

**SRI LANKA:**

**THE  
DEVOLUTION  
DEBATE**

**ICES**

# **Sri Lanka: The Devolution Debate**

**ICES**

**International Centre for Ethnic Studies  
Colombo**

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International Centre for Ethnic Studies  
2, Kynsey Terrace, Colombo 8, Sri Lanka

First Published February 1996

Second Edition June 1996

ISBN 955-580-009-X

Typeset by  
Unique Graphics

33, 2/3, Galle Road, Colombo 6, Sri Lanka

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## **Foreword**

ICES has from its inception had a firm commitment to the regional devolution of power in Sri Lanka. This commitment preceded by several years the limited and contradiction-ridden embodiments of this principle in the 13th and 16th Amendments and the Provincial Councils Act of 1987. ICES's advocacy of devolution has on the one hand been based on a recognition of its value as a means of mitigating current ethnic conflicts and working towards the restoration of peace. But in a longer perspective, ICES also views devolution as the necessary expression, at the level of political institutions, of the multi-ethnic and plural character of Sri Lankan society, and as an extension of democracy through the sharing of power between the central state and regional representatives of the people.

The present volume is, therefore, the newest addition to a series of studies that ICES has commissioned and publications it has sponsored over the years on devolution. Its focus of attention consists of the most recent body of proposals made by the PA Government for constitutional reform, whose direction is the transformation of the Sri Lankan political structure into a "Union of Regions." The contributors to this symposium have in common an adherence to the principles of power-sharing through regional devolution in Sri Lanka, and in this sense share a sympathetic or supportive approach to the current proposals. But this collection of essays is not a propagandist exercise, nor do their authors uphold any single viewpoint on the details of the proposals. Some of the essays include critical scrutiny of particular elements of these proposals, or are directed towards raising issues where greater clarity of formulation is needed, or pointing out problems that may arise in implementation.

It is hoped that in this way the book will fertilise the present public debate on the devolution proposals by placing before its readers the observations and reflections of several concerned scholars who have devoted serious thought and study to the questions arising from the proposals. A substantial part of the book is taken up by a series of appendices, which reproduce the essential texts, from the Bandaranaike-Chelvanayakam Pact of 1957 to the two sets of proposals by the PA Government. We hope that by making available these documents, in



an easily accessible form in one place, the book will render a further service to those who wish to study the present proposals in the historical context of the several previous attempts at peaceful resolution of the conflict.

Regi Siriwardena  
Editor, ICES

## Chapter I

### Towards Effective Devolution

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*G.L.Peiris*

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(Inaugural Address at the India-Sri Lanka  
Consultation on Devolution, March 4, 1995)

Thank you Hon.Lakshman Kadirgamar, Hon. S.Thondaman, Members of Parliament, Members of Political Parties, Distinguish delegates from India, Ladies and Gentlemen. We are having this symposium on devolution at a particularly appropriate time. You are all aware that Sri Lanka has embarked upon an exciting adventure in the realm of constitutional reform. We are departing from some of the orthodox concepts and assumptions which pervaded our constitutional systems in the past. We have now explicitly recognised that some of the value systems on which these traditional principles were based are not really appropriate or opportune in our country today.

We are therefore engaged in an exercise to ascertain the identity of the principles and approaches that will sustain us in the future. We are examining with a degree of candour which has rarely been manifested in our country in the past the structures that have been critical to our system.

We are asking ourselves what are the changes that are appropriate in those structures. What sort of society do we wish to build in our country? The constitution is merely an instrument for effecting some of these changes. It establishes a framework within which legislation can be propagated to address burning issues with regard to relationships among the different groups in our country.

Now we are doing this with a degree of dedication and commitment which again is refreshing, and is a redeeming feature. The established constitutional structures are predicated very much upon the postulate of legislative sovereignty and omnipotence that is part of the legacy which we have inherited from the public law of the United Kingdom.

But the experience of the third world has been to demonstrate very convincingly that that doctrine is not really adequate to provide us with a firm foundation for achieving harmony among the different groups that inhabit our country. We are therefore experimenting with mechanisms which will act as a break on the arbitrary and capricious use of public power.

That really is at the core of the objective that we are seeking to accomplish through the constitutional reform process now engaging the attention of the parliamentary select committee.

The new constitution that is in the process of being drafted will contain an elaborate chapter on devolution. Some of the government proposals have already been published and they are being examined by the parliamentary select committee.

Right now political parties in and outside parliament are making oral representations to this select committee. That will go on for another two weeks or so, and thereafter the government will publish the revised text of the proposals that will in due course be presented to Parliament.

We are convinced that a substantial degree of devolution represents the key to the most vexed problem confronting the Sri Lankan nation at this time. The President when she addressed the members of the SLFP yesterday in Maharagama made the point that whatever the government will do in the field of constitutional reform will endeavour to safeguard the 'legitimate,' reasonable, just interests of the majority of the community while at the same time enabling minority communities to live with dignity and self respect in their native land.

That is the balance, the equilibrium, that will be struck in the constitutional structures that will emerge from the current deliberations. Now we believe that devolution has a significance in our political culture that transcends what is described as a ethnic problem.

When I wound up for the government at the debate on the second reading of the budget, I made the point particularly with reference to observations made by representatives of the Tamil speaking parties in parliament, that as far as the government is concerned, the peace dividend does not consist exclusively or even primarily of the reduction of the military expenditure.

The peace dividend is something much more basic and fundamental as far as the government is concerned. We are looking forward to a whole series of accelerated developments in that field. Vast areas of the country which have been alienated from the national economy for a sustained period of time will now be penetrated by technology and the infusion of capital.

All these will be integrated into the country's economy. The waters of Sri Lanka in the north and the east will be reopened for fishing. There is a great deal of potential to be exploited in the eastern coastal belt, as far as a development of tourism is concerned.

We know from the experience of Canada, in particular in what happened in regard to the Charlotte Town Agreement, that advantages of economic integration would constitute one of the primary motivations in this field to forge certain linkages which are necessary for cohesion in regard to the development of harmonious relations among the ethnic communities.

Now devolution is also important from our point of view because it strengthens and buttresses democratic forces, and participatory mechanisms in different parts of the country. Young people, in particular, are given the opportunity of getting involved in public life in different parts of the country. Otherwise there is danger of disenchantment with regard to political institutions. We want to encourage people in different parts of the country to take an interest in public institutions and to involve themselves with enthusiasm and vigour. It is a training ground for the emergence of a new generation of leaders. It is therefore a mistake to think of devolution only in the context of the ethnic problem. I think it is a broader and most significant political and social phenomena. That is the light in which the government perceives the merits of devolution. I think that is the fundamental point that needs to be made.

Now when we formulate our proposals with regard to the

devolution of power I think we need to bear in mind that if this exercise is to be attended by any degree of success, there are certain basic and indispensable prerequisites. To my mind there are at least five such factors.

The five factors may be enumerated briefly. The first is sincerity; people must accept that what you are doing is being done with a degree of sincerity. If there is no credibility, however perfect the structures may be, you do not fulfil one of the basic requirements of success. Now with no intention of casting aspersions on persons or any political groups (this is not the forum for that), I would like to make it a point that some of the initiatives of the past failed at the threshold because of the lack of sincerity.

There was no perception of sincerity within the people attributable to or imputable to the people who were responsible for these initiatives. I think that is the starting point. That is one of the significant differences between the previous initiatives and the current initiatives.

Secondly, there must be clarity. What are the functions that are retained by the Centre, and what are the functions in respect of which responsibility can be devolved to the periphery? These must be spelt out with clarity. There must not be grey areas which will give rise to acrimonious debates. That is very essential. Devolution means at bottom the sharing of power, it is a partnership, it is not divisive.

It does not have to be acrimonious on what are the powers which can be devolved to the provincial councils or other units which are established, and what are the powers which need to be retained by the centre. Is there any need for a concurrent mechanism, concurrent list, must there be a category of functions in respect of which responsibilities are to be shared between the centre and the periphery?

Or is this a dispensable concept that we can do away with? That is one of the very serious questions that would need to be addressed. The 13th Amendment to the Sri Lankan Constitution in its existing form suffers from many infirmities and weaknesses, one of which is a lack of the kind of clarity on the powers which are devolved.

This is one of the fundamental reasons why the 13th Amendment has not worked well in practice. So there must be clarity, and that is the second quality or characteristic which I would identify.

Thirdly, there must be cohesion, this must not be done adhoc or piecemeal. It must not be perceived as essentially an exercise in expediency. It must give expression to an overall ideology, a philosophy, an internally consistent value system. This is very important. Now that is one of the things that we consider to be of fundamental importance in relation to the initiatives that we have undertaken.

The fourth requirement is that enforceability. It must be capable of implementation. Now these are several facets to this. One is financial capability, all the legal structures will have very little meaning in practice, unless the periphery has the wherewithal to discharge its functions.

We have at the moment a Finance Commission which is responsible for the allocation of resources to the provincial councils. There are many anomalies attendant upon the principles that govern the work of the Finance Commission.

For example, if the provincial council is vigorous and enthusiastic, it raises a large volume of revenue, as a result of its own persevering efforts. The inevitable result in keeping with the principles which are now applicable is that the grant to that provincial council by the finance commission is reduced pro tanto. Now that is the compelling disincentive: the more money you raise by your efforts, the less you can expect from the finance commission. The principle should really be the reverse of that, there must be a system of matching grants that will involve providing incentive for performance.

That is the opposite of the established principles. So when I speak of effectiveness I mean first and foremost financial viability, we need to look at those systems and structures.

There must be some enforcement mechanism. Devolution means demarcation, delineation of boundaries, frontiers of jurisdiction that is the essence of devolution. The frontiers of jurisdiction. Now when these frontiers are transgressed or when these are encroached upon by legislative action, legislative action which is ultra vires the document that controlled the devolutionary process, there must be effective remedies that are capable of invocation in those circumstances.

It there is a lacuna in that regard, then the whole exercise in devolution will prove abortive, it will be futile. So you must set in

place viable remedies which are capable of being invoked in situations where the frontiers laid down by the constitutional instrument are transgressed with impunity.

We must set up structures which are charged with public responsibility for monitoring and for exercising some kind of surveillance over legislative action in this field and intervening where such intervention is appropriate. So that again is an element, it is a facet of enforceability of implementation which I regard as important.

The fifth and final characteristic which is worth mentioning at the commencement of these proceedings is the availability of adequate and viable machinery enabling the resolution of conflicts which will inevitably arise from time to time between the Centre and the periphery.

I note that this is one of the subjects that will be discussed in the course of your deliberations on Centre-State relations. Tensions and conflicts which arise in this field must be addressed before they become aggravated or exacerbated.

Many countries in the world have a wealth of experience in this field and we certainly benefit from that experience. I am not for one moment suggesting that we can emulate uncritically or adopt in toto the political experience of any other nation.

There must be adaptability, resilience, elasticity, we must adapt to suit our own cultural mores and our political culture. Subject to that qualification I think it would certainly be profitable to look at the experience of the other countries, Canada in particular, and of course India has a great deal of experience with regard to this.

While we devolve more and more authority you must put in place mechanisms which would enable national policy to be worked out in a setting where there is some kind of overall vision. It would not be right for the Centre to go in one direction and for the periphery to go in another direction. In such a context conflict would naturally arise. So you need certain centralising mechanisms set up through structures which would enable consultation on a continuing time frame; the sharing of ideas and experiences, the resolution of conflicts in an incipient form before they assume horrendous proportions. I think that should be an important feature of the constitutional package that we propose. Now I would like to stress once again the importance

of sincerity, the perceptions of sincerity, a reality of sincerity. The 13th Amendment in the present form is the anathema of sincerity in that powers which are ostensibly devolved can be reacquired by the Centre by the use of disingenuous mechanisms, such as a description of anything under the sun as a matter in respect of which the formulation of a national policy is required. Now the mechanism has been used to re-establish central authority in such areas as agrarian services, and in the establishment of a national transport commission. It is all embracing in its conception. Now that kind of sleight of hand, that kind of disingenuity is not likely to inspire confidence in anybody. Education is a devolved subject, but by characterising a school as a national school (and there are no criteria that govern the delineation) next morning it is handed over to Colombo. Now that kind of a move might sound clever, but actually it is the opposite of cleverness, and that is a kind of cleverness that must now be avoided in formulating the provisions of the new constitution.

