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The Secretary,  
Experts Committee to Draft a new Constitution,  
Room No. 32, (Block 02),  
BMICH, Baudhaloka Mawatha,  
Colombo 7.

Dear Sir,

Please find attached the submissions of the Tamil National Alliance, an alliance of Ilankai Tamil Arasu Kadchi (ITAK), Tamil Eelam Liberation Organisation (TELO) and People's Liberation Organisation of Tamil Eelam (PLOTE) and which is represented in Parliament as the ITAK.

Yours truly,

*R Sampanthan*

## **TNA Position on a New Sri Lankan Constitution**

The Tamil National Alliance, an alliance of Ilankai Tamil Arasu Kadchi (ITAK), Tamil Eelam Liberation Organisation (TELO) and People's Liberation Organisation of Tamil Eelam (PLOTE) believes that a new constitution is imperative if Sri Lanka is to move forward towards sustainable peace and prosperity as a united country. As the representatives of the Tamil People of Sri Lanka, we wish to assure the country of our commitment to a united, undivided, indivisible country, in which all peoples are treated as equals and the multi-ethnic, multi-lingual and multi-religious plural nature of the country is affirmed, preserved, and celebrated. We believe and emphasise that a constitution is and should be the social contract between different peoples who inhabit the country. Therefore, the fundamental feature of the constitution and its basic structure must reflect the basic agreement between Sri Lanka's peoples, be they majority or minority in numbers. For that to be achieved, it is necessary to understand and appreciate certain historical realities. It will then be clear that the Tamil people's struggle for dignity and autonomy during the past 70 years has always been a response to, and a reflection of, the state of Sri Lanka's social contract. Accordingly, the Tamil people's struggle has undergone four distinct phases, each reflecting the main demands of the Tamil people at the time: (1) parity of status, (2) federalism, (3) separatism, and (4) sharing powers of governance through devolution as per the several commitments made by the Sri Lankan state.

### **Parity of status**

In the lead up to Ceylon's independence, and during the first decade after independence, the Tamil people demanded parity of status within Sri Lanka's constitutional structure. Such parity was demanded due to the distinct identities of the different peoples, and the simple truth that three distinct and independent territories existed prior to the arrival of European powers in the 16<sup>th</sup> century. One such territory was the historical habitation of the Tamils. In our view, a historical examination as to which ethnic group first inhabited Ceylon is neither helpful nor relevant. Following the fall of the Kandyan kingdom to the British, the island of Ceylon became one territory in 1833 consequent to the recommendation by the Colebrooke-Cameron Commission.

Given this history, it was natural for the inhabitants of each territory to be recognised as equals within Sri Lanka's constitutional structure.

During this period, others including Sinhalese leaders, demanded a federal structure of government. In 1926, S.W.R.D. Bandaranaike put forward the suggestion that Ceylon should have a federal structure of government. In 1934, the Ceylon Communist Party also resolved in favour of a federal arrangement. The Kandyan leaders consistently argued for a federal government when they made submissions before the Donoughmore Commission as well as the Soulbury Commission. The Tamil leaders did not demand a federal arrangement at that time. The Tamils instead agitated for parity of status.

### **Federalism**

At the time of independence in 1948, neither a federal arrangement nor parity of status was considered necessary by the British colonial rulers. The Soulbury Constitution, a unitary constitution with simple majoritarian rule, was promulgated along with an explicit prohibition on the passage of legislation that would adversely impact any minority community or confer any benefit on any community. However, this constitutional prohibition did not actually prevent discriminatory laws, such as the Citizenship Act of 1948, which effectively denied citizenship to a large number of Tamils of Indian origin. Largely in response to these growing injustices, in 1951, we, the Ilankai Tamil Arasu Kadchi (ITAK), also known as the "Federal Party", which was the main Tamil political party, articulated our claim for a federal structure of government. Then another egregiously discriminatory piece of legislation – the Official Language Act – was enacted in 1956. This Act made Sinhala the official language of the entire country notwithstanding the historical fact that Tamil was the language spoken by the majority of the people inhabiting the North and East of the country.

