Province shall function under the direction and control of the PDIG of such Province.

- 17.17 The Provincial Deputy Inspector General of Police (PDIG) shall be responsible to and under the control of the Chief Minister thereof in respect of the maintenance of public order in the Province and the exercise of police powers in the Province as set out in this Schedule. However the Chief Minister shall act in consultation and with the concurrence of the Governor of the Province in the exercise of these powers.



## **LOCAL GOVERNMENT**

- 18.1 Local authorities, that is, Pradeshiya Sabhas and Municipal or Urban Councils should be recognized and granted 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, but would have power to make by-laws in respect of subjects in List III.
- 18.2 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 Grama Sabhas/ Urban Ward Sabhas.
- 18.3 The elected representatives to the Pradeshiya Sabhas should be drawn from the Grama Sabhas while the elected representatives to the Urban/ Municipal Councils should be drawn from the Urban Ward Sabhas. The elections to the Grama Sabhas and the Urban Ward Sabhas should be based on Wards. (See Annex 1 and 2)
- 18.4 People's participation in governance will be through the Jana Sabhas which will consist of about a hundred families at village level and through Veedi Sabhas which will consist of about two hundred families at the street level in the urban areas. It is by the Jana/Veedi Sabhas that the local needs will be listed and prioritized at their meetings and subsequently monitored and audited.
- 18.5 After a representative has completed half his term, he could be recalled for poor performance or errant behaviour by the electing body if two-thirds of the electors support such a move.
- 18.6 A Grama Sabha will consist of two or three Grama Niladhari Divisions which are divided into Wards, each Ward being made up of about 100 families who will form the Jana Sabha. Each of these Jana Sabhas will elect its ward member in the Grama Sabha (GS). The members of each Grama Sabha will elect one amongst them as its chairman.
- 18.7 The members of all the Grama Sabhas in a Pradeshiya Sabha division will constitute an electoral college and will elect one amongst them to be the chairman of the Pradeshiya Sabha and a member to represent each of the Grama Sabhas in the Pradeshiya Sabha. To enable representation of political parties that do not obtain representation through this process, up to a maximum of five additional seats will be reserved in the Pradeshiya Sabha for the election of members of the electoral college belonging to those parties.
- 18.8 There will be an Urban Ward Sabha for each Municipal/UC Ward. This Urban Ward Sabha will be made up of Veedi Sabhas, each representing about 200 families. Each of the Veedi Sabhas will elect a member to represent it in the Urban Ward Sabha (UWS). The members of each Urban Ward Sabha will elect one amongst them as its chairman.
- 18.9 The members of all the Urban Ward Sabhas in an Urban/ Municipal area will constitute an electoral college and elect one amongst them to be the chairman/ mayor of the Council and a member to represent each of the Urban Ward Sabhas in the Urban/ Municipal Council. To enable representation of political parties that do not obtain representation through this process, up to a maximum of five additional seats will be reserved in the Council for the election of members of the electoral college belonging to those parties.