So those are some thoughts that I would like to leave with you as you embark upon your deliberations. I would like to pay tribute to the International Centre for Ethnic Studies for its initiative today. India is a country whose experience has a great deal to offer us, situated as we are in our current predicament and struggling to find ways and means of extricating ourselves from some of these dilemmas. India has a great deal of experience with regard to centre-state relations; the powers of New Delhi, and the imposition of central rule on states is considerable. It is our intention in preparing this constitution to go some way further than India has done in that area. The government feels that the provisions of the Indian Constitution enable interference by the Centre in too wide a category of situations. The Sarkaria Commission and the Rajamannar Commission in India have also pointed out that the powers of the Centre need to be circumscribed, and need to be curtailed in this field. Otherwise there is a danger that the devolutionary structures will be placed in jeopardy as a result of capricious action by the Centre. That is a danger that we are conscious of, having looked at the contemporary Indian experience critically. So this kind of cross-national sharing of experiences with a country which has a greater experience of devolution than we have had - in fact we have no devolution at all, decentralisation yes, local government

yes, devolution no. Therefore the Indian experience is of direct relevance to us in preparing the Constitution of the Republic of Sri Lanka for the future. So I would like to congratulate the ICES, Neelan Tiruchelvam, Radhika Coomaraswamy, Jayadeva Uyangoda, Chairman of the Sri Lanka Foundation, for their association with this project. There is no doubt that your deliberations will have direct impact on the task that we have commenced and I wish your deliberations every success. Thank you very much.

## Chapter 2

### Some Thoughts on the Devolution Package

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*Lakshman Marasinghe*

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#### 1. Preliminary Observations

The package for the devolution of power submitted to the people, by the government of Sri Lanka, on August 3rd, 1995 may be considered more as a pre-constitutional document than as a statement of governmental policy. The former suggests that the contents of that document is more or less the synthesis of decisions taken by the government at the policy level. From such a document one could read, as a soothsayer does from tea leaves, the circumstances within which the pre-constitutional document was spun on behalf of the nation. Firstly, it appears to me that this document represents the nation's alternative to Eelam. Eelam was meant to result in a Tamil nation, which by International Law would give that area of land (The North-East) the recognition of a sovereign State. Second, the document contains in substance a balance between what any government in Sri Lanka could concede to the Tamil people while at the same time maintaining its political legitimacy in the eyes of the majority Sinhala people. Third, by failing to state with any clarity whether the document intends to maintain the present status of Sri Lanka as a Unitary State, the government has left in the hands of political scientists and constitutional lawyers the task of discovering the precise nature of the resulting constitutional structure of the Island. I am reminded here of the Union of South Africa Act of 1909 (chapter

9), which established The Union as we know of it today. That Act left the then Dominion of South Africa straddled between a Unitary State and a Federation. This was done so as to satisfy the conflicting demands of the two founding nations - The Boers and The English. That Act was considered at the time to have been a successful attempt to keep the Union together. The Union Act was only recently replaced, in 1993, by the present post-apartheid Constitution. But the constitutional structure introduced in the South Africa Act of 1909 remains to this day undisturbed. The point that needs to be emphasised is that it is often advisable to avoid giving specific characteristics to a constitution when its main purpose was to balance the competing demands of two ethnic groups. There is no harm done to a nation to leave the basic constitutional structure unclear, so that lawyers and others could work out what structure the legislature meant to provide. This may be determined by a careful analysis of the way powers have been allocated between the centre and the Regions. In South Africa the question as to whether it was a Unitary State or a Federation never became a question of great moment. Fourth, the proposal is however clear that what was intended was a devolution of power and not a devolution of Sovereignty. In this sense the document intends not a simple delegation of power as done in the creation of a Local Body, such as a Municipality.

According to the proposal, what is created is an entity which has Plenary powers both in the Executive and Legislative departments of government, limited only by the substance of the Regional Powers List included in its Appendix A. These entities (described as Regions), derive Plenary powers and therefore are not confined by the legal maxim "delegatus non potest delegare". For that reason the entities created have a power to sub-delegate their powers to other Local Bodies within each region to facilitate the governance of their Region.

Fifth, the quest for EELAM involves, as mentioned above, the creation of a sovereign State. There are a number of constitutional structures that could be proposed between EELAM and a centralised Unitary State like the constitutional structure Ceylon (as it then was), received at Independence. In this context reference is being made to the structure provided by The Soulbury Constitution at Independence, which is maintained in substance to this day. The Structure nearest to

EELAM is one of a Confederation where two sovereign entities come together to form a State while each continuing to maintain its original separate Sovereign status. An oft cited example of this structure is The Swiss Confederation. The second next to EELAM is a decentralised Federation as distinct from third next to EELAM the centralised Federation. It may be observed that the establishment of a Federation entails an allocation of powers to separate constitutional entities.

These are the powers that are required to govern these entities. Together with an allocation of powers through devolution, there is additionally in a Federation an allocation of sovereignty. This is achieved through a process of devolution of sovereignty. In a typical Federation there is, therefore, not only a devolution of powers, but there is also a devolution of sovereignty. As for the devolution of powers there are two paradigms. In the first paradigm, powers may move away from the centre, centrifugally, to the entities, {Regions (Sri Lanka) Provinces (Canada), States (Australia/USA)}. In the second paradigm powers may be drawn towards the centre, centripetally. While a movement away from the centre may create a decentralised Federation a movement of powers towards the centre may result in a centralised Federation. In either case there is a devolution of sovereignty. A good example of a decentralised Federation, which could be considered as being the constitutional structure second next to EELAM, may be found in the present Federal German Constitution. To a lesser degree Australian Federalism rests upon a decentralised Federalism. Canada on the other hand provides a good example of a centralised Federalism, the structure third next to EELAM. The fourth structure next to EELAM is that of a Unitary State within which there is a devolution of power, which I believe the present proposals set out. The fifth structure next to EELAM is the one Ceylon inherited from the Soulbury Constitution. This analysis of constitutional structures is made merely to point out that the government has in reserve several other constitutional structures to consider, when the moment for negotiation arrives. What is proposed here is only the first step the government could take towards providing an alternative to EELAM.

## 2. Devolution of Powers

The proposal declares that the unit of devolution is the Region and that the Regional Councils are vested with both the Legislative and Executive powers pertaining to each Region {#10.1}. The proposal does not provide a precise determination of the boundaries of the Regions and in fact suggests that boundaries such as those applicable to the present Northern and the Eastern Provinces may require re-drawing. By leaving this open for a later determination, it gives the government an additional plinth at any future negotiations.

The proposal provides for two-tier infra-structures for the implementation of the devolved powers. It provides in such key areas as: Finance, Law and Order, Education, Administration of Justice and the Public Services, interlocking administrative organs. These Administrative organs of the Regions and of the National government must act together to implement the devolved powers and in that sense they tend to interlock their Administrative infra-structures in implementing them. In the area of Finance, it is proposed that a National Finance Commission would remain responsible for the allocation of grants to the Regional Councils, while the latter would be responsible for the utilisation of those and other monies they may acquire on their own. In this activity the infra-structures of both the National and the Regional levels of government become inter-locked in being dependant on each other for the implementation of the powers inherent in that department of governance. In each of the other four areas of governance mentioned above, similar administrative paradigm appears.

It is important to point out that the presence of these interlocking infra-structures provide a healthy grip between the Regional Councils inter se and the Regional Councils and the National Government. In Finance: "Regional Councils may regulate and promote foreign direct investment, international grants, and development assistance, subject to such conditions as may be specified by the centre {#2.4}". This provides more than an interlocking infra-structural device. This provides for a control upon the development potential of the Regions. In the area of Law and Order, there will be two police commissions. A Regional Police Commission which will remain responsible for

"Recruitment, transfers within the Region, dismissal, and disciplinary control of regional police service...{#3.3}". The second Police Commission which will remain responsible for "...the transfer of police officers from one region to another", shall be the National Police Commission. These transfers are to be done in consultation with the Regional Police Commission. It is important to note that these transfers are done not with the "concurrence" but after "consultation" with the Regional Police Commission. It is not clear as to what form these consultations would take. It is however clear that the consent of the Regional Police commission is not required as a pre-requisite to any such transfers. It is also important to note that there is no requirement that a Police force of a region should reflect its own particular ethnic diversity. Additionally, the fact that the national police force was made responsible for investigating offences against the State, threats to national security, offences related to elections, interprovincial crimes and international crimes {#3.2} makes it again necessary to interlock the Regional infra-structures with the national infra-structures. Similarly with Education, the Administration of Justice {#6.3} and the Public Service {#7.2}. There are forty-five areas included in the Regional list of powers and fifty-eight areas included in the Central Government List.

The Regions are provided with a local tax base by leaving within their power to collect: excise duties, turnover taxes wholesale and retail sales taxes, betting taxes, taxes on prize competitions and lotteries, motor vehicle licence fees, stamp duties on transfer of property of land and of motor cars, fines imposed by courts, court fees, land taxes, and taxes on mineral rights. Additionally, the Regions have the power to engage in domestic and international borrowings, which require the concurrence of the National Government if the amounts borrowed were to exceed a certain amount. But there is no such restriction in the regulation and promotion of foreign direct investment, international grants and developmental assistance to the Regions. Although the Appendix frees the Regional Councils from seeking any kind of permission from the centre, paragraph 2.4 of the proposal makes such assistance, "subject to such conditions as may be specified by the center". This conflict in the language in which the power to seek development assistance, investments and international

grants is couched requires some clarification.

The decentralisation of the Administration of Justice is an important feature of the package. Litigants will be able to pursue their litigations in the Regions in which they live. They will be able to proceed, from within their Regions, right up to the pen-ultimate stage of their litigation process, leaving only the ultimate appeal to the Supreme Court to be heard in the capital city of Colombo. The multiplication of the Judiciary with the attendant institutions may result in a large expenditure which may have to be shared between the Regions and the centre.

The repealing of Article 76, which prohibits the abdication or any alienation of the legislative power of Parliament as presently constituted (#9.2) does not require a referendum. The repealing of that Article is not one of the Articles that Article 83(a) require to be submitted to a referendum in addition to a two-thirds majority vote of all the members of the Parliament whether voting or not. Its repeal could be done with a mere two-thirds majority of the whole Parliament. However, the constitutional transformation of the Island Nation from one of "Unitary State" (Article 2) to one of a Union of Regions (#9.1(a)) would require under Article 83(a) of the Constitution an approval from the people at a referendum in addition to the aforesaid two-thirds majority vote.

The powers regarding Land and Land settlement require some careful thought. The paragraph (#4.1) which deals with this aspect reads: "Land will be a devolved subject and state land will be vested in the Regional Council". This clearly indicates two matters. First, State land will no longer be the property of the Centre, although the Centre was empowered under the same paragraph to utilize such land for purposes falling within its powers, recognised in Appendix B of the Proposal. This use of the State land by the Centre will be possible in consultation with the relevant Regional Council. This provision removes a possible dichotomy that may be found in many Federations between Federal Land and Provincial Land. It is clear that the permission or the consent of the Regions is not necessary for this purpose. It is, however, not clear as to what form these consultations should take. The Regions however may avoid the incursions of the Centre over state land by relegating such land as there may be within

its boundaries for Public use of their own residents. This may be done by establishing a Public Authority like the well known "Tennessee Valley Authority", which was established for the purposes of utilising the Tennessee Valley for public purposes. This could be done immediately after the Regions are created, almost on the first meeting of the Regional Councils, thus forestalling any plans that the Centre may have over such land. Second, by making land, a devolved subject, the government appears to have left an important aspect of land control in the hands of the Regions. It appears from the wording of the aforesaid paragraph that the Regions will have control over the buying and selling of land, namely, control over the alienation of land. However, if this control were to take the form of excluding ownership of land based on race, religion, sex or any other basis which is deemed to be offensive to the Constitutional protections provided by the fundamental law of the land, then such exclusions may be judged to be ultra vires and therefore of no effect. If such controls were somehow allowed by the law, then it might lead other Regions to enact similar controls as to retaliate against the offending Region. This may be done by enacting the same kind of exclusions against the groups in favour of which the first set of exclusions were enacted, thus leading the Island nation into a state of chaos. Dangers inherent in this kind of approach require little emphasis. It is therefore advisable to separate Land Use Planning, from ownership of land, which indeed is a property right. Matters surrounding alienation of private land, as distinct from State land, should be a matter within the competence of the Centre rather than that of the Regions. Regions may be allowed to engage in Land Use Planning but the right to buy and sell land should never be left in the hands of the Regions. That could lead to dangerous social consequences.