In July 1957, an agreement was reached between Prime Minister S.W.R.D. Bandaranaike and S.J.V. Chelvanayakam, the leader of the Federal Party. This agreement envisaged the creation of regional councils by which governmental power was to be devolved. One regional council was to be created for the North; two or more regional councils for the East. The regional councils had

the power to amalgamate beyond provincial boundaries, and colonization was to be entrusted to the regional councils including the selection of allottees and the selection of persons working in land development schemes. This agreement was, however, breached, ostensibly for the reason that there was opposition to it from the majority community. Later, in 1965, another similar agreement for autonomy was reached between Prime Minister Dudley Senanayake and Tamil leader S.J.V. Chelvanayakam. Under this agreement, land under colonization schemes in the Northern and Eastern provinces was to be dealt with on the basis of the following priorities: first, to landless people in the District; second, to landless Tamil-speaking persons resident in the North and East; and third, to other landless citizens in Ceylon, preference being given to Tamil citizens resident in the rest of the Island. But that agreement too was breached for the same reason.

During the period that followed, successive Sri Lankan governments decided to weaken the status of Tamils in the country, and entrench majoritarian rule within Sri Lanka's constitutional structure. In 1972, Sri Lanka's First Republican Constitution affirmed Sinhala as the only official language and granted to Buddhism the "foremost place". These features were then replicated in 1978 in the Second Republican Constitution. Both these instruments deliberately left out the prohibition on discriminatory legislation contained in the previous Soulbury Constitution.

### **Separatism**

Given the trajectory towards majoritarianism, the repeated affronts to their dignity, and the systematic denial of any meaningful opportunity to exercise their sovereignty, the Tamil people began to abandon their demand for federalism, and moved towards demanding a separate state. Prior to this shift, in the Election Manifesto of 1970, the ITAK specifically called upon the Tamil People not to vote for any Party that demanded separation, as it was not in the best interests of the country and the Tamil people. But after every reasonable request of the ITAK was denied at the 1971 Constituent Assembly, the ITAK withdrew from the process.

Following the promulgation of the 1972 Constitution, S.J.V. Chelvanayakam resigned his Parliamentary seat, and forced a by-election for Kankesanthurai to prove that the Tamil people rejected the 1972 Constitution. He won that election by an overwhelming majority, thereby

proving that the Tamil people rejected the 1972 Constitution, and considered themselves not bound by it. It was this series of events that eventually led to the Vaddukoddai Resolution of the Tamil United Liberation Front (TULF), which resolved to restore and reconstitute a separate state that existed prior to European occupation. The TULF contested the July 1977 general election and won all Tamil majority seats in the North and East except one, thereby winning the mandate of the Tamil People to establish a separate state. The unilateral altering of the social contract between the various peoples of Sri Lanka through the 1972 Constitution led to the demand for separation. It was a demand that was made due to the fact that no alternative was available to the Tamil people to exercise their sovereignty or to redress the denial of meaningful participation in governance.

### **Sharing of Powers of Governance**

Following the anti-Tamil pogrom of July 1983, sixteen TULF members of Parliament refused to take the Sixth Amendment oath against separation, and consequently lost their seats in Parliament. During this time, India's good offices were accepted by the Sri Lankan Government to resolve the Tamil National Question. After extensive discussions between the Government of Sri Lanka and the TULF from 4<sup>th</sup> May to 19<sup>th</sup> December 1986, the "Indo-Lanka Accord" was signed in Colombo on 29<sup>th</sup> July 1987 by Indian Prime Minister Shri Rajeev Gandhi and Sri Lankan President J.R. Jayawardene. This International Bilateral Agreement recognised that Sri Lanka is "a multi-ethnic and a multi-lingual society", that each ethnic group has a distinct cultural and linguistic identity, which has to be carefully nurtured, and that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil-speaking peoples. Additionally, it recognised that the Northern and Eastern Provinces would join to form one administrative unit until such time a referendum was held to decide whether they should remain joined.