- 18.10 Each Grama 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 functioning at that level eg. Grama Sevakas, Samurdhi Niyamakas et al.
- 18.11 As every effort is being taken to give local authorities their due place within the district, a competent officer belonging to the provincial public service must hold the office of the Secretary of the Pradeshiya Sabha. It may be noted that the Pradeshiya Sabhas Act confers the position of chief administrative officer of the Sabha on the Secretary, and the position of chief executive officer of the Sabha on the Chairman.
- 18.12 The Assistant Commissioner of Local Government who functions in the District Secretariat will be the link between the local authorities and the Commissioner of Local Government at the provincial level. He will also provide the link between the District Council and the local authorities in the District.
- 18.13 There would be statutory provision to ensure that adequate funds are made available to the pradeshiya and grama sabhas, and the urban/municipal councils and the urban ward sabhas.
- 18.14 A local authority shall, unless sooner dissolved, continue for a period of four years from the date appointed for its first meeting and the expiration of the said period of four years shall operate as a dissolution of that local authority.
- 18.15 In demarcating Pradeshiya Sabhas, due consideration should be given to the geography of the area, ease of communication within the area, economic activities, and community cohesiveness of the population. The same factors should be taken into account even in the demarcation of Grama Sabhas. Ideally, one Grama Sabha should be established for a population ranging from 3,000 to 5,000 and consisting of 2 to 4 Grama Sevaka divisions. Ideally, a Pradeshiya Sabha should be established for a rural or estate population ranging from 25,000 to 45,000. A Delimitation Commission should initially demarcate the Grama Sabhas and thereafter redemarcate the Pradeshiya Sabhas in the country based on these criteria. This would consequently result in rational changes to boundaries of administrative divisions.
- 18.16 In Urban Council areas, an Urban Ward Sabha shall be established for every 2 Grama Sevaka divisions comprising around 8,000 persons.
- 18.17 In a Municipal area, it may not be necessary to establish Urban Ward Sabhas. Instead, it will be prudent to divide the area into Wards, co-terminus with the Grama Sevaka divisions.

## **19. CENTRE-PROVINCIAL RELATIONS**

- 19.1 The need for mechanisms to encourage and enhance cooperation between the Centre and the Provinces is recognized. 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.

19.2 A Council of Chief Ministers chaired by the President/Prime Minister 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.

19.3 Resolution Of Centre-Provincial And Inter-Provincial Issues

19.3.1 There is a need for mechanisms 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 Prime Minister (in the interim period, by the President).
- Arbitration by a Tribunal appointed by Parliament.
- Reference to the Constitutional Court.

INDEPENDENCE OF THE JUDICIARY AND OF THE PUBLIC SERVICES.

**Mechanisms for ensuring the independence of state services and those holding key positions in such services.**

20.1 **National**

There should be a Higher Appointments Council to ensure the independence of the state services and that of the judiciary of the Republic.

20.1.1 Composition of the Higher Appointments Council

- (i) The Prime Minister
- (ii) The Speaker
- (iii) The Leader of the Opposition in Parliament, and
- (iv) Six persons appointed by the President on the nomination of a Committee of Parliament proportionally composed of all parties represented in Parliament which should include three persons to represent minority interests appointed in consultation with Members of Parliament who belong to the respective minority communities. The speaker shall be the Chairman.

20.1.2 Duties of the Higher Appointments Council - It should recommend the appointment of Chairmen and members of Commissions specified in Part I of the Schedule hereto. (As far as practical the composition of the Commissions should reflect the ethnic composition of the country).

20.1.3 All persons sought to be appointed by the President on the advice of the Prime Minister to any of the offices specified in Part II A and Part II B of the schedule hereto should have the approval of the Higher Appointments Council before they are appointed. The Prime Minister in so advising the President shall obtain the concurrence of the Cabinet.

**Schedule - Part I**

- I. The Election Commission
- II. The National Public Service Commission III The Police Commission
- IV. The Human Rights Commission of Sri Lanka
- V. The Permanent Commission to investigate Allegations of Bribery or Corruption.
- VI. The Finance Commission
- VII. The Delimitation Commission
- VIII. The Official Languages Commission
- IX. The Land and Water Commission.

**Part IIA**

- I The President and other Judges of the Constitutional Court.
- II Chief Justice and Judges of the Supreme Court
- III. The President and Judges of the Court of Appeal
- IV. The members of the Judicial Service Commission

**Part IIB**

- I The Attorney General
- II. The Auditor General
- III. The Inspector General of Police
- IV. The Parliamentary Commissioner for Administration (Ombudsman)

V. The Secretary -General of Parliament.

## **20.2 Provincial**

- a) There should be a Provincial Higher Appointments Board comprising nine members, comprising the Chief Minister, and the Chairman of the Council and the Leader of the Opposition (all legally provided for) as ex-officio members and six other distinguished persons appointed by the Governor nominated by a Committee of members of the Council representing all the political parties. The composition of the Provincial Board shall as far as possible reflect the ethnic composition of the Province.
- b) The Provincial Higher Appointments Board should nominate the Chairman and members of the Provincial Public Service Commission whose number (including the Chairman) should not exceed seven members.
- c) As far as practical, the Commission should reflect the ethnic composition of the province.
- d) The Provincial Higher Appointments Board referred to in (a) above may also be charged with the nomination of any key officials of the Provincial Public Service, identified by the Provincial Legislature concerned as officers whose independence should be assured.