It is however important to point out that The Preambles to documents, whenever or wherever they may be found, must be used as benchmarks for the interpretation of their contents. The Preamble to The Proposals in paragraph (c) reads: "These proposals seek to redefine the constitutional foundation of a plural society within a United and Sovereign Republic of Sri Lanka based on the following principles: ... (c) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any



distinctions and in full equality before the Law...". An argument may be made based on this paragraph to have a law limiting the right to own property in any Region based on race, sex, or religion to be struck down. However, a law limiting property ownership to residents of a particular Region will not be offensive as a violation of the aforesaid Preamble. There is a plethora of case law to support the validity of such a law. Any Region may therefore legitimately limit the ownership of immovable property to its own residents, but could each Region determine as to who its residents are? The proposal appears to be silent on that point. Its silence may be indicative of the fact that there is a general presumption in favour of movement among Regions and to that extent no single Region has the power to exclude citizens of Sri Lanka from becoming residents in any particular Region.

The Centre, among a host of other matters has exclusive control over: defence, immigration, citizenship, currency and foreign exchange, foreign affairs, national rivers, shipping and navigation, maritime zones which includes historical waters and territorial waters, exclusive economic zone, and the continental shelf. It is also important to note that the National government at the centre is responsible for Buddhism. In the exercise of most of these powers the National government at the centre has access to the Regions. Certain administrative infra-structures of the National government must inevitably be located in the Regions.

Perhaps borrowing a page from the Australian constitution the proposal states that: The territory comprising the cities of Colombo and Sri Jayawardene Pura Kotte will be excluded from the regional council constituted for the Western Region and will be administered directly by the centre, in such manner as the centre may think fit (#1.5)". This would provide the centre with a considerable tax base from which the Western Provincial Regional council may otherwise have benefited.

The creation of Capital Territories is a phenomena well known to South Asian and South East Asian nations as well. Kuala Lumpur the capital of the Federation of Malaysia is a Federal territory, carved out of the Sultanate of Selangor, and is not subject to the laws of Selangor. The University of Malaya campus straddles both the Federal Territory and that of Selangor. It therefore enjoys both the

Federal Government holidays and those that are peculiar to Selangor, which would otherwise have not applied to the Federal territory. Similar discrepancies may arise in Sri Lanka too.

### 3. Reflections

The proposals contained in the document considered here are meant to replace the LTTE claim for a separate State of EELAM.

They are also meant to provide the Tamil minority with certain rights and powers which they as a minority with ancient roots in Sri Lanka never did have. Additionally, these proposals are meant to redefine the constitutional structure of Sri Lanka as it enters the twenty-first century. The present constitutional structure of a heavily centralised Unitary State, which was an important feature in constitutions drafted at the middle of the present century has now fallen out of fashion. The tendency today, with an overlay of human rights, fundamental rights and collective rights is to move constitutional structures into the area of devolution of powers and devolution of sovereignties. It is difficult to perceive that ethnic conflicts could be resolved only by war. At the end of the conflict the government is well advised to provide a constitutional settlement which would provide the Tamil community the social, economic and political goals, which they tried to achieve through war. The provision of such goals, and perhaps more, at the end of the armed conflict should provide the Sinhala majority with conditions for social and political stability without which the so called "rights of the Sinhala majority" may be of little or no value. It must be remembered that there are no minority rights and majority rights which could be weighed on fine scales in precise proportions. What there are, are conditions: social, economic and political within which both the minorities and the majorities may equally enjoy their rights. It must be remembered that the notions of majority rights and minority rights are of little or no value, unless the conditions necessary for their enjoyment were first secured and provided for the nation as a whole. Any constitutional changes proposed must therefore be of such a nature that they should not be a means for measuring, quantitatively and qualitatively, minority rights

and majority rights, but to evaluate the conditions that the Island should have as a minimum, to permit the fullest enjoyment of all rights, not as Tamils or Sinhalese, but as citizens of Sri Lanka. Such a constitutional dispensation at the termination of an armed conflict, becomes an important prerequisite, without which the social and economic changes which must follow to sustain the peace will not arise. In my view the proposals presently proposed by the government should not be considered as being carved in stone. They may, in certain areas, as indicated above, be considered merely, as starting positions, and certain further changes which may be deemed necessary to avoid future conflicts, such as on the question of Land, may have to be introduced. And at the end of the day, when the dust of conflict which had befuddled the hearts and the minds of a nation has settled, there must arise a new dawn where both ethnic groups the Sinhala and the Tamil may live together in amity, with the Muslims, the Malays and the Burghers, to create a new Sri Lanka. Towards this a new constitutional arrangement for the next century requires careful crafting.

## Chapter 3

# Devolution and Power Sharing: The Means to Peace and Development

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*Bertram Bastiampillai*

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The great American politician, Thomas P. O'Neil had observed that all politics is local. There lies an incontrovertible point about the relationship between voters and their representatives which has now unfortunately decreased owing to other pressures at national level politics. But if democracy is to be real, the decisions of the local elected officials actually should have the maximum impact on an ordinary citizen's life more than the decisions at the national level. Hence government at the local level is more essential.

Subjects like sanitation and its effects on the health of the village, the town and the province or how would a region find funds to build a dispensary or hospital have become actually more important to the average people than abstruse policies. The construction and repair of roads, the siting of shopping centres and the establishment of manufactories in residential areas have a more direct relevance to the quality of the lives of people in the outer lying areas. These may appear to be mundane but to the usual citizen they are more meaningful and he has strong views on them. And decisions regarding these issues which impinge on the lives of the average citizens should naturally be taken at the regional or local level, and not at the centre remote from the problem.

Devolved administration therefore, be it legislative or executive, has to be lively and strong. Hence a system of power sharing among levels of government, central, provincial and perhaps

even below, needs to be created. In the suggested plan of devolution for Sri Lanka the Constitution is expected to enumerate the central government's powers and in a separate schedule the powers allocated to the units of devolution and the entire set up is to be called a Union of Regions. The plan of devolution is useful in the practical running of the people's lives and has been discussed in this article later.

Below the region would be a special set-up for Colombo and the metropolis since this area has unique features. In the other parts of the island municipalities, towns, divisions and villages are to exist. Some of these local bodies have the power to elect their own officials, levy taxes and act within the spheres delegated to them, and they are under the region's purview. Critics have found in the devolved and decentralised system a certain measure of redundancy and sometimes complain of confusion. But this drawback is valuably offset by the practice of democracy that the system could make possible and hence will be popularly satisfying. Popular participation in public affairs is a significant civic virtue that would enhance the quality and accountability of administration.

Devolution and decentralisation afford opportunities for debating and indicating with greater precision and accuracy the issues of local public interest. It is true that there are different administrations such as the one at the apex, the central government, then the provincial set up, and so on. At times responsibilities too could unavoidably overlap between the administration at different levels. However, if subjects that come under the purview of the respective administrations are clearly specified such overlap is avoidable or could seldom occur. Devolution in practice means democracy will be working from "bottom up".

In a pluralist society, as in Sri Lanka, separate regional institutions need to be provided as far as possible for different ethnic groups which devolution permits. At the same time, the group would share some common institutions such as the basic constitution, same laws or the jurisdiction of higher courts. But the units to which authority is devolved will be allowed another set of exclusive institutions in other spheres such as the legislative and executive. The intention is to recognise and preserve the special and peculiar interests of the regional units like in their language.

In a tolerant plural society, which Sri Lanka should create, full participation and protection ought to be accorded to the numerically lesser groups as those in a region. Then apart from the formal plural political institutions and effective arrangements implied in the proposed devolutionary plan, pluralism also has to be informally safeguarded and conventions have to be cultivated so as to create, even central cabinets with an ethno-linguistic composition as well as such a judiciary, a foreign service, and other statutory bodies and so forth.

Evidently in a society deeply divided, rifts being politically based on differences such as on ethnicity, religion and language, clearly there can only be peaceful government with the consent of the diverse communities in the regions. This is clearly illustrated in the case of Northern Ireland vis-a-vis the United Kingdom. Coercion cannot be a substitute to consent which would be gained by sharing of powers. Italy affords another example where power sharing had to be relied upon to maintain unity.

Italy chose to follow regionalism. Five special autonomous regions were vested with extensive powers, sometimes because of communal problems as in the South Tyrol which has a large German speaking minority that was yearning to reunite owing to irredentist inclinations with the Austrian Tyrol, and sometimes owing to salient geographical separation from Italy coupled with a local desire for autonomy as in Sicily and Sardinia. These regions had regional councils with their own executive set-up with a president, taxing authority, a share in national taxes, financial autonomy, controls over urban and local police, roads, regional transport, town designing, local government, agriculture and industry.

The arrangements in the Trentino-Alto Adige region and its province of Bolzano offer a good example of contrivances to contend with minority problems. Considerable autonomy is allowed to Bolzano which is largely German speaking while at the same time the Italian community does not suffer as a result. The South Tyrol question was handled "partly by international pressure, partly by terrorism and partly through willingness by the Italian Government to make concessions and to compromise".

It is of interest to note the way in which the political claims of the minorities were satisfied. German was made an official language

granting it equality with Italian, education was largely left to local control thereby decreasing disputes over it and proportional representation was used in elections as well as in other matters such as access to administrative positions. This sort of power and administration sharing was arranged to end the mistrust and suspicion that had clouded the relations of a German minority in an otherwise Italian region. It certainly has lessons for a Sinhala majority in Sri Lanka coexisting with other minorities either spread within the island or concentrated in areas.

Belgium furnishes another illustration of accommodative political power sharing. In Belgium the prevalence of people of two racial stocks and with religio-linguistic differences tended to prove divisive. The country dealt with such problems by constitutional amendment, legislation, and above all compromise which are all needed in Sri Lanka. Only the strong could compromise. The Regional organs operate in the general political, economic and cultural fields and there is to be a re-distribution of power between Parliament and the King and his Ministers and regional institutions. It should be remembered that it is the realities of economic power and political relationships that can determine meaningful regional autonomy.

Regional autonomy, allowed to distinctive communities, helps consolidating rather than breaking the State. In Spain, in the late 1970s, there was the plan of transforming the centralised state into a decentralised structure along with a devolution of authority and functions to outlying regions such as to the intractably recalcitrant Basque country and to Catalonia. Consequently the separatist tendencies in the Basque and Catalan regions diminished and the central government's legitimacy got fortified. Basque and Catalan identities came to be complementary to and not opposed to a broad Spanish identity. Basque separatism decreased in popularity when the Spanish state got more clearly democratised and the desires of distinctive communities were considered in an accommodative spirit. Then "mutually supportive, legal and effective memberships in substate (Catalan), state (Spanish), and suprastate (European) polities emerged".

People quote the collapsed revolution in the former USSR or in Yugoslavia to demonstrate that devolved arrangements collapse. But be it in the USSR or Yugoslavia or in former South Africa actually

"institutional camouflage" covered up the limited or even almost absent autonomy that apparently had been afforded to regional territorial entities. There was hardly any content or effectiveness allowed to be practically there in the devolved structures.

The end of the Cold War broke the rigid central control that Moscow and Belgrade had wielded over the Soviet Union and Yugoslavia. No sooner than the old Communist Governments forfeited their legitimacy, the two countries fragmented along nationality divisions. If the divisions truly had enjoyed substantial power the varied and articulate ethnic groups would not have rent asunder as the minority groups would have experienced the means to make their voices heard - The Centre then would have held, and had not fallen apart. The Soviet Union was a federation but federalism expects a democratic framework which was never there. The Soviet Union instead was not only a "federation" but also really at the same time it was governed by dictatorship rule managed from Moscow, and with no real power left to the republics. Once the dictatorship or authoritarianism evaporated in the USSR and Yugoslavia, "federation" too dissolved.

In Canadian Quebec, the quest for independence was re-supported in the beginning of the 'nineties. It did not necessarily imply that federalism drove people towards separation. The claim was for real autonomy. The Meech Lake Accord of June 1992 had been rejected. If implemented it would have increased and widened Quebecois' autonomy. The Accord's rejection was regarded by the French Quebecois as a dismissal by English Canadians of moderate and minimal reasonable demands for more meaningful autonomy. Frustrated, the Quebecois turned toward independence. Then when emotions raged strong most of those in Quebec preferred to wrest greater autonomy than independence and in 1992 fifty two per cent of the inhabitants indicated it. Clearly wide ranging decentralisation and devolution of authority and power to constituent regions help to keep them together than to disintegrate. The phobia that devolution will be disastrous to a country is baseless, and again the Canadian experience with the referendum in Quebec in November 1995 proved this. But it also gave warning that true autonomy is indispensable to bind together the country.