It is noteworthy that the Tamil-speaking concerns in terms of their linguistic and territorial identity were accepted by the tallest Sinhalese leaders, S.W.R.D. Bandaranaike, Dudley Senananyake, and J.R. Jayawardena, in three separate agreements.

When the Thirteenth Amendment to the Constitution was presented to Parliament, TULF leaders A. Amirthalingham, M. Sivasithamparam and R. Sampanthan wrote to the Prime Minister of India Shri Rajeev Gandhi stating that this Amendment neither reached the ideals laid down in the Indo-Lanka Accord nor fully realised the aspirations of the Tamil people. As a consequence of this engagement, and after further negotiations with President J.R. Jayawardene in New Delhi on 7<sup>th</sup> November 1987, the Indian Government secured an assurance from President Jayawardene that the Thirteenth Amendment would be improved upon to meet at least the aforesaid concerns.

After the Provincial Councils were set up in 1988, the TULF did not contest the provincial council elections on the ground that devolution arrangements were inadequate. However, the TULF did not pursue its demand for a separate state, specifically due to the changes that had been introduced through the Thirteenth Amendment and the assurances given to improve on the Thirteenth Amendment. Although the new Amendment did not fully meet the demands of the Tamil people, it did succeed in signalling a willingness on the part of the majority community to share power with the Tamil-speaking peoples of Sri Lanka. Accordingly, the TULF decided to re-enter parliament in 1989, and swore the oath of allegiance against separatism. Mr. A. Amirthalingam clearly articulated this position of the TULF.

The decision not to pursue the demand for a separate state was therefore based on the fact that a structural change had been introduced through the provincial councils system and the assurances given to improve on the Thirteenth Amendment, even though meaningful sharing of powers of governance was yet to take place. It is in this background that every effort made thereafter was in the direction of improving on the Thirteenth Amendment towards a federal structure. Several proposals and commitments warrant mention.

First, in 1993, the Mangala Moonesinghe Select Committee during President R. Premadasa's tenure recommended devolution based on the Indian model. It suggested that the Concurrent List be either abolished or that most of the subjects in it be transferred to the Provincial List. It further proposed an Apex Council linking the Northern and Eastern Provincial Councils.

Second, the government proposals for constitutional reforms in 1995 and 1997 under President Chandrika Bandaranaike Kumaratunga, and the Constitutional Bill of 2000, all proposed extensive devolution of power, and abandoned the unitary state structure. It is significant that former presidents Mahinda Rajapaksa and Maithripala Sirisena, and present day ministers Prof. G.L. Peiris, and Nimal Sripala de Silva, all of whom are part of the current government, were in the cabinet when all three government proposals were put forward and the new Constitution Bill was brought to Parliament, with cabinet approval, as a government bill. The main opposition party, the UNP, opposed the Bill solely for the reason that the abolition of the executive presidency was to occur at the end of the tenure of President Kumaratunga and not immediately. Apart from that objection, the UNP supported the Bill's substantive content on devolution of power. Thus, there was consensus among the mainstream political parties on moving from a unitary framework to a federal structure of government.

Third, in December 2002, talks were held between the Government of Sri Lanka and the LTTE in Oslo. At these talks, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka. The Sri Lankan government delegation was led by Prof. G.L. Peiris, who after reaching this agreement, said the following at a press conference:

Responding to a proposal by the leadership of the LTTE, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking people, based on a federal structure within a united Sri Lanka. The parties acknowledged that the solution had to be acceptable to all communities...And the parties agreed to, on that basis, discuss matters further.

He further stated:

The LTTE is no longer insisting on a separate State but...is looking at a different concept in earnest and that is internal self-determination...which was power-sharing, extensive power-sharing within the framework of one country, no

question of secession, no question of separation, but power-sharing within the framework of a country.