## **21 AMENDMENT PROCEDURE**

- 21.1 The Substance of Articles 82 (5) and 83 of the 1978 Constitution will be retained.
- 21.2 A Bill to amend the Constitution or replace it with a new Constitution should be approved by 2/3 of the members of each House of Parliament sitting and voting separately.
- 21.3 Notwithstanding 21:2, a Bill for the amendment or for the repeal and replacement of or which is inconsistent with any of the provisions of specified Articles of the Constitution or of the amendment procedure itself, shall not become law unless it is also approved by the people at a Referendum.

## **DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES.**

As a part of the universal adult franchise and as a part of the electoral process in a democratic state, it is important that women should receive a proportionate representation in the Legislature. The importance of science and technology for industrial development must be recognized and acted on. It is not possible for practical reasons to make such requirements mandatory. It is only possible to declare such requirements purposive and therefore desirable. Therefore it is proposed that Articles 29 of the 1978 Constitution be repealed and that the following sub-paragraphs be changed in Article 27 (2) by replacing Article 27 (2) (e) and (f) of the Constitution as follows:

1. **Article 27 (2) (f)** " the State shall ensure that a reasonable proportion of women candidates, who are considered suitable to be elected as members of Parliament, Provincial Councils, and

local authorities, are chosen by the varying political parties to contest at such elections".

2. **Article 27 (2) (e)** : "Invest adequate funds to promote and use science and technology and innovation so as to maximize productivity and industrialize the country, making Sri Lanka a leader in the use of advanced technology".
3. **Delete Article 27 (7)** as it is not applicable at present.

**The repeal of Article 29** is strongly recommended so that the Directive Principles of State Policy and Fundamental Duties which are stated in chapter 6 of the 1978 Constitution has the constitutional legitimacy of them being enforced as law and not remain merely as meaningless constitutional platitudes. It is for this reason that the repeal of Article 29 is imperative for the purpose of establishing the aforementioned duties.

**DISTRIBUTION OF POWERS BETWEEN THE CENTRE  
AND THE PROVINCES**

**List - I - National List**

1. Defence; national security; security forces; special forces including coast guards; para-military forces established by or under law.
2. National police; law and order including public order and the exercise of police powers in the Capital Territory and where expressly provided in the Constitution.
3. Firearms, ammunition, explosives and other armaments.
4. Foreign affairs, including all matters which bring the Republic of Sri Lanka into relations with other States, the United Nations Organization, its specialized agencies and inter-governmental organizations, and the undertaking of international obligations.
5. Entering into treaties, conventions and agreements with other States and international organizations and implementing such treaties, conventions and agreements.
6. Diplomatic, Consular and trade representation.
7. Facilitating international conferences, associations and other such bodies and implementing decisions made thereat.
8. Foreign jurisdiction; immigration and emigration; extradition.
9. Regulation of international and foreign funded non-governmental organizations.
10. Piracy and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
11. Citizenship.
12. Registration of births, marriages and deaths; registration of persons.
13. National census and statistics.
14. Elections; National Elections Commission.