Regional offices in Sri Lanka if devolution is to mean much in practice, need to be staffed by regional civil servants with authority to implement distinctive regional policies. Such offices ought to be headed by a Regional Minister from the Board of Ministers under the Chief Minister, and the respective Minister can by his clout in the Board secure the adoption of the distinctive regional policies proposed by him. This should form an essential feature of autonomy and is now being mooted. In the divisive communal situation that has sadly developed in Sri Lanka since 1948, difficulties will prevail in striking a balance between democracy, local feelings, and efficiency and national interests. These problems have to be avoided or overcome. As in Sri Lanka, strained by communal divisions, regional governments can in some areas appear to become divisive particularly as communities live interspersed. Here the fear will be domination of one small community by another bigger one. Intense communal divisions along with dispersed communities can inhibit pluralistic co-operation, and instead encourage majoritarian domination. In such places, boundaries could be redrawn and perhaps each community could manage its own area of habitation. This may be some form of a solution.

Enhanced agricultural productivity within areas could result only from the attitudes and commitment toward production developed in regional institutions. Regionalism accompanied by devolution will tend to strengthen the feelings of group identity that will help local ethnic communities to preserve themselves against being assimilated while it will not deter healthier integration into the larger society when confidence and trust grow.

In Sri Lanka religious, ethno-linguistic and communal differences have contributed to division. And the nationalism that developed proved to be endowed with an exclusivist ideology. The majority succumbed to the temptation of being unaccommodative and preferred unchallenged hegemony, adopted majoritarian attitudes and force as was demonstrated in 1948, 1956, 1958, 1972 and so on, and remained reluctant to grant due rights to numerically smaller groups such as the Tamils be they of the hill country or of the north and east. In turn, the Tamils also responded by being reactively nationalist and even sought their own rule. Now a compromise is needed from both sides. Unfortunately, majoritarianism tended at times to be concessional

when it instead should have accorded just, due, and reasonable rights. In turn, some of the Tamils grew militant and a few of them even threatened secessionism. This was because compromise was not seriously considered nor adopted; coercion alone was considered and implemented.

New institutional arrangements are imperative to dilute conflicts in multicultural Sri Lanka. Such arrangements can gradually be accompanied by the growth of accommodating attitudes between the majority and minority groups. To hasten this process, equality and non-discriminatory principles should be legally ensured; devolutionary arrangements need to be implemented; proportionally representative voting can be useful; the Police and security forces should not be perceived to be dominated by the majority group; and equal official treatment of language truly should be practiced. Generally the groups and individual members should be securely protected. Then stability and satisfied minority groups might survive in a genuinely multicultural society.

Now in regard to regions, it is not their extent but their resources that matter most. A large region can be poorer than a smaller region endowed with minerals and gems, with a fertile soil and a climate conducive to the production of profitable export crops. Some regions may be bounded by the sea while others may have hills; some may be having better rainfall while others may depend on precarious rainfall, and some may benefit from rivers and waterfalls. The obsession with the extent of land a region will contain is not so meaningful: it is viability that matters more.

Devolution will survive if built on trust and if there is the will to accept all citizens as equals of the one and the same country. To create confidence among communities and regions, power has to be effectively shared by the Centre with the Regions and their peoples. There is nothing that is sacred and unalterable in a constitution since constitutions embody agreed upon social and political arrangements, and are compacts.

If endless strife is to be ended the way may be the accommodation of different identities through the construction of "flexible, dispersed, diffuse sovereignties". Institutional designs of decentralised, democratically answerable regional structures that

bestow "distinctive national formations" a sense of belonging to Sri Lanka have to be created. Such structures should be empowered to negotiate terms by which economic and political unions can be created among the regions. The identification of one nationality with nationalism in a plural society can only engender intolerance of other nationalities.

Writers like Ruth Lapidot (1992) and Allen Bucharian (1993) have cogently and convincingly discussed the need to re-think the understanding of "state" and "nation" and urged governments to reformulate the notion of sovereignty to accommodate both which can exist separated. The challenge is to plan out and execute new and well conceived structures that could associate diverse peoples so that they live together peacefully while freely joining together in important areas of common interest and concern in order to secure and improve the well-being of all.

The currently aired proposals of devolution, discussed below, may prove to be a turning point. They could help the development of peripheries and heal ethnic strife too.

Proposals for devolution in Sri Lanka have been thought of even earlier but in a half-hearted manner and in an incomplete form. In the 1920's when constitutional reform was being contemplated by the British colonial overlords, there were representations from an association of Kandyans who advocated a federal form of government with Sri Lanka (Ceylon) being divided into three areas with authority being devolved upon these divisions. Likewise, S.W.R.D. Bandaranaike, a later Prime Minister (1956-1959) in independent Sri Lanka, had also spoken of a federal set-up for the island as he felt that the country was a plural one where diverse ethnic groups would like to preserve their identity in an autonomous region.

Since independence (February 4, 1948) on more than one occasion proposals for devolution of power and responsibility were conceived of but no successful delivery occurred. Again S.W.R.D. Bandaranaike, Prime Minister as an answer to ethnic discontent among the Tamils planned to create autonomous provinces in 1957 while Dudley Senanayake thought of some devolution to districts in 1965 for the same reason. However, both the plans never materialised. Then in 1980 devolution in the interests of carrying out

administration to meet the needs of those in the peripheries was attempted but with little success.

Finally Sri Lanka was forced to accommodate the practice of devolution following the worsening of the Sinhalese-Tamil conflict which occasioned the intervention of India. An Indo-Sri Lanka agreement in July 1987 made it essential for the government to create Provincial Councils and devolve authority to them in eight provinces, one being a merged province of the north and east where the Tamils mostly lived. Two pieces of legislation, the 13th amendment to the Constitution of 1987 and the Provincial Councils Act of the same year, provided the legal instrument of such devolution. Nevertheless strong unitarian tendencies and controlling attitudes made devolution a reluctant and unsatisfactory exercise in practice. As a result the ethnic conflict in the island escalated and violent separatist tendencies began to manifest themselves among the militants, the Liberation Tigers of Tamil Eelam.

According to the proposals for devolution now being discussed the President of the island and Parliament would manage subjects that are not transferred to the region and those affairs pertaining to the maintenance of sovereignty, integrity, unity, security and the progress of the country as a whole. Meanwhile, the regions' legislative powers would lie in the Regional Councils. They could enact Laws and exercise executive powers in regard to those subjects that are specifically listed which include Law and Order, Administration of Justice, Social and Economic Development, Cultural Affairs and Land Policy. As devolution is now being conceived of the matters which are to be left to the Regional Councils echo more or less a similar thinking as that in vogue in the 1980s but the currently proposed arrangement would in addition ensure all persons, fully and effectively, to exercise their human rights and fundamental freedoms without discrimination and equally before the law.

Regional Councils are to be allowed to tax, mobilise financial resources via loans and there is provision for a Finance Commission to be created to oversee the allocations to the diverse regions. A High Court also is to be established in each region for judicial matters to be dealt with. For conducting executive business, a Regional Service is to be set up and a region is to have a Regional Public Service

Commission that would recruit, officials and exercise disciplinary authority in respect of the personnel in the Regional Service. These plans have been incorporated and in a coherent and lucid manner with little room for doubts or distrust. But, of course, in some matters rethinking and reformulation of ideas would be of use and perhaps even essential. The present proposals on devolution reserved for Central Government management Airports, Harbours and Ports handling international transportation. This provides a clear enunciation in regard to places of national importance and leave little fear that Trincomalee has been surrendered to a particular region.

The present devolutionary proposals however are forthright, comprehensible and inspire more confidence among inhabitants of a region that their lands would be allowed primarily to be utilised by those within that region. All other schemes of devolution in earlier times had remained mere promises. Devolution did not come to pass in practice at all. Now there is a greater ring of sincerity in the plan to devolve. Earlier, hopes were aroused but not fulfilled.

The Chief Minister was left in an attenuated position according to the present prevailing scheme of 1987. The Councils were starved of adequate funds and by introducing the practice of deciding what is National Policy by the Centre and confiscating subjects under it from provinces, the Centre left little to be done by the periphery. In regard to vital subjects such as law and order there really was no devolution. There was a concurrent list and naturally the Centre with its overmighty Executive snatched much that ought to have been left to the Province. The creation of Divisional Secretaries controlled by the Centre was an act that made devolution of little practical use.

Clearly devolution cannot be viable so long as there is an over-bearing Centre. The present proposed arrangements however have made explicit that an overseeing Centre will not intervene to stultify devolution. The abolition of the concurrent list and enhancing of the devolved list reinforces devolution of power and responsibility to the regions. The deletion of Article 76 of the Constitution provides greater room clearly for effective power sharing. In brief whatever stymied devolution earlier has now in the present plans been to a fair extent eradicated.

According to the present proposals the Governor will be

appointed by the President with the concurrence of the region's Chief Minister. Moreover the Governor could freely function without being dictated to by the Centre any more. The constitutional position of the Governor has been secured from being subverted by tampering with his independence and suborning his impartiality. The Governor could observe conventions of parliamentary democracy in choosing a Chief Minister or in regard to the dissolution of a Council. The norms of democracy prevail in the proposed set up and sharing of authority is allowed.

Then the way in which devolved finance is to be dealt with in terms of the fresh proposals is also welcome. Without resources to the regions being adequately allowed, Councils cannot function using devolved powers and discharging responsibilities. The regions could collect taxes, borrow and even avail themselves of foreign exchange for fostering economic development. Authority has now been given to regions to generate and acquire funds, both local and foreign.

Additionally, another commendable feature in the present proposals is that centralization is reasonably checked. More room and space has been permitted for regional autonomy to prevail. The Centre will not be a hindrance to self-management in devolved areas.

The preamble to the proposals makes it evident that the underlying imperative beneath the presently thought out devolution is a peaceful resolution of the ethnic conflict. All communities in Sri Lanka are to live in security; human dignity is to be valued and equality of treatment in public life is to be ensured. Identities of the different communities are not endangered and participation of them in the national life is assured. It is acknowledged according to the proposals that we are to live in a plural society. No community is likely to be subsumed by another.

Decentralization and devolution are coupled with an accommodation of ethnic diversity. Political and administrative power in terms of the new proposals are territorially devolved. The proposals for devolution provide for power sharing among different ethnic groups. Political conflict is being averted by providing alternative sites of authority and the proposals could usher in a pluralistic democratic order while accommodating sub-national identities within the ambit of an overarching national identity. Devolution will recognise

diversity while giving a place to all groups in the state machinery. It can be emphasised that secession often erupts when autonomy is denied. Certainly the current proposals could help in averting separation or secession. It is peace and with its absence of discontent among peoples that leads to better security and removes threats to the island's integrity.

## Chapter 4

### Devolution of Power, The Problems and Challenges

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*Neelan Tiruchelvam*

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Leonard Woolf the literary critic and publisher was a colonial civil servant in Ceylon from 1904 to 1911, and served both in Jaffna in the extreme North and in Hambantota in the deep South. Many years later in 1938 as an advisor to the Labour Party he reflected on the questions of minority protection and constitutional reform. He argued in favour of a constitutional arrangement which ensured a large measure of devolution or the introduction of a federal system on the Swiss model. Woolf added that "The Swiss federal canton system had proved extraordinarily successful under circumstances very similar to those in Ceylon, i.e. the co-existence in a single democratic state of communities of very different size, sharply distinguished from one another by race, language and religion."

Despite the foresight of Leonard Woolf almost six decades ago, Sri Lanka's failure to lay down the constitutional foundations of a multi-ethnic society based on equality, ethnic pluralism and the sharing of power has exacerbated the ethnic conflict. As a consequence Sri Lanka has been besieged for years by ethnic fratricide and political violence. The proposals of 3rd August 1995 represented the boldest attempt to redress the imbalance in the relationship between the different ethnic groups through devolution of power to the regions.

Several measures were introduced recently to redress the perceptions of injustice and discriminatory treatment felt by the Tamil

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This article has been reconstructed from an interview with Gamini Weerakoon over TNL.



and Muslim minorities. The first of such attempts was to address the residual issues relating to statelessness by the Grant of Citizenship to Stateless Persons Act No. 5 of 1986, and the Grant of Citizenship (Special Provisions) Act No. 39 of 1988. In the realm of language, Tamil was progressively made a national language in the second Republican Constitution in 1978, and subsequently made an official language in 1987. As a consequence of these changes, Sinhala and Tamil are the languages of legislation, administration and of the courts; although many problems remain with regard to effective implementation of the policy of bilingualism.