Fourth, in 2006, President Mahinda Rajapaksa appointed an All Party Representative Committee (APRC), and a committee of experts to formulate proposals for a new constitution. At its inaugural meeting, President Rajapaksa outlined their task in the following words:

We must explore past attempts from the Bandaranaike-Chelvanayakam Pact onwards...People in their own localities must take charge of their destiny and control their politico-economic environment. Central decision-making that allocates disproportionate resources has been an issue for a considerable time. In addition, it is axiomatic that devolution also needs to address issues relating to identity as well as security and socio-economic advancement, without over-reliance on the centre. In this regard, it is also important to address the question of regional minorities...There are many examples from around the world that we may study as we evolve a truly Sri Lankan constitutional framework including our immediate neighbour, India...

Any solution must be seen as one that stretches to the maximum possible devolution without sacrificing the sovereignty of the country given the background to the conflict.

President Rajapaksa rightly pointed out that the Co-Chairs of this process, i.e. the European Union, Japan, the United States (U.S.), and Norway, did not condone separation. However, they also expressed their view with regard to what the solution should be. They stated:

It must show that [Sri Lanka] is ready to make a dramatic political change to bring about a new system of governance which will enhance the rights of all Sri Lankans, including the Muslims. The international community will support such steps; failure to take such steps will diminish international support...The Tamil



and Muslim peoples of Sri Lanka have justified and substantial grievances that have not yet been adequately addressed.

Meanwhile, one of the Co-Chairs, the U.S., also made some specific statements with regard to Sri Lanka. The Assistant Secretary of State of the U.S. for South and Central Asian Affairs, Mr. Richard A. Boucher, visited Sri Lanka on 1<sup>st</sup> June 2006, and stated:

We also think the government should provide a positive vision to Tamils and Muslims of a future Sri Lanka where their legitimate grievances are addressed and their security assured. President Rajapaksa has spoken of ‘maximum devolution’. Previous negotiations have agreed on ‘internal self-determination’ within a federal framework. However the idea is expressed, it could offer hope to many in the North and East that they will have control over their own lives and destinies within a single nation of Sri Lanka...Although we reject the methods that the Tamil Tigers have used, there are legitimate issues that are raised by the Tamil community and they have a very legitimate desire, as anybody would, to be able to control their own lives, to rule their own destinies and to govern themselves in their homeland; in the areas they’ve traditionally inhabited.

The multi-ethnic expert committee involved in the APRC process, in their main report, proposed an extensive power-sharing arrangement similar to the Constitution Bill of August 2000. The final APRC report meanwhile suggested important improvements to the Thirteenth Amendment including the abolition of the concurrent list.

Finally, following the conclusion of the armed conflict in 2009, the government made certain pledges to implement and build on the Thirteenth Amendment. Such pledges confirmed that the commitment to devolution was not tied to ongoing hostilities with the LTTE. It can clearly be seen that the same approach was promised at the time hostilities ended in May 2009 and thereafter.

On 26<sup>th</sup> May 2009, President Rajapaksa issued a joint communique with the visiting UN Secretary General Ban Ki- Moon stating:

President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13<sup>th</sup> Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka.

The very next day, on 27<sup>th</sup> May 2009, the UN Human Rights Council adopted a resolution in which the aforesaid commitment by President Rajapaksa was incorporated in the following words:

Welcoming also the recent assurance given by the President of Sri Lanka that he does not regard a military solution as a final solution, as well as his commitment to a political solution with the implementation of the thirteenth amendment to bring about lasting peace and reconciliation in Sri Lanka.

It is noteworthy that in June 2010, Dr. Manmohan Singh, the former Prime Minister of India made a statement with regard to Sri Lanka. He stated:

You have a situation in Sri Lanka. The decimation of the LTTE was something which is good. But the Tamil problem does not disappear, with the defeat of the LTTE. The Tamil population has legitimate grievances. They feel they are reduced to second-class citizens. And our emphasis has been to persuade the Sri Lankan government that we must move towards a new system of institutional reforms, that the Tamil people have a feeling that they are equal citizens of Sri Lanka, and they can lead a life of dignity and self-respect.