15. Currency and foreign exchange, international economic relations, external resources and the formulation of monetary policy.
16. Public debt of the Government of Sri Lanka.
17. Foreign loans of the Government of Sri Lanka.
18. Regulation of banking, banking institutions and other national financial institutions.
19. National policy on insurance and institutions providing insurance services.
20. Regulation of securities, stock exchanges and future markets.
21. Audit of the accounts of the Governments and of the Provinces and of other States institutions.
22. Taxes on income, capital and wealth of individuals, companies and corporations as provided in the Constitution.
23. Customs duties, including import and export duties, and excise duties (excluding such excise duties as may be specified by law) as provided in the Constitution.
24. Turnover taxes and stamp duties, goods and services taxes as provided in the Constitution.
25. Any other taxes, duties or levies not mentioned in the Provincial List.
26. National Lotteries.
27. Pensions payable by the Government of Sri Lanka or out of the Consolidated Fund of Sri Lanka.
28. Nuclear energy.
29. National grid for the supply of electricity; maintenance and management of the national grid; national projects in generation, supply and distribution of electricity as declared by Parliament by law.
30. National projects in non-conventional energy as declared by Parliament by law.
31. National projects in water supply and sanitation.



32. Regulation of the development and exploitation of oil fields, petroleum and petroleum products and the collection of Royalties thereon.
33. National policy on mines and minerals; national projects for the development and exploitation of mines and minerals as declared by Parliament by law.
34. National planning for inter-provincial rivers in consultation with the relevant Provinces; inter-provincial irrigation schemes, that is, schemes whose head-works and command areas are located in two or more provinces; regulation of flow of water in inter-provincial waterways, in keeping with the recommendations of the National Land and Water Commission.
35. Airports, ports and harbours with international transportation; provision of facilities, in consultation with the relevant Provincial Governments, in fishery harbours used mainly by vessels engaged in fishing beyond Sri Lankan waters.
36. Inter-Provincial transport.
37. National Railways.
38. Civil aviation.
39. The main inter-provincial highways linking the Capital Territory with the provincial capitals, provincial capitals with each other and district capitals with each other in so far as the highway linking district capitals traverse provincial boundaries; toll roads and expressways constructed by or under the authority of the Central Government.
40. Roads within the Capital Territory other than roads maintained by Local Authorities.
41. Shipping and navigation, but not including boat and ferry services for internal transportation; Maritime Zones including historical waters and territorial waters; Exclusive Economic Zone and Continental Shelf.
42. Posts and telecommunications.
43. Establishment of regulatory authorities which shall consist of the representatives of the Centre and of the Provinces, for the determination of national standards relating to communication and media and the enforcement of such standards; licensing of mass media including broadcasting and television institutions at the national level.
44. National holidays; national policy on holidays.

45. National Public Service; National Public Service Commission.
46. National policy on health; national health plan; national health administration; hospitals declared by Parliament by law as special purpose hospitals and teaching hospitals affiliated to National Universities; co-ordination of health services; co-ordination of education, training and research relating to health; determination of national health standards; administration of special health programmes; national institutions for education and training of auxiliary medical personnel.
47. Policy and enforcement procedure relating to drugs, poisons and narcotics and enforcement jointly with the Province.
48. Administration of Justice as provided in the Constitution; court procedure.
49. National prisons.
50. Policy and law relating to adoption of children.
51. Fishing beyond territorial waters (12 nautical miles); registration of vessels engaged in fishing beyond territorial waters; rights relating to traditional migratory fishing within territorial waters; reference of inter-provincial fishing disputes and disputes relating to traditional migratory fishing for settlement in accordance with the provisions of the Constitution.
52. Protection, development and exploitation of marine and aquatic resources in keeping with international obligations and measures to enforce such obligations.
53. National policy on education; national institutions in the field of education such as the National Institute of Education; administration and supervision of schools declared by Parliament by law as national schools, provided that the administration of any national school may be entrusted to the relevant Provincial Government; transfer of any national school to the relevant Provincial Government whenever found to be expedient, but not vice-versa; co-ordination of training of teachers; determination of minimum standards for national public certification examinations and the conduct of such examinations; determination of national syllabi and curricula; determination of minimum qualifications for teachers; national institutions for the training of teachers; special programmes in education; educational publications provided by the Central Government; *Privena* education.
54. University Grants Commission; universities declared by Parliament as national universities; national standards for universities; national institutions for technical and higher technical education.
55. National standards with regard to professions, occupations and training.