## Provincial Councils

However, the most significant measure to redress the imbalance in the relationship between the different ethnic groups in the country was the devolution of power to Provincial Councils by the Thirteenth Amendment to the Constitution. This scheme envisages the devolution of legislative and executive authority to eight provincial councils which were constituted within the country. The structure of the devolutionary system envisages the election on the proportionate representation system of a legislative body known as a Provincial Council. Each province would have a Governor appointed by the President. The Governor holds office during the pleasure of the President but may be impeached by the Council if he intentionally violates the constitution or is guilty of misconduct or corruption. The Governor shall also appoint a Chief Minister who in his opinion is best able to command the support of the majority of the members of that Council. There shall in addition be a Board of Ministers of which the Chief Minister shall be the head. The executive power in respect of the devolved subjects shall be vested in the Governor, who shall however in the exercise of the functions act in accordance with the advice of the Board of Ministers unless he has been expressly required by the constitution to act on his own discretion.

The subjects and functions to be devolved on the Provincial Councils are set out in the 9th Schedule to the Constitution which is called the Provincial Council List. The subjects include police and

public order, provincial planning, local government, provincial housing and construction, agriculture and agrarian services, rural development, health, indigenous medicine, cooperatives, and irrigation. In respect of subjects such as law and order, education and land, the scope of devolution is further defined in Appendix 1, 2 and 3. There is also a Concurrent List of subjects where the centre and provinces enjoy concurrent authority. The Reserve List defines a sphere of exclusive authority of the centre and includes areas such as defence and national security, foreign affairs, post and telecommunications, broadcasting, television, justice, foreign trade and commerce, ports and harbours, aviation, national transport, minerals and mines and elections. An unusual feature of the reserve list which has caused uncertainty is a provision that national policy on all subjects and functions shall belong to the center.

On the financing of devolution, it was envisaged that provincial councils would be financed through direct grants by the centre, limited form of taxation, and revenue sharing arrangements. There is also a Finance Commission consisting of 5 members empowered to make recommendations with regard to allocations from the annual budget of funds adequate to meeting the needs of the province. The Commission has also the power to make recommendations with regard to making apportionment of funds between various provinces having regard to the objectives of balanced regional development in the country.

In addition, the devolutionary scheme envisages the establishment of high courts in each province to exercise original criminal jurisdiction and appellate and revisionary jurisdiction in respect of criminal matters. In addition, the Provincial High Court had been conferred the jurisdiction to issue prerogative writs such as habeas corpus, certiorari and prohibition in respect of any matter set out in the Provincial Council List.

The political and constitutional contexts within which the Provincial Council scheme was evolved has continued to constrain the effective working of Provincial Councils. The scheme was an integral part of the Indo-Sri Lanka Accord entered into on 29th July 1987 and signed by President J.R. Jayewardene of Sri Lanka and Prime Minister Rajiv Gandhi of India. The Accord endeavoured to provide a conceptual framework for the resolution of the ethnic

conflict and to outline institutional arrangements for the sharing of power between the Sinhala and Tamil communities. The Accord declared that Sri Lanka was "a multi-ethnic and multi-lingual plural society" consisting primarily of four main ethnic groups -the Sinhalese, Tamils, Muslims and Burghers. It further recognised that the northern province and the eastern province "had been areas of historical habitation of the Tamil-speaking population". Both these statements had important ideological significance in framing the policies of bilingualism; the provincial council scheme; and the temporary merger of the northern and eastern province as the unit of devolution.

The framers of the Indo-Sri Lanka Accord had hoped that they would present the political groups in the north-east and the south of Sri Lanka with a 'fait accompli' and that they would progressively build a consensus around the main concepts and ideas embodied in the Accord. These expectations however proved to be unrealistic. Both the LTTE, the dominant politico-military formation in the north-east and the JVP repudiated the Accord and questioned its legitimacy. A controversy surrounding the Accord ultimately led to an armed confrontation between the LTTE and the Indian Peace Keeping Force and to an insurgency in the south of Sri Lanka. These developments cast a dark shadow over the working of the Provincial Council system. Elections to the Provincial Councils were held in April and June 1988 but the Sri Lanka Freedom Party, the main Opposition party did not participate in this exercise. Similarly the elections to the north-east provincial council held in November 1988 were deprived of their legitimacy due to the opposition of the LTTE and the difficulties in conducting free and fair elections. The devolutionary experiment in the north-east was shortlived and lasted from November 1988 and mid March 1990. It remains a cruel irony that the north-east provincial council remains dissolved and all legislative and executive power is vested in the Governor of that province.

The Constitution framework also proved to be problematic. Section 2 of the Sri Lanka constitution entrenches a unitary state and this conception of the unitary state has influenced the outlook of the bureaucracy and the judiciary in the resolution of centre-provincial disputes. The executive presidency inevitably led to a concentration of power and authority in the centre, and constrained the meaningful

devolution of power to the provinces. The divisional secretariat system resulted in further extension of the authority of the centre at the sub-district level.

Various disingenuous methods were employed to reconstitute the centre powers relating to transportation and agrarian services. The centre also exercised an excessive degree of control over finances, and devolution of powers in the area of land and law and order were incomplete. These developments have led to concern that there was a reluctance on the part of the centre to part with power and that there was consequently a lack of sincerity in implementing the scheme of devolution.

With the installation of a new government in August 1994, a Select Committee of Parliament has been constituted to engage in a comprehensive reform of the constitution including the possible repeal and replacement of the existing constitution. At the centre of this exercise would be a new package of proposals on a comprehensive devolution of powers. The Select Committee will reassess the existing constitutional framework relating to devolution, the possible transfer of all if not most of the subjects in the Concurrent List to the Provincial List and the framing of imaginative arrangements for the resolution of the centre-provincial dispute. This exercise will also need to provide for assured means of financing devolution.

## Constitutional Reform Proposals

The proposals that have been made before the Select Committee of Parliament relate essentially to the political and constitutional framework for the sharing of power between the North-East and rest of the country. They also relate to problems of equality in terms of language and equality of opportunities. The third issue relates to institutional arrangements which ensure that when there are disputes between the centre and the province these disputes will be addressed in a manner which is consistent with the spirit and substance of the constitutional framework. And fourthly, some assurance that whatever political framework is agreed upon will not be subsequently abrogated or amended in a manner detrimental to the Tamils and

Muslims. These are the four broad areas which need to be addressed in an overall political solution.

Meanwhile the main problem in terms of restoring democracy to all parts of the country is the need for a political solution. If you look at similar conflicts in other parts of the world, take for example the Middle East conflict, as a result of the Oslo and Cairo agreements, a certain measure of autonomy was conferred on the West Bank and in Gaza. A devolved authority was established but it was recognised in these agreements that peace and democracy may not arise at the same time. There has to be a time frame, a transitional arrangement to ensure that once peace is established, there is an authority which can administer the areas during the transitional period, in preparation for the conduct of democratic elections. In our situation too, there are similar considerations which may be relevant.

## **Fundamental Rights and the Rights of Ethnic Groups**

Effective securing and guaranteeing the rights of various ethnic groups is a very important aspect of the constitutional reform process. Here we are looking at three different kinds of constraints. Firstly, the need to more effectively strengthen individual rights. The right to life, for example, is not expressly protected in the Constitution; nor is the right to privacy expressly protected. There are certain rights with regard to the rights of the accused when they are interrogated which need to be protected. They are known as the Miranda rules in the United States. When a person is arrested by a Police Officer he has the right to counsel, and the right to remain silent; these are important procedural rights which need to be secured. So the first task in terms of strengthening individual rights would be to incorporate certain rights which are recognised in the International Civil and Political Covenant, and make them part of our laws.

The second constraint relates to what are known as 'derogations' and limitations of fundamental rights. In times of emergency or in the interests of national security or the national economy, parliament may by law or by emergency regulation derogate

from or limit these fundamental rights. It has been a very strong view of constitutional lawyers and human rights activists that the limitations in the present constitution are too sweeping and they need to be rationalised.

The third constraint relates to having more effective remedies. One of the proposals that is being considered intends to ensure judicial review of legislation. In addition to pre-enactment review, we will have a certain opportunity to challenge legislation which violates fundamental rights. There is also an attempt at what we call democratising remedies, meant to extend the period of time within which the fundamental rights challenge could be invoked. It will also allow public interest groups to intervene on behalf of a person who for reason of poverty or other disadvantage, is unable to intervene on his/her own behalf.

## **Enhancing Devolution**

Is meaningful devolution possible within a unitary framework? Dr Colvin R. de Silva used to say that there is nothing called a unitary constitution which is locked up in some mythical vault in heaven with which one could compare a constitution and say whether it is unitary or not. So the question of whether a constitution is unitary or federal is a matter on which there has been a considerable debate. In India, for example, this issue has been very vigorously debated. But it is our strong conviction that in a unitary constitution the centre has the power of overriding either legislative or executive authority of the devolved unit. We have seen this in Sri Lanka, in a number of important areas such as agrarian service, education, and transport, where the authority of provincial councils has been legislatively and administratively overridden during the last several years.

The judiciary in most countries does not function as a neutral arbitrator between the Centre and the Provinces, particularly within a unitary framework. In such systems the judiciary seems to function rather as an extension of the centre than a neutral arbiter between the centre and the provinces. This again has led to a considerable concentration of power and authority in the centre and to consequently

weaken and dilute devolution. In the Sri Lankan context, there is another complicating factor, which is the Presidential System. In the Presidential system, power tends to gravitate towards the Centre, and when you have an active, interventionist Presidency, (as we have had in the period of former President Premadasa) we found that certain sub-district units, divisional secretariats, were established, which were controlled directly by the Centre. The devolutionary exercise was weakened and somewhat undermined by the creation of these subdistrict units throughout the country.

There are many problems with the devolutionary framework which was introduced after the Indo-Sri Lanka accord. The first is the constitutional framework. The second is in regard to the distribution of power between the Centre and the Provinces. There is the question of 'national policy' on all the devolved subjects which was vested in the centre. Under the guise of national policy, what was given with the left hand was effectively taken away with the right hand. In a number of instances such an erosion took place of the devolutionary arrangement. Finally with regard to financing, there is extreme dependence of the Province on the Centre. And there are many provinces — even the North-east Council, which is administered by a Governor — which are in the midst of a serious fiscal crisis.

The changes that are currently being considered in the system of devolution are not marginal or modest changes; rather, they envisage a fundamental reconstruction of the distribution of powers by the Centre to Provinces. They further envisage more effective mechanisms for ensuring that the Centre does not intrude or encroach upon the powers of the Provinces. More effective arrangements for settling of disputes between the Center and the Provinces and a measure of assured finances for the Provinces are also being proposed.

The legal text of the chapter on devolution released by the Government on 16th January 1996 represents a further step in the process of constitutional reform. Within the Select Committee, the debate will focus on the continuities and discontinuities between the August proposals and the more recent legal text. The continuities are seen in the definition of the nature of the state, the political structures of the devolved unit and the subjects and functions devolved. Some Tamil political parties have however complained that there is a tilt in

favour of the center in relation to the powers of dissolution and in the distribution of police powers and subjects such as irrigation. The unit of devolution would remain the most contentious issue and is likely to be addressed if a consensus is forged on the substance of devolution. The United National Party would be a critical factor if a two-third majority is to be secured in Parliament. A further hurdle that would need to be overcome is a national referendum to be conducted throughout the island. If however the two major southern political parties, People's Alliance and the United National Party are supportive of the exercise, there are realistic prospects of success at the referendum.

One of the limitations of the Indo-Sri Lanka Accord which provided the basis to the Provincial Council scheme introduced in 1988 was that while the Accord called for a redefinition of the Sri Lankan polity, it did not bring about a change in the unitary character of the Sri Lankan state. The Accord did declare that Sri Lanka was a multi-ethnic, multi-lingual plural society consisting primarily of four main ethnic groups - the Sinhalese, Tamils, Muslims and Burghers. However no change was envisaged in Section 2 of the Sri Lankan Constitution which entrenched the unitary state. This conception of the unitary state influenced the outlook of the bureaucracy and the judiciary in the resolution of center-provincial disputes. Various disingenuous methods were also employed to re-vest in the center powers relating to transportation, agrarian services and education. The August 3rd proposals redefined the nature of the state as a "union of regions" drawing on the language of the Indian constitution. Sri Lanka was further described as a "united and sovereign Republic". In the present legal text, there is a reworking of the language without any attempt to alter the substantial impact of this provision. The Republic of Sri Lanka is now described as an "indissoluble Union of Regions" and thereby interpolating an archaic phrase drawn from the Australian constitution. This framework was necessary to ensure that exclusive legislative and executive competence could be assigned to the regions within the devolved sphere.