Prime Minister Dr. Manmohan Singh also stated as follows:

The Prime Minister emphasised that a meaningful devolution package, building upon the 13<sup>th</sup> Amendment, would create the necessary conditions for a lasting political settlement. The President of Sri Lanka reiterated his determination to evolve a political settlement acceptable to all communities that would act as a catalyst to create the necessary conditions in which all the people of Sri Lanka could lead their lives in an atmosphere of peace, justice and dignity, consistent with democracy, pluralism, equal opportunity and respect for human rights. Towards this end, the President expressed his resolve to continue to implement in particular the relevant provisions of the Constitution designed to strengthen national amity and reconciliation through empowerment. In this context, he shared his ideas on conducting a broader dialogue with all parties involved. The Prime Minister of India expressed India's constructive support for efforts that build peace and reconciliation among all communities in Sri Lanka.

This commitment was then repeated in May 2011 when External Affairs Minister G.L. Peiris visited New Delhi. A joint press statement with the Minister of External Affairs of India stated:

...the External Affairs Minister of Sri Lanka affirmed his government's commitment to ensuring expeditious and concrete progress in the ongoing dialogue between the government of Sri Lanka and representatives of Tamil parties. A devolution package, building upon the 13<sup>th</sup> Amendment, would contribute towards creating the necessary conditions for such reconciliation.

This commitment was reiterated once again in Colombo in January 2012. After meeting President Rajapaksa, visiting Indian Minister for External Affairs, Hon. S. M. Krishna speaking at a joint press conference with Minister G.L. Peiris, stated:

The Government of Sri Lanka has on many occasions conveyed to us its commitment to move towards a political settlement based on the full implementation of the 13<sup>th</sup> Amendment to the Sri Lankan Constitution, and

building on it, so as to achieve meaningful devolution of powers. We look forward to an expeditious and constructive approach to the dialogue process.

A few months earlier, in November 2011, the final report of the Lessons Learnt and Reconciliation Commission, appointed by President Mahinda Rajapaksa, contained the following crucial recommendation on devolution of power:

Launch a good-faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre.

The Commission observed:

Devolution should essentially promote greater harmony and unity and not disharmony and disunity among the people of the country. The promotion of this ‘oneness’ and a common identity should be the principal aim of any form of devolution while protecting and appreciating rich diversity.

The focus should be to ensure that the people belonging to all communities are empowered at every level especially in all tiers of Government. Devolution of power should not privilege or disadvantage any ethnic community, and in this sense, should not be discriminatory or seen to be discriminatory by the people belonging to any ethnic community within the country.

The democratic empowerment of the people should take place within the broader framework of the promotion and protection of human rights which is a fundamental obligation of the elected government deriving from specific provisions of the Constitution and the Treaty obligations the country has voluntarily undertaken.

In addressing the question of devolution two matters require the attention of the government. Firstly, empowering the Local Government institutions to ensure greater peoples' participation at the grass roots level. Secondly, it is also imperative that the lessons learnt from the shortcomings in the functioning of the Provincial Councils system be taken into account in devising an appropriate system of devolution that addresses the needs of the people. It should at the same time provide for safeguarding the territorial integrity and unity of Sri Lanka whilst fostering its rich diversity.

An additional mechanism that may be considered is the possibility of establishing a Second Chamber comprising Representatives from the Provinces. Such a mechanism is likely to generate a sense of confidence among the political leadership and among the people in the Provinces, that they too have a vital role to play in the legislative decision making process, inter alia, by examining legislative measures that may have a bearing on issues of particular relevance to the Province.