56. National policy on agriculture and animal husbandry; national institutions for education and training of auxiliary agricultural and veterinary personnel.
57. National standards relating to science and technology, and to research, development and training in the areas of industries, agriculture, fisheries and aquatic resources.
58. National research institutions.
59. Tea, rubber and coconut plantations and tea and rubber small holdings; the regulation of the production of tea, rubber and coconut, National policy on coconut cultivation and products.
60. Foreign trade; general policy on inter-provincial trade.
61. Sri Lanka Standards Institution.
62. Establishment of standards of weights and measures.
63. Intellectual property including patents, inventions, designs, copyrights, trademarks and merchandise marks.
64. Monopolies, mergers, restrictive trade practices.
65. *Buddha Sasana*.
66. Pilgrimages outside Sri Lanka.
67. National Libraries and the National Library Services Board.
68. National Archives and Museums.
69. Archaeology; Policy formulation; excavation and conservation including access for such purpose; maintenance and administration of ancient and historical monuments, archaeological sites, archaeological remains and records declared by or under law to be of national importance and future discoveries declared after consulting the relevant Provincial Government, by or under law, to be of national importance.
70. Treasure trove.
71. Preservation and promotion of the national heritage.
72. National standards relating to public performances; national certificates for public performances.

73. National policy on tourism; promotion of national tourism.
74. National zoological and botanical gardens.
75. National land use policy and planning in accordance with Section 13.
76. National policy on the environment; national plans on the environment and conservation of the environment, including forestry and fauna and flora, in keeping with international obligations.
77. National Parks, Strict Natural Reserves, Nature Reserves, Sanctuaries and National Heritage Wilderness Areas declared by or under law.
78. Reserved Forests and Conservation Forests declared by or under any law, which shall be used in conformity with national plans on forestry and in accordance with national land use policy.
79. Foreshore; national plans on coast conservation prepared in consultation with the relevant Provincial Governments; declaration and demarcation of coast reservations for the implementation of national programmes relating to coast conservation.
80. Formulation of national poverty alleviation programmes in consultation with the Provincial Governments and co-ordination of the implementation of such programmes by the Provinces.
81. Social security and social insurance.
82. National policy on youth.
83. National policy on women.
84. National policy on children and differently abled persons.
85. National policy on sports; administration of national sports bodies.
86. Disaster management at national level; intervention including relief, reconstruction land compensation in instances of natural and man-made disasters and epidemics, supplementing the role of the Provincial Governments.
87. Labour regulation and standards; labour laws.
88. National policy on industrial development including those based on agricultural products in consultation with the Provinces.

89. Establishment of commercial, industrial and other enterprises, partly or wholly owned by the Central Government.
90. Institutions for the promotion of investments and determination of policy relating to foreign investment.
91. National housing programmes with the concurrence of the relevant Provincial Government.
92. National spatial and urban planning in consultation with the relevant Provincial Governments.
93. Cadastral and Geological Surveys of Sri Lanka.
94. Urban planning and implementation in the Capital Territory; public utilities in the Capital Territory.
95. Drainage and waterways within the Capital Territory.
96. Establishment of any institutions for the discharge of any or all of the functions/subjects specified in items 40, 94 and 95 of the National List and for the delegation of any of the functions of such institution to any local authorities within the Capital Territory.
97. National policy on food security.
98. National policy on consumer protection including adulteration of foodstuffs and on price control.
99. Prevention of the introduction to the country and spread from one Province to another of infectious or contagious diseases or pests affecting human beings, animals or plants.
100. Surveys for the purpose of any matters enumerated in the National List.
101. Fees in respect of any of the matters in the National List.
102. Requisition or acquisition of private property for the purposes of any matter in the National List solely for the furtherance of economic or social needs, subject to the payment of compensation assessed and determined according to the market value of the subject property at the time of acquisition.