With regard to the subjects and functions to be devolved on the regions, most of the subjects and functions which were previously in the concurrent list were transferred to the regional list. This would significantly strengthen the capacity of the devolved authorities to

adopt an integrated approach to social and economic development of the region and thereby seek to redress regional disparities in development. A contentious issue has been devolution of powers in relation to land. The legal text makes it clear that state land shall vest in the region and the Regional administration shall be entitled to transfer or alienate land and engage in land use and land settlement schemes. The centre may however for the purposes of a reserved subject request a Regional administration to transfer state land to the centre. There is an obligation on the part of the center to consult the region with regard to such requirements. The legal text also provides that Inter-regional irrigation projects where the command area falls within two or more Regions would be the responsibility of the centre. This provision is also found in the Provincial Council Scheme although the selection of allottees and the alienation of land under such schemes were within the powers of the Provincial Council. This is a matter which will require further clarification. Law and order including the maintenance of public order have been clearly devolved on the Region although there would be disputes as to whether the investigation of offences relating to the reserved list of subjects should be vested with the regional or national police service.

An innovative arrangement envisaged by the scheme for the settlement of inter-regional disputes is the Chief Minister's conference. The conference which is to consist of chief ministers of all the regions has the power to take all actions and measures which are necessary to ensure full compliance with the chapter on devolution in accordance with the spirit and intention of the constitution. The conference also has the power to settle disputes between the regions through mediation and conciliation and where such efforts fail, refer the matter for adjudication to an arbitral tribunal constituted by the disputing Regional Councils. If the Chief Ministers' conference is to play a meaningful role in the implementation of this scheme, its jurisdiction must clearly extend to the resolution of centre-regional disputes.

## **Muslim Question in the East**

With regard to the Eastern Province, there is clearly a need to have meaningful and adequate institutional arrangements for the

Muslims there if we are to evolve a durable solution. There are many options which are being put forward. One is a power sharing arrangement which would ensure that Muslims will be able to enjoy representation in the legislature and the executive proportionate to their demographic presence in that area. Secondly, there is the need for some means of equitable sharing of resources between the Muslims and the other communities with regard to issues like economic development, land, financial resources, credit and educational opportunities. This is one type of approach, which is essentially an arrangement for the Muslims to participate meaningfully in a devolved administration.

The second is to consider a kind of devolutionary arrangement which will involve areas which are not territorially contiguous and coming together in some kind of shoe-string manner. The third will be to consider carving out a contiguous Muslim area. If we take, for example, the former electorates in the Ampara district which are preponderantly Muslim like Pottuvil, Kalmunai, Samanturai, then we will be able to consider whether some kind of devolution of power could be worked out to that contiguous Muslim enclave.

Perhaps, a non-contiguous devolution will be extremely difficult to administer, because of the heterogeneity of population. It will be administratively and politically difficult to distinguish between one category of citizens who will be accountable and responsible to one political authority and another category of citizens living in the same village or in adjoining villages being responsible to another. So while there is the legitimate concern that the security and identity of the Muslims who live outside this contiguous enclave need to be protected (and we need to find a mechanism to do that), I think the idea of non-contiguous areas linked together would pose problems of implementation.

## **Unit of Devolution**

The proposals that were presented by the political parties from the North-East before the Select Committee envisages the unit of devolution which would link together the Tamil majority areas of

the Northern, and Eastern provinces. In making these proposals they recognised that there may be firstly the need to make special arrangements, institutional arrangements, for the Muslims and the need to consider the possibility of some adjustment of the boundary in the North-East province. These are the three elements which should form the basis of working out the unit of devolution.

In defining the unit of devolution, the principle of territoriality is important. The principle of territoriality in a way reinforces the pluralistic character of Sri Lankan society. This is a principle which is quite fundamental to any meaningful scheme of devolution.

The problem of power sharing of minorities is one which has arisen in several contexts, and it is not an easy problem to resolve. However, through the territorial principle, we are able to look at alternative ways of sharing power with which most of the people of Sri Lanka would be quite comfortable.

The devolution of powers is at the centre of the contemporary political and constitutional discourse in Sri Lanka. It is critical to resolution of the most vexed problem facing Sri Lanka - the national question. Any approach to this problem must be predicated on the inextricable link between peace, ethnic reconciliation and development in Sri Lanka.

## Chapter 5

### Towards a Compromise Solution

*Sumanasiri Liyanage*

The devolution proposals presented by the Peoples' Alliance government in August have evoked diverse responses and reactions. The LTTE and some Tamil groups in Colombo have rejected them. The LTTE official organ, the *Inside Report*, said that 'to lay down arms for intangible proposals would not only be political suicide for the LTTE but national suicide for the Tamils'. They described the proposals as 'irrelevant'. Similarly, some Sinhala groups have expressed their dissatisfaction with the proposals. According to them, the proposals would eventually lead to a division of the country and so the proposals are not acceptable to the Sinhala people. A group of Sinhala elites have made a statement that the proposals 'instead of solving the North East problem' would 'aggravate it still further' and 'lead to the establishment of Eelam'.

In presenting the government proposals, President Chandrika B. Kumaratunga has said that the aim of these proposals was to meet not the demands of the 'extremists' on both sides but the aspirations of the moderates. The TULF President M. Sivasithamparam has expressed his view that the government's devolution proposals would win the overwhelming approval of the majority Sinhala population at a nation-wide referendum. The TULF and other Colombo-based Tamil parties have welcomed the devolution proposals. Dr Ranjan Hoole, a leading member of the University Teachers' for Human Rights, Jaffna, has described the proposals as a 'courageous step'. Outside observers have also praised the government's initiative. Dr Muni, a lecturer in the Jawaharlal Nehru University, writes:

The package is primarily addressed to the Tamil masses, including those living in LTTE-controlled areas of the north and the east. It is assumed that if proposals are effectively propagated, they would be generally welcomed, resulting in the erosion of the LTTE's social base and legitimacy, which is so crucial for guerilla fighters in their operations.<sup>1</sup>

The Sri Lankan government's initiative has been welcomed by the international community as a bold and sincere move to resolve the ethnic problem in Sri Lanka. However, there are many problems which have yet to be addressed to win the support of the Sri Lankan people for the devolution proposals. The first issue is whether the devolution package and the current devolution discourse would be able to provide a space for the so-called extreme elements. It may be a set of proposals to meet the aspirations of the moderate Sinhala, Tamil, and Muslim people. Had the proposals been presented some time ago, it would have produced the expected results. But, at present, extreme forces are in a position to determine the final outcome so that they should be regarded, whether we like it or not, as an element in the power configuration. So I think that the following words of Mr Kumar Ponnambalam contain an element of truth.

If the government wants to salvage the situation, it could do so only by announcing the stoppage of hostilities and requesting the Tamils in the North-East and the LTTE to consider the package, without having to look towards heaven for food or to see whether bombs are falling.<sup>2</sup>

Similarly, the fear expressed by some Sinhalese cannot be ignored just by alleging that they are none other than the Sinhalese chauvinists. In my view, what moderates should do is to provide a space within which not only the moderates but also the so-called

extremists could move towards a compromise. The whole concept and exercise of conflict management involves the provision of such a wide space. If the moderates tend to think otherwise, they may also end up as an incorrigible group of extremists. This is because the moderates may begin to assume that their views are total and totalizing so that nothing should be altered. In this article, I adopt a more conciliatory position.

Almost everyone seems to accept the need for devolution. But, at the same time, they emphasize that they are not happy with the proposed structure. One may have many reasons to suspect the accuracy of these statements. However, what is necessary is to take them as the point of departure. In my view, the devolution discourse should now take a radical shift. In this respect, the point made by Dr Rajan Hoole is important. He writes:

The TULF too would serve the cause of the proposals much better if it comes out of its Tamil nationalist trap and refrains from using expressions like Tamil homeland and Tamil self-rule. These had their relevance at one time, before the LTTE era. They are relevant as a form of discourse when a weak and oppressed minority appeals to international covenants in a bid to secure space for the preservation of its identity.<sup>3</sup>

Sinhalese 'moderates' also are making the same mistake. They reiterate the pre-package arguments and emphasize the need for devolution and the magnitude of the ethnic question. They also spend much time explaining how the ethnic question evolved historically. I think that we have passed the stage at which governments were hesitant to present proposals because they feared that the opposition would make political capital out of it. Similarly the opposition parties then behaved irresponsibly by rejecting any proposal for a peaceful settlement and by misleading the people. Today, the position is quite

<sup>1</sup> Daily News, August 19, 1995

<sup>2</sup> The Sunday Times, September 10, 1995

<sup>3</sup> The Sunday Times, September 10, 1995

different. The major opposition party, the UNP, has not come out against the proposals openly. In fact, some members of the UNP see the need to support the proposals. Though the LTTE's initial response was negative, it was reported recently that it may be ready to start talks with a neutral third party mediation. Above all, people want to see an end of the prolonged war. The Government should try to use this relatively favourable situation to arrive at a compromise solution. Tamil parties have expressed their fear and suspicion that the pressure from some Sinhalese-Buddhist groups would compel the government to introduce some amendments resulting in a dilution of the present proposals. So it is important that any modifications to the proposals should strengthen not weaken or dilute the spirit and the power-sharing element in the original proposals.

### Power-sharing and devolution

As Duchachek pointed out, constitutions may be regarded as 'power maps'. It is the law which governs the governors. In the current context, the rigid conventional division of constitutions as unitary and federal is not adequate. I identify four types, namely, unitarianist, regionalist, federalist and confederalist. In the set of proposals announced by the government, a devolution of power from the centre to regions has been suggested. Whether it will be a devolution within the unitary constitution (=regionalism) or within a federal structure is not clear. Under federalism, the regional units and centre are 'in some respects co-ordinate and not subordinate to each other'. There is also a constitutional guarantee of autonomy ensuring relative permanence to the existence of centre and units'. Furthermore, '[t]he federal principle of constitutional organization is designed to allow integrative and divisive forces to operate simultaneously'.<sup>4</sup> Regionalism is similar to federalism in distributing power territorially. However, it differs from federalism because a devolved legislature and administration are not independent of the central legislature and

<sup>4</sup> Palley, Claire, *Constitutional Law and Minorities*, London: Minority Rights Group, 1978, p.13.

'the central body can override the regional body's decisions by legislation, and sometimes even by administrative veto'.<sup>5</sup> According to Sherwood, devolution means 'the transfer of power to geographic units of local government that lie outside the formal command structure of the central government'. It goes beyond decentralization which implies 'the dispersal of power throughout the structure'.<sup>6</sup> The proposals put forward by the government suggest a spatial power-sharing arrangement. However, power-sharing may also have to include power-sharing arrangements at the centre as well as intra-region power-sharing. The absence of such an arrangement seems to be the main weakness of the government proposals. The introduction of some horizontal power-sharing features in the current proposals may help to eliminate the fear and suspicion expressed by some of the so-called extremists. And it may pave the way for a consensus.

### A Compromise between Communities

One of the most powerful obstacles in finding a compromise solution without diluting the spirit of the devolution proposals is history. Descrombes describes history as a "Western myth". Both parties involved in the current debate have their own historical interpretations. As Ernest Renan once remarked, 'getting history wrong is a part of being a nation'.<sup>7</sup> If we really need to come to a consensus, in my view, we should, at least for the time being, forget our own interpretations of history. Instead of posing the question whether there was/is a Tamil homeland, let us ask the question: Where do the Tamil majority live in contiguity? What is the

<sup>5</sup> *Ibid*, p.14.

<sup>6</sup> Sherwood, Frank P, 'Devolution as a Problem of Organizing Strategy', in Robert T.Daland (ed), *Comparative Urban Research: The Administration and Politics of Cities*, Beverly Hills: Sage Publications, 1969, pp. 60-87.