Thereafter, the Government of Sri Lanka itself co-sponsored three resolutions at the UN Human Rights Council: HRC 30/1, HRC 34/1, and HRC 40/1 in October 2015, March 2017 and March 2019 respectively. HRC 30/1, which is reaffirmed by the subsequent resolutions, contained the following words:

Welcomes the commitment of the Government of Sri Lanka to a political settlement by taking the necessary constitutional measures, encourages the Government's efforts to fulfil its commitments on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population; and also encourages the Government to ensure that all Provincial Councils are able to operate effectively, in accordance with the thirteenth amendment to the Constitution of Sri Lanka.

In a speech in parliament on 9<sup>th</sup> January 2016, then President Maithripala Sirisena recalled the Bandaranaike-Chelvanayakam Pact and the Senanayake-Chelvanayakam Pact, and lamented their subsequent withdrawal. He suggested that a personality in the nature of “Prabhakaran” would not have emerged in the country had these agreements been implemented and the grievances of minorities been addressed.

On the occasion of the State Visit of President Gotabhaya Rajapaksa to India, on 29<sup>th</sup> November 2019, Prime Minister Shri Narendra Modi stated as follows:

We also openly exchanged views on reconciliation in Sri Lanka. President Rajapaksa told me about his inclusive political outlook on ethnic harmony. I am confident that the Government of Sri Lanka will carry forward the process of reconciliation, to fulfill the aspirations of the Tamils for equality, justice, peace and respect. It also includes the implementation of the 13th amendment. India will become a trusted partner for development throughout Sri Lanka including North and East.

From all of the above, it is clear that if there is one matter that needs to be ensured in the new constitution, it is the settlement of the Tamil National Question. The country did not suffer a civil war for three decades on account of any other issue but this. No other issue had required the country to make commitments to India and to the rest of the International Community, including the UN – and all of those commitments include the explicit pledge to grant a meaningful power-sharing arrangement to the Tamil-speaking peoples of the North and East of Sri Lanka. These repeated assurances match the several efforts taken under different presidents and governments, all of which is in the direction of a meaningful power-sharing arrangement. It is also worth noting that we, the main representatives of the Tamil people, have, at each election since 1956, rejected the Sri Lankan constitution at the time, and have called for a new constitution to be promulgated in Sri Lanka by which all peoples are granted dignity, equality, and a meaningful opportunity to exercise their sovereignty by sharing powers of governance. In each such election, the Tamil people have returned a strong endorsement of our position.

We reiterate that the demands of the Tamil people for dignity and autonomy have always been made in the context of the governance structure that prevailed at the time of such demands. Whenever efforts were made to offer a meaningful power-sharing arrangement, for example, through early efforts such as the Bandaranaike-Chelvanayakam Pact, the demands of the Tamil people remained rooted within a united country. It is only when such an arrangement was rendered impossible due to majoritarian and chauvinistic constitutional structures in the 1970s that these demands shifted towards separatism. We reiterate that the demand for a separate state was eventually not pursued *because* meaningful sharing of powers of governance once again became realisable with the introduction of the Thirteenth Amendment. We hold that sharing powers of governance is now an inextricable part of Sri Lanka's current social contract, and is deeply tied to the dignity of the Tamil people of this country. Therefore, any attempt to renege on past commitments to ensure meaningful sharing of powers of governance would amount to an affront to the dignity of the Tamil people, and a grave breach of the current social contract between the various peoples of this country.

Sri Lanka has signed the Universal Declaration on Human Rights, which in article 21(3) provides: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." Moreover, Sri Lanka is party to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 1 of each of these treaties provides: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Sri Lanka accordingly has international legal obligations to protect and promote the Tamil people's right to internal self-determination. It is therefore axiomatic that the present constitution-making endeavour must recognise meaningful sharing of powers of governance as the centrepiece of the new constitution. It must be remembered that the persistent denial of the right to internal self-determination to a People entitles them, under international law, to external self-determination.

It is in this background that we assert that the following principles be adhered to, and realised, in a new Sri Lankan constitution.