[In the formulation of national policies, standards or plans, the Central Government shall consult the Provincial Governments and the policies, standards or plans decided upon shall be subject to approval by both houses of Parliament]

**List - II - Provincial List**

1. Provincial planning including employment planning at the Provincial level and plan implementation including employment programmes.
2. Provincial policy on education; administration of education and educational services within the Province in conformity with national policy; administration of national schools entrusted by the Central Government; training of teachers; technical and higher technical education; provincial institutions for technical and higher technical education; provincial universities conforming to national standards set by the Universities Grants Commission, provided that not more than 75% of student intake shall be reserved for the relevant province; pre-schools; vocational education and training; research on education; educational publications provided by the Provincial Government.
3. Health and indigenous medicine including provincial health services and provincial health administration in conformity with national health policy; teaching hospitals affiliated to provincial universities; supervision of private medical care; control of nursing homes and of diagnostic facilities within a Province in keeping with national policy; provincial institutions for education and training of auxiliary medical personnel.
4. Agriculture and agrarian services; agricultural research, extension, promotion and education within the Province; promotion of agro-based industries within the Province; provincial institutions for education and training of auxiliary agricultural personnel.
5. Palmyrah development; cashew development.
6. Coconut small holdings.
7. Animal husbandry; provincial institutions for education and training of auxiliary veterinary personnel; establishment and upkeep of pasture land.
8. Protection against pests and prevention of plant diseases in keeping with national policy.
9. Fisheries and aquatic resources within territorial waters, but not including rights relating to traditional migratory fishing in territorial waters as provided in the National List.
10. State land and its use, alienation or disposal as specified in the Constitution.

11. Irrigation within the Province; groundwater irrigation; salt water exclusion schemes.
12. Forests, excluding those specified in the National List, which shall be used, subject to the provisions of the Constitution, in conformity with national plans on forestry and with due regard to national land use policy..
13. Protection of the environment in conformity with national policy on conservation of the environment.
14. Coast conservation in conformity with national policy.
15. Conservation of fauna and flora in keeping with national policy.
16. Water supply and sanitation other than national water supply and sanitation projects.
17. Drainage and waterways within the Province other than within the Capital Territory.
18. Generation, supply and distribution of electricity, other than national projects.
19. Provincial projects in non-conventional energy.
20. Roads excluding those specified in the National List; toll roads and expressways constructed by or under the authority of the Provincial Government.
21. Transport excluding national railways, but including ferry and boat services for internal transportation.
22. Minor ports and harbours, jetties and piers for internal transportation, and with no international transportation; fishery harbours with no international transportation.
23. Housing, other than national housing programmes.
24. Urban planning and implementation, other than within the Capital Territory in accordance with national plans.
25. Local Government
26. Road Development.
27. Development and exploitation of mines and minerals other than national projects, declared by Parliament by Law.



28. Production and supply of salt.
29. Development and exploitation of sand and rock quarries.
30. Industries and industrial development inclusive of industrial research and training within the Province.
31. Promotion of investments in the Province.
32. Trade and commerce excluding foreign trade.
33. Promotion and development of provincial products for the purpose of foreign trade.
34. Establishment of commercial enterprises, partly or wholly owned by the Province.
35. Co-operatives and Co-operative Banks.
36. Supply and distribution of food; rationing of food and maintenance of food stocks in keeping with national policy on food security.
37. Markets and Fairs.
38. Law and Order, Provincial Police and Provincial Police Commission to the extent provided in the Constitution.
39. Administration of Justice within a Province to the extent permitted by the Constitution; mediation and conciliation; provision and the setting up of court buildings in consultation with the Judicial Service Commission, the maintenance of court buildings and the development of the infrastructure of courts.
40. Provincial prisons; borstal and reformatory institutions.
41. Formulation and implementation of programmes for the advancement of women, subject to national policy.
42. Formulation and implementation of programmes for the advancement of women, subject to national policy.
43. Formulation and implementation of programmes for children and differently abled persons, subject to national policy.
44. Sports.