<sup>7</sup> Quoted in Hobsbawm, Eric J, *Nations and Nationalism Since 1780: Programmes, Myths and Reality*, London: Cambridge University Press, 1990.



geographical space that the Tamils occupy today ? According to the 1981 census which is the latest data available, 73 per cent of Sri Lanka Tamils (I use census categories) live in the Northern and Eastern provinces. In the Northern province, the Tamils comprise more than 90 per cent of the total population in the province.

Territorial delimitation may be worked out taking three principles into consideration. These principles are: (i) the existence of boundaries for a long period even by chance; (ii) administrative rationality; and (iii) ethnicity.<sup>8</sup> In the current Sri Lankan context, the existing provinces and ethnicity have to be taken into account. When the ethnic tension subsides, the rationality factor may be considered. Most Sinhalese, including Sinhalese in the Eastern province, tend to prefer devolution in terms of the existing nine provinces. The Tamils demand the merger of two provinces. The Muslims comprising nearly one-third of the population in the Eastern province also seem to prefer the *status quo*. How do we break this impasse ? One answer may be to redemarcate provincial boundaries amalgamating Sinhala contiguous areas with the North Central province and the Uva province and Tamil areas with the Northern province and creating a new Muslim region. The devolution proposals of the government seem to include an arrangement on these lines. However, this may, in turn, create new problems. In my view, the best solution is either to maintain the *status quo* and to accommodate Tamil demands by different means or to merge the two provinces permanently. In the present conjuncture, I would prefer the first alternative with the provision of redemarcation of boundaries after five years. Three suggestions may be made. First, an intra-province power-sharing arrangement may be introduced for the Eastern Province. Under this system, it may be provided that each party which receives more than, say 15 or 20 per cent of total votes cast be included in the regional cabinet (South African provisional constitution). As an alternative or complementary provision, the sharing of three major governmental positions in the regional council, for example, the office of Governor, Chief Minister and Speaker of the House, by the three ethnic groups

<sup>8</sup> See Coakley, John, (ed), *The Territorial Management of Ethnic Conflict*, London: Frank Cass, 1993, p. 9-10.

in the Eastern Province may be introduced.<sup>9</sup> A somewhat similar arrangement may satisfy the demands of the Kandyan Tamils in the Central Province.

Secondly, it may be advisable to provide for a second chamber at the centre giving ethnic minorities reasonable representation (say 50:50 or 60:40) so that the majority community alone may not be able to pass laws without the support of the minorities. This body may consist of 45 members with five members each from the nine provinces. A constitutional clause may be included to ensure that one seat should be given to an ethnic group which comprises more than 5 per cent of the total population of the province.<sup>10</sup> As critics have shown, regionalism and devolution have both divisive and unifying tendencies. The unifying forces may be strengthened by the establishment of a second chamber. Thirdly, a constitutional provision can be made enabling two or more provinces to come together and form a single unit if the people of those provinces voted in favour at a provincial referendum for such an amalgamation. Alternatively, as Mangala Munasingha Committee has recommended a provision may be made to form an apex council if two or more provinces decide to do so. These features which will improve the current devolution proposals may also allow the representatives of the Tamils to share power at the centre. This will substantially reduce the Sinhalese domination of the Sri Lankan state.<sup>11</sup>

- <sup>9</sup> This idea is discussed at greater length in Navaratna-Bandara A.M. and Sumanasiri Liyanage, 'The Consociational Democratic Solution to the Sri Lankan Ethnic Conflict', *Ceylon Studies Seminar*, Discussion Paper 3/1993, University of Peradeniya, Sri Lanka.
- <sup>10</sup> This idea was developed by a group of academics at the University of Peradeniya at an informal discussion. The group consists of Prof. Y.R. Amarasinghe, Prof. A. Sivarajah, Dr S.H. Hasbullah and Dr Shanta Hennayake, Dr A.M. Navaratna Bandara and the writer of this article.
- <sup>11</sup> The domination of the post-colonial Sri Lankan state by the Sinhalese politicians has been emphasized recently in a statement issued by the All Religious Solidarity Alliance. The signatories to the statement include Ven. Maduluwawe Sobhita Thera, Rev. Fr. Siri Oscar Abeyratna, Ven. Bellanwila Wimalaratana Thera and Ven. Inamaluwe Siri Sumangala Thera.

The devolution proposals may also be strengthened by giving the power of implementation of the subjects of the reserved list and laws relating to those subjects which affect the provinces to the regional council. It may reduce the cost. This is the system in Germany. One of the significant features of the present devolution proposals is the suggestion to do away with the concurrent list included in the 13th Amendment. As Prof G.L. Peiris, Minister of Justice and Constitutional Affairs has correctly pointed out, one of the weaknesses of the 13th Amendment 'is a lack of the kind of clarity on the powers which are devolved'.<sup>12</sup> The concurrent list is being used to avoid an actual devolution of powers. As Prof Peiris puts it: 'Education is a devolved subject, but by characterising a school as a national school next morning it is handed over to Colombo'.<sup>13</sup> Unfortunately, the present proposals also include a kind of hidden concurrent list. This has to be eliminated.

The fear has been expressed that ethnic groups which are territorially non-contiguous or geographically scattered will not get representation. Muslims in Mannar, Tamils in Colombo may fall into this category. This problem can be addressed by introducing changes in our electoral system. At the regional level, the first-past-the-post system of election with multi-member constituencies will be a solution to this problem. This will enable Muslims to elect a representative to the Northern Regional Council and Tamils to Western Regional Council.

It is also argued that Sinhala areas have not asked for devolution and that the devolution principle should be confined to Tamil areas. The issue related to this argument is that the creation of nine regional councils will be an expensive exercise. To resolve this problem, as in Spain, the principle of optionality may be introduced. Every provincial council need not ask, at the beginning, for the maximum powers. Some councils may allow the centre to look after their affairs. Devolution thus may be asymmetrical.

12 Peiris G.L., *Towards Effective Devolution*, Colombo: International Centre for Ethnic Studies, 1995, p.4

13 *Ibid*, p.7.

My purpose here is not to make specific suggestions for the improvement of the present proposals but rather to emphasize the possibility of many options and alternatives in dealing with the problem. Political scientists and constitutional lawyers may be in a better position to suggest new options. Such alternatives which take into account the views of contending ethnic groups may help us to arrive at a compromise solution.

## An Implementing Mechanism

The present proposals have to go through a long constitutional process before they become part of the Sri Lanka constitution. As presented, the proposals are not more than a discussion document. A formal document will have to be submitted to the Parliamentary Select Committee on Constitutional Reforms. Then the proposals have to be passed by Parliament by a two-thirds majority. They may have to be approved by the people at a referendum. Only then will the devolution proposals become law. This may take more than a year. So what is done in this interim period may be crucial in creating a climate for effective implementation. The present climate characterized by an increased military offensive by the Sri Lankan armed forces is not favourable for a settlement of the conflict. A large number of people have left Jaffna anticipating a clash between the LTTE and the Sri Lanka armed forces.

How is the government planning to break this impasse? It appears that the government is aiming at achieving a military victory over the LTTE so that the LTTE's unchallenged position can be weakened. The government also seems to think that the military defeat of the LTTE would facilitate obtaining a new electoral mandate in the South. It may be true that this strategy is based on sound pragmatic political logic. But it contradicts the original peace strategy of the PA government and will put the government in a war trap. What is essential is not to capture abandoned geographical space but to win the hearts and minds of the Tamil people. This socio-psychological space does not overlap with the geographical space.

With this danger in mind, I wish to make some suggestions in

outline. In my view, some space should be provided for the extremists to participate in the devolution discourse. Since they have already developed a power structure especially in the northern province, it is imperative that the government should accept the fact that they may not be ready to give it up for nothing. If the LTTE is willing to give people in the Northern Province an opportunity to consider the devolution proposals and to vote for or against it at a referendum, LTTE may be asked to run the interim civil administration in the areas where at present they have control. Such an arrangement in the interim period will help the peace process as well as the implementation mechanism of the devolution proposals. The question of civil administration of the areas which are now under the LTTE control may arise even after the military repossession of those areas. The Colombo-based Tamil parties may have neither the capacity nor the support of the people to take over the civil administration. It appears that most of them do not have any intention of doing so. The Sri Lanka government and the LTTE should stop military operations and the expansion of their forces. The democratic rights of the people have to be re-established and the displaced people have to be re-settled at the expense of the central government. The setting up of a Tamil civil administration as an interim measure is imperative. The central government may appoint a group of good administrators to maintain civil rule. But what is necessary is not so much good administration as Tamil self-governance.

## Chapter 6

### Breakthrough in Sri Lanka

*S. Guhan*

The “devolution package” announced by the Sri Lankan President, Ms. Chandrika Kumaratunga, on August 8 is a historic step forward towards resolving Sri Lanka’s ethnic conflict. In her very first policy pronouncement on the subject on January 6, 1995, she said: *“Our Government is committed to a peaceful resolution of the ethnic conflict... We believe that all communities must be given the space to express their identity and participate fully in the life of the nation, whether it be at the national, provincial or local level”*. In seeking to translate this rhetoric into reality, Ms. Kumaratunga has displayed clear and courageous statesmanship of a rare order by coming out with these proposals in the midst of, and undeterred by, the active hostilities precipitated against her by the LTTE since April 1995.

In terms both of principles and operational content, the devolution proposals are far reaching. As she has forthrightly pointed out in her broadcast, the proposals amount to “a new approach predicated on unqualified acceptance of the fact that the Tamil people have genuine grievances for which solutions must be found”. The preamble and provisions of the package recognise that Sri Lanka has to be a multi-religious, multi-lingual, multi-cultural “Union of Regions” in which all communities should be given “the space to express their distinct identity”.

The detailed proposals have been formulated so as to reflect five underlying considerations; consistency, coherence, clarity, effective implementation, and structures for the just and equitable resolution of Centre-Region disputes. In the distribution of powers

and responsibilities between the two levels, there are only Reserved (i.e. Central) and Regional Lists leaving no scope for encroachment by the Centre into Regional jurisdictions through a Concurrent List. Unlike in the Indian Constitution, the Governors are to be appointed only with the concurrence of the Regional Chief Ministers and they can be removed if a two-third majority of the Regional Council passes a vote of no-confidence. The Governors cannot refuse or delay assent to bills enacted by the Regional Councils unless the Supreme Court determines that they are unconstitutional. The Chief Ministers cannot be removed so long as they enjoy the confidence of their Regional Councils.

In a number of respects, the Regions have been given larger powers than what is available to the States in India. For instance, they have exclusive jurisdiction over industries and industrial development. They are free to undertake activities relating to broadcasting and media, including television. They can set up regional, financial and credit institutions. They can have recourse to domestic and international borrowing with concurrence from the Centre being limited to the latter above a specified limit. Subject to broad guidelines specified by the Centre, the Regions can regulate and promote foreign direct investment, international grants and development assistance.

Tamil aspirations have been specifically met in important respects. Tamil is to be an official language fully co-eval with Sinhala. The State lands within the Regions are exclusively vested in the Regional Councils. The merged North-East Province has been initially construed as a single Region with its existing boundaries to be re-demarcated "in full consultation with a view to reconciling Sinhala, Tamil and Muslim interests." Police administration within the Regions is to be an exclusive regional responsibility. National and Regional Police Commissions are to be established for the recruitment, transfers and disciplinary control of the police forces at the two levels by a Constitutional Council consisting of the heads of the Central and Regional Governments. This is an important innovation meant to de-politicise police administration.

A National Finance Commission will be entrusted with allocating grants to the Regions, keeping in mind the objectives of balanced regional development. Revenues from excise and turnover

taxes, which are the predominant tax sources in Sri Lanka, are to be shared between the two levels. A permanent Commission on Devolution will resolve Centre-Regional and inter-Regional disputes through mediation if possible and adjudication if necessary.

Altogether, the present proposals are a distinct improvement compared to the 13th Amendment to the Sri Lankan Constitution enacted in November 1987 following the Indo-Sri Lanka Accord of July 1987. More remarkable is that, even while transiting from a unitary to a federal polity, Sri Lanka has been courageous enough to provide more autonomy to its sub-national units than the Centre in India has been willing to do in over four decades of our constitutional history. Prof. G.L. Peiris, Sri Lanka's Minister for Justice and Constitutional Affairs, has explicitly referred to this in a recent address by saying: "*The Government feels that the provisions of the Indian Constitution enable interference by the Centre in too wide a category of situations. The Sarkaria Commission and the Rajamannar Commission in India have also pointed out that the powers of the Centre need to be circumscribed and need to be curtailed in this field. Otherwise, there is a danger that the devolutionary structures will be placed in jeopardy as a result of capricious action by the Centre. That is a danger that we are conscious of having looked at the contemporary Indian experience critically.*"

The substance of the devolution package became public knowledge in Sri Lanka through a news agency report a week before their official announcement on August 3. This has made it possible to have a wide spectrum of reactions. The principal Opposition parties - the UNP and DUNF - have so far adopted a stance of cautious silence. They have not opposed the proposals recognising that the Government enjoys an overwhelming "mandate for peace" from all sections of the people. The Tamil parties represented in the Sri Lankan Parliament - TULF, the CWC, EPDP and PLOTE - have welcomed the package. A number of influential intellectuals consisting of the country's leading professionals, civil servants and diplomats have endorsed the proposals. Leading newspapers have also been supportive.