## **1. Nature of the State:**

- (1) Sri Lanka (Ceylon) shall be recognised as a free, sovereign, independent and united Republic comprising the institutions of the Centre and of the Regions, which shall exercise powers of governance as laid down in the Constitution.
- (2) One of the Regions shall be for the territory predominantly occupied by the Tamil-speaking peoples in the North-East.

## **2. Fundamental Rights:**

The Constitution shall include a comprehensive list of fundamental rights and freedoms, founded on human dignity and personal autonomy, and reflecting the full gamut of Sri Lanka's international human rights obligations.

## **3. Language:**

- (1) The Constitution shall recognise Sinhala, Tamil, and English as the official languages throughout Sri Lanka, and the languages of administration in the entire island.
- (2) Citizens should have a right to interact with the State, whether in person or in correspondence, in the language of their choice.
- (3) The Constitution should specify that official documents, notices or directives which communicate, imply or impose a penalty or fine or punishment have no force or effect in law in the event they are issued in violation of language rights.

## **4. The Executive:**



- (1) The Constitution shall provide for a government with a ceremonial President who is accountable to Parliament, and who acts on the advice of the Prime Minister. The Prime Minister shall be the head of the cabinet of ministers.
- (2) The cabinet of ministers, the state ministers, and the deputy ministers, shall be appointed by the President on the advice of the Prime Minister from amongst members of Parliament. Assignment of subjects and functions shall be within the powers of the Prime Minister, and these powers may be exercised by the Prime Minister at any time.

#### **5. The Legislature:**

- (1) The Constitution shall provide for a bicameral legislature with a chamber comprising members directly elected by the people, and a second chamber comprising representatives of the Regions.
- (2) Legislation shall be passed upon passage of a Bill by simple majority through both chambers, except in the case of amendments to the Constitution, in which case, the Bill shall be passed with a two-thirds majority in both chambers. And in the case of amendments affecting devolution to the Regions, it shall have an additional requirement of assent by every one of the delegations from the Regions to the second chamber.

#### **6. Sharing of Powers of Governance:**

- (1) There shall be Regional Councils for every Region, as defined in a schedule to the Constitution.
- (2) There shall be a Governor for each Region, who shall be appointed by the President on the advice of the Chief Minister of the relevant Regional Council, and such advice shall only be given with the approval of the Regional Council.

- (3) The Governor shall, except as provided in the Constitution, act on the advice of the Chief Minister and the cabinet of ministers of the Regional Council.
- (4) Regional Councils shall have legislative power over subjects specified in a schedule to the Constitution. The statutes duly enacted by a Regional Council shall prevail over all previous legislation on the same subject with respect to the relevant region.
- (5) Suitable time-bound arrangements shall be made with regard to Governor's assent to statutes to avoid delay.
- (6) National policy on a devolved subject defeats the object of devolution. Therefore, all Regions must be consulted and where all Regions agree, national policy must be confined to framework legislation within which Regions can exercise fully legislative and executive power pertaining to the devolved subject. Framework legislation shall not curtail devolved power.
- (7) The Central Legislature may make laws with respect to subjects devolved to the Regional Councils, provided all Regional Councils vote to approve the said Bill. Where a Regional Council does not so approve, the Act, if passed, shall not have force or effect within the said Region.
- (8) Devolved power cannot be overridden or taken back without the consent of the Region concerned. In the case of Constitutional amendments affecting devolution, it should have the approval of every regional delegation from the Regions in addition to two third majority votes in both Houses.
- (9) Assignment of subjects and functions shall be based on the principle of maximum possible devolution. All subjects other than such subjects as must necessarily be with the Central Government, such as national security, national defence, armed forces, foreign affairs, and national economic affairs, must be devolved.
- (10) Some of the important subjects and functions to be devolved shall include (but not be limited to):

- a. land;
- b. law and order;
- c. education including tertiary education;
- d. health;
- e. housing and construction;
- f. agriculture and agrarian services;
- g. irrigation;
- h. fisheries;
- i. animal husbandry and livestock development;
- j. resettlement and rehabilitation;
- k. local government;
- l. regional public service;
- m. regional police service;
- n. religious and cultural affairs;
- o. all other socioeconomic and cultural matters;
- p. cooperatives and cooperative banks;
- q. industries; and
- r. taxation, central grants, international and domestic loans and grants, and foreign direct investment.