45. Social Services, but not including social security and social insurance.
46. Poverty alleviation subject to the Centre's power to formulate and coordinate national poverty alleviation programmes as set out in item 80 of the National List.
47. Relief, rehabilitation and reconstruction and the granting of compensation consequent to natural or man-made disasters; disaster management at the Provincial level.
48. Public debt of a Province, excluding debts owed to the Central Government.
49. Domestic borrowing on the security of the Consolidated Fund of the Province.
50. International borrowing subject to such criteria and limitation as may be specified by Parliament and with the concurrence of the Finance Commission.
51. The promotion and management of foreign direct investment, international grants and developmental assistance to the Province subject to such criteria and limitation as may be specified by Parliament and with the concurrence of the Finance Commission.
52. Provincial financial and credit institutions including provincial institutions providing insurance services.
53. Provincial Public Service; Provincial Public Service Commission.
54. Provincial holidays subject to national policy on holidays.
- 55.1 Excise duties to be specified by law made by Parliament.
- 55.2 Betting and gaming taxes, taxes on prize competitions and on lotteries, other than national lotteries and lotteries organized by the National Government.
- 55.3 Provincial sales taxes and turnover taxes on wholesale and retail sales.
- 55.4 Liquor rentals; toddy tapping licence fees.
- 55.5 Licensing fees for the possession, transport, purchase and sale of intoxicating liquors.
- 55.6 Dealership licenses on drugs and other chemicals.

- 55.7 Motor vehicle license fees and other fees charged under the Motor Traffic Act.
- 55.8 Fees on lands alienated under the Land Development Ordinance and Crown Lands Ordinance.
- 55.9 Fees under the Fauna and Flora Ordinance.
- 55.10 Stamp duties on transfer of immovable properties and motor vehicles.
- 55.11 Taxes on mineral rights subject to limitations imposed by Parliament.
- 55.12 Taxes on products of agriculture, forestry, animal husbandry and fisheries.
- 55.13 Taxes on goods and passengers carried by roads or inland ferries and boats.
- 55.14 Taxes on entry of goods into a local area for consumption, use or sale therein.
- 55.15 Taxes on the consumption of sale of electricity and pipe-borne water.
- 55.16 Taxes on advertisements other than advertisements by means of newspapers, magazines, radio or television.
- 55.17 Taxes on vehicles, boats and animals.
- 55.18 Taxes on professions and trades.
- 55.19 Utilization of court fines within the Province provided that not less than ten per centum of the fines imposed shall be utilized for construction and maintenance of court buildings and the development of the infrastructure of courts.
- 55.20 Court fees, including stamp fees on documents produced in courts.
- 55.21 Imposition, collection and utilization of fines, other than court fines, in respect of the matters in the Provincial List.
- 55.22 Imposition of levies relating to any of the subjects or functions under the purview of the Province.
- 55.23 Any other tax that may be devolved by law by Parliament on the Province.
- 56. Land revenue, including the assessment and collection of revenues, and maintenance of land records.

57. Registration of motor vehicles.
58. Pensions payable by a Provincial Government or out of the Consolidated Fund of a Province.
59. Provincial lotteries and their conduct.
60. Cultural, tourism and trade representation of the Province in Sri Lankan Diplomatic Missions abroad.
61. Participation in international conferences, associations and other such bodies in relation to matters in the Provincial List.
62. Licensing and regulations of mass media including broadcasting and television institutions at the Provincial level; printing presses.
63. Provincial libraries and museums; Provincial archives.
64. Promotion of cultural activities within the Province with due regard to the preservation of cultural diversity.
65. Preservation, maintenance and administration of ancient and historical monuments, archaeological sites and records other than those specified in the National List.
66. Provincial certificates for public performances.
67. Promotion of provincial tourism.
68. Provincial zoological and botanical gardens.
69. Provision of facilities for festivals.
70. Pilgrimages within Sri Lanka.
71. Charitable and religious endowments.
72. Registration and regulation of unincorporated associations and societies within the Province, charities and charitable institutions; trusts and trustees.
73. Coordinating the activities of international and local non-governmental organizations in relation to matters in the Provincial List.
74. Consumer protection in keeping with national policy including price control of products not subject to price control by the Centre.