(11) All appointments to the regional public service and regional police service, other than the Chief Secretary and other secretaries to regional ministries, shall be made by the Regional Public Service Commission and the Regional Police Commission, as the case may be, which shall be answerable and responsible to the Chief Minister and to the cabinet of ministers of the relevant Region.

(12) The Chief Secretary shall be appointed by the President with the concurrence of the Chief Minister of the Region, and shall be removable by the President on the advice of the Chief Minister. Secretaries to regional ministries shall be appointed by the Governor on the recommendation of the Chief Minister and the cabinet of ministers of the relevant Region, and shall be removable on their advice.

- (13) There shall be adequate provision made in the Constitution for the protection of the minority communities in every Region.

## **7. The Judiciary:**

- (1) The Constitution shall provide for a Constitutional Court, comprising members appointed by the Constitutional Council, to hear and determine the constitutionality of legislation made by the Central Legislature and statutes made by Regional Councils. Such power may be exercised prior to the enactment of such law or statute, or after enactment, whether it arises in the course of legal proceedings or by the direct institution of proceedings.
- (2) In respect of matters relating to the interpretation of the Constitution, the decisions of the Constitutional Court shall be final.
- (3) Jurisdiction with respect to fundamental rights applications shall be exercised by the Provincial High Courts.

## **8. Public Security:**

- (1) The Constitution shall provide that the declaration of a state of emergency shall be made by the President, on the advice of the Prime Minister, or on the advice of the Governor of the Region with the concurrence of the Chief Minister of Region. Such a state of emergency shall only be declared when there are reasonable grounds to apprehend the existence of a clear and present danger to public security, preservation of public order (including preservation of public order consequent to natural disasters and epidemics) or the maintenance of supplies and services essential to the life of the community in the country or Region. A state of emergency can be declared only with respect to the territory where such a clear and present danger prevails.

- (2) The declaration of emergency shall state the basis on which such a state of emergency was declared, and shall be limited in time.
- (3) The Declaration of Emergency shall be subject to parliamentary approval or the relevant Regional Council's approval, as the case may be, and be subject to judicial review by the Constitutional Court. If such approval is not granted, or where the Constitutional Court so holds, such Declaration of Emergency shall stand rescinded.

## **9. Land:**

- (1) Land shall be a devolved subject. All state land used by the Central Government for a subject in the Central List shall be continued to be used by the Central Government. Rights acquired by citizens in state land shall be preserved. All other state land shall vest in the Region concerned, and can be used by the Region in terms of its devolved powers over land.
- (2) Alienation of state land shall be done on the basis of the principles enunciated in the Bandaranaike-Chelvanayakam Pact and Senanayake-Chelvanayakam Pact.
- (3) Regions shall have powers of land acquisition and requisition.

## **10. Police:**

- (1) Law and order shall be a devolved subject.
- (2) There shall be a National Police Force, and Regional Police Forces for each Region.
- (3) Offences that are reserved to be dealt with by the National Police shall be listed in a schedule to the Constitution. All other offences shall be within the purview of the Regional Police.

- (4) The head of the Regional Police shall be the Regional Police Commissioner, who shall be appointed by the Governor on the advice of the Chief Minister of the Region. There shall be a Regional Police Commission to be appointed by the Governor on the advice of the Chief Minister and the leader of the opposition of the relevant Regional Council. Appointment and disciplinary control of Regional Police personnel shall be under the Regional Police Commission. The Regional Police Commissioner shall be answerable and responsible to the Regional Minister entrusted with the subject of law and order.

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