75. Weights and measures except establishment of standards.
76. Research on subjects and functions in the Provincial List.
77. Surveys for the purpose of any matters enumerated in the Provincial List.
78. Fees in respect of any of the matters in the Provincial List.
79. Requisition or acquisition of private property for the purposes of any matter in the Provincial List solely for the furtherance of economic or social needs, subject to the payment of compensation assessed and determined according to the market value of the subject property at the time of acquisition.
80. Any other matter provided for in the Constitution.

**Note:** Where a subject or function not enumerated in any of the Lists is ancillary to a subject or function already included in the Provincial List, such subject or function shall be deemed to be included in the Provincial List. All other subjects and functions not explicitly listed in the National or Provincial Lists shall be deemed to be included in the National List.

**List - III - Local Authorities**

Pradeshiya Sabhas and Municipal and Urban Councils shall have the power to make by-laws in respect of the following subjects and functions, subject to the statutes of the relevant Provincial Legislature:

1. Pre-schools.
2. Adult and non-formal education; vocational training.
3. Promotion of religion and culture, including the establishment and maintenance of religious schools and cultural centres.
4. Community centres, libraries and reading rooms.
5. Buildings; building operations and works.
6. Assessment and collection of land revenues.
7. Supply of electricity; promotion of non-conventional energy sources.
8. Water supply and water works.
9. Public wells; public baths and bathing places.
10. Drainage and flood control.
11. Lakes and canals, other than lakes and canals for irrigation.
12. Thoroughfares, including clearing and lighting of the same.
13. Local transport services; ferry and boat services.
14. Bus-stops and vehicle parks.
15. Preservation of public health.
16. Control of mosquitoes and other disease-causing insects.
17. Provision of public sanitary conveniences; conservancy and scavenging.
18. Primary health centres; indigenous medical clinics.
19. Ambalams and madams.
20. Inns and rest houses.
21. Licensing and regulation of lodging houses and tenement buildings.
22. Licensing and regulation of bakeries, eating houses, restaurants, tea and coffee kiosks and hotels.
23. Licensing and regulation of shops and places for the sale of perishable items of food.
24. Regulation of dairies and the sale of milk.
25. Abattoirs.
26. Markets and fairs; itinerant and sidewalk vendors.
27. Licensing and regulation of launderers and laundries.

28. Licensing and regulation of beauticians and hairdressers.
29. Licensing and regulation of forges.
30. Licensing and regulation of mills.
31. Regulation of small industries, including handlooms, textiles and garment manufacture.
32. Protection of the environment.
33. Care of waste of public lands.
34. Provision of facilities to fishermen.
35. Local authority housing, including housing for the poor.
36. Community amenities such as parks, gardens and playgrounds.
37. Burial and burial grounds, cremations and cremation grounds and crematoriums.
38. Regulation of toddy tapping; control of the sale and supply of toddy.
39. Regulation of breweries and aerated water manufactories.
40. Implementation of poverty alleviation programmes.
41. Implementation of youth welfare programmes.
42. Social welfare, including welfare of the differently abled; welfare of the weaker sections of society.
43. Family welfare; women and child development; provision of childcare facilities.
44. Licensing and regulation of brokers and money lenders.
45. Licensing and regulation of public entertainment.
46. Ambulance services.
47. Fire services.
48. Protection of wildlife.
49. Regulation of pens for cattle.
50. Branding of animals; control of diseases among animals and birds.
51. Stray animals including stray dogs.
52. Prevention of cruelty to animals.
53. Disposal of dead bodies of animals.
54. Control of gambling.
55. Advertisements displaced in public places.
56. Control of nuisances.
57. Regulation of processions and assemblies on thoroughfares.