The Buddhist clergy which initially felt that the time was not ripe - pending the suppression of militancy in the North - for the announcement of the proposals would appear to have been assuaged

by Ms.Kumaratunga's prompt personal briefing of the Mahanayake Theras of the two leading Malwatte and Asgiriya Chapters of the Sangha at Kandy. Two extreme Sinhala groups, the Mahajana Eksath Peramuna (MEP) and the Janatha Vimukthi Peramuna (JVP) have, however, been sharply critical of the proposals seeing in them the seeds to the "disintegration of Sri Lanka."

In sum, as of now, it would seem that the proposals have met with a much greater degree of general endorsement than what might have been expected given the past history of attempts to accommodate Tamil claims and interests. War-weariness stemming from 14 years of civil strife is certainly a factor in this. A proximate factor is also the Sri Lankan Army's success in the Weli Oya operation just prior to the emergence of the proposals which has made people feel that the Government was negotiating from a position of relative strength. Public opinion can change; one can only say "so far so good." Nevertheless it appears that public support for Ms.Kumaratunga's initiative is likely to follow rather than determine her success in winning acceptance for them in the military and political processes that lie ahead.

These processes, no doubt, face a long, tortuous and troublesome road in future months. On the legal front, the proposals have to be approved by the Parliamentary Select Committee dealing with overall changes to Sri Lanka's Constitution, by the full Parliament, and thereafter through a referendum. Meanwhile, a conclusion, in one way or another, will have to be reached in the operations in the North-East which as of now remain in a large measure under the actual control of the LTTE. As is well known, the LTTE has been unwilling to enter the democratic political process prior to, or during, the Indo-Sri Lanka Accord which effectively spanned 1987-1990 or subsequent to it. The key issue is whether the LTTE can at least now be persuaded to negotiate with Ms.Kumaratunga's Government on the basis of the devolution package which represents a truly liberal initial offer made under extraordinarily difficult circumstances.

In the present situation, direct negotiations between the Government and the LTTE are not likely to be feasible. Quiet third party mediation might, however, be possible and perhaps is the only way out to put an end to the harrowing misery of the Tamil population

in northern Sri Lanka. India, particularly the political parties in Tamil Nadu, can play a role by urging the LTTE to accept mediatory processes for conciliation. This is at once the least and the most that we in India can and should do emulating in some small measure the high statesmanship that Ms.Kumaratunga has shown.

## Chapter 7

# Control of State Land - The Devolution Debate

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*Sunil Bastian*

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In the political struggle to devolve power to regional units in Sri Lanka, the question of taking away the power over state-owned land from the central state has been a most difficult one. In fact one could argue that even if the provisions of the 13th Amendment to the Constitution had been properly implemented, a subject like law and order would have been devolved to a much greater degree than power over land. Provisions provided in this Act allow a much more significant degree of power being devolved on the question of law and order, than on state land.

### Central control of state land

The historical changes that made the Sri Lankan state the biggest landowner in the context of a capitalist economy go back to the time of introduction of a plantation economy during the colonial period. Various land ordinances of the 19th century made the Sri Lankan state the biggest landowner in the country. This step was necessitated by the needs of the colonial economy. The introduction of a capitalist economy meant regularisation of private ownership on land, and the state became the owner of that land for which nobody could claim a legal ownership. The outcome of changes which were meant to lay the institutional framework for a capitalist plantation economy was to make the state the largest landowner in the country.

What is interesting to note is that despite many attempts to

reduce the control of the state in various areas of the economy, and irrespective of the fact that there has been a large-scale distribution of state land through various schemes, in a strictly legal sense the central state still controls a significant area in the country. As it has been pointed out in a recent World Bank study, "government holdings of tree crop estates over 50 acres represent one-fifth of all cropland. In addition government holds title to many smaller farm holdings which are privately operated....the government also owns most of the land not under crops (two-thirds of the country's land area). Hence the Sri Lankan government is by far the dominant landlord in the island....A generally accepted estimate is that the government owns about 82% of all land in the country (cropland and other)".<sup>1</sup>

The control of this enormous resource is obviously a significant source of wealth, influence, patronage and power for those who gain political power at the centre. In the past, state-owned land has been distributed in a variety of different ways. The Table 1 below <sup>2</sup> summarises the extent and manner in which this distribution has taken place.

Table 1 State Lands Alienated 1935-85

	Hectares
Major colonisation schemes	175,941
Village expansion	357,239
Highland settlement	13,525
Youth settlement	7,964
Regularisation of encroachment	205,762
Middle class allotments	55,019
Land grants under special provisions	9,980
Rainfed farming settlements	5,363
<b>Total</b>	<b>830,833</b>

- 1 World Bank, Sri Lanka - Poverty Assessment, November 7, 1994,
- 2 T.Somasekaram, 194 Not Out, Island, 23rd August 1994 - Newspaper article by a former Surveyor General on the occasion of the 194th anniversary of the Survey Department

It is important to note that state-owned land is distributed through a variety of schemes, and the colonisation schemes which are the centre of the debate when it comes to the ethnic question are not the most important one. The land distributed as village expansion schemes account for 43% of the hectares distributed and regularisation of encroachments accounts for another 25%. Major colonisation schemes cover 21%.

Land distribution under each of these schemes gives rise to sources of political power. Some of the schemes have been undertaken for direct political reasons. By having a chance to take decisions about state land through a centralised state, those who wield power at the centre have a powerful mechanism to maintain their elite positions and a network of political patronage in society. A cursory glance at the daily newspapers gives us many examples of how this power is used by the political elite of this country. Some of the recently exposed corruption scandals had to do with politicians using state land for patronage purposes.

It is not surprising therefore that the political elite at the centre has been extremely reluctant to devolve power over state land to a regional elite through a process of devolution. This is the political issue that is on the cards in the present debate about devolution of power over state land. In order to resolve the ethnic conflict it has become necessary to vest state land in the provinces in regional bodies which will be controlled by a regional elite, and this is strongly resisted by those who control political power at the centre. As a result, wresting control over land from the centre has been a most intractable issue in the attempt to devolve power.

In order to control state land in the periphery, Sri Lanka has developed over the years highly centralised institutions within the state structure. Mahaweli Authority, Forest Department, Wild Life Department, Land Commissioners Department, etc., are some of these. The bureaucracy that has staffed these centralised institutions has become a key player in the attempt to maintain the central control of land. Recent literature on the political economy of state reforms within capitalism identifies the need to analyse the interest of bureaucracies in maintaining a large role for the state in general, and centralised institutions of the state in particular. They are identified as

a special class that benefits in various ways due to the prevalence of a centralised state. The influence of these bureaucratic classes seems to be very strong when it comes to matters dealing with land in Sri Lanka. The critical role of these classes need to be kept in mind in the analysis of the central control of state-owned land.

Making use of the control over state land, the central government has also carried out policies that have contributed directly to the worsening of ethnic relations. The most glaring example of such a policy is the large-scale irrigation schemes in the dry zone of Sri Lanka - part of which is in the North-East. Since independence, Sri Lanka has settled a large number of peasant families through such schemes in the dry zone. These projects, which are called "colonisation schemes", have a continuity in the agrarian policies of Sri Lanka despite changes in regimes. The beginning of these programmes goes back to the late twenties, even before Sri Lanka gained independence, and therefore presents one of the well-established orthodoxies in development. They constitute a part of a number of policies that were meant to protect the smallholder peasantry as a class. Subsidizing peasant production, providing various infrastructure facilities and distribution of lands in a variety of ways, are other elements of this agrarian populism.

Policies of agrarian populism, when implemented in a multi-ethnic society through a highly centralised state where the majority ethnic group wield a greater degree of political power, lead to many contradictions. However the discourse of agrarian populism, which looks at the question of land distribution only through the prism of class inequality, does not deal with ethnic contradictions. This lacuna is found in the literature which looks at policy issues, as well in the discussions of practitioners of development projects working in rural areas. The inability or unwillingness to look at ethnic contradictions by those who have been promoting populist policies in agriculture has contributed either directly or indirectly to the deterioration of ethnic relations.

Large "colonisation schemes" serve the interests of large-scale capital as well. They provide business opportunities to foreign and local capital, mainly to those involved in the construction and energy sectors. This is a principal reason why they have received the

support of foreign governments providing bilateral aid. These projects have absorbed a very significant proportion of the foreign assistance that Sri Lanka has received, and would have been difficult to carry out without that assistance. The biggest such "colonisation scheme" was the Mahaweli Development programme, which was formulated in 1967 and then accelerated after 1977. While the Mahaweli programme was on, it absorbed the largest proportion of foreign assistance that Sri Lanka received at that time. Much of this assistance was absorbed by private contractors, who undertook the construction of infrastructure facilities. The large contractors came from the donor countries assisting the projects.

Colonisation schemes, while on one hand being part and parcel of agrarian populism and serving the interests of large-scale capital also have a close link with Sinhala nationalism. This link can be seen on an ideological plane if we focus on how these projects are legitimised through a nationalist discourse. The opening of the dry zone areas through state intervention has been equated with restoration of the "glorious ancient civilisations of the Sinhalese" which existed in these parts of the country in ancient times. These historical memories are often evoked in legitimising these development policies. Most publications, both by government and other propagandists, evoke these nationalist myths when discussing these schemes. Politicians who have been in charge of these development schemes have often compared themselves with kings who built these ancient irrigation schemes. Anthropological analysis has shown how these nationalist myths are even incorporated in modern day opening ceremonies of the irrigation schemes.<sup>3</sup>

Another political link between these policies and ethnic politics arises due to changes in the demographic patterns brought about by these projects. Colonisation schemes have contributed to changes in the ethnic composition, especially in the Eastern Province

3 For an excellent exposition of how nationalist myths are incorporated into development projects See, Serena Tennekoon, *Rituals of Development: The Accelerated Mahaweli Development Program of Sri Lanka*, American Anthropologist, 1988, Vol.15, Reprinted by Social Scientists' Association, Reprint Series 7, March 1991



where such settlements took place. This is accepted even by those authors who have been recently trying to justify these settlements in the controversies surrounding the ethnic conflict.<sup>4</sup> Thus according to Pieris (1991), in 1921 the area presently constituting Ampara<sup>5</sup> "had in aggregate, a population of 68,643 of which 56.5%, 34.5% and 8.0% were accounted for, respectively, by Muslims, Sri Lankan Tamils and Sinhalese. The population pattern of 1921 appears to have remained more or less unchanged till the early 1950s. On a rough estimate based on 1946 Census data, during the preceding 25-year period, the aggregate population of areas that came to constitute Ampara district increased by a mere 20,000. Then, with the establishment of the Gal-Oya Colonization Scheme, the massive influx of people into the interior of Ampara began. By 1981 the population of the district has reached 388,786. Accompanying this expansion, there was a drastic change in the ethnic composition of the population with the Sinhalese share rising to 38% of the total."<sup>6</sup> Patrick Peebles comes to similar conclusions by concentrating on an area that he calls Eastern dry zone.<sup>7</sup>

In Table 2, Pieris (1991)<sup>8</sup> demonstrates the shift in ethnic composition between 1921 and 1981 in the three districts which presently constitute the Eastern Province. This data demonstrates the increase in the proportion of the Sinhala population with a parallel decrease in the proportion of Tamil population in Ampara and

4 See, G.H.Pieris, An appraisal of the concept of a traditional Tamil homeland in Sri Lanka, Ethnic Studies Report, Vol.IX, No.1 January 1991

5 The Ampara district was demarcated as a separate district in 1961 by delineating "Administrative divisions of Panawa (Lahugala and Potuvil), Akkrai Pattu, Nintavur, Karivaku and Sammanturai, and a large part of the former Bintenna Division (now Wewagam Pattu)". In comparing changes in population composition the population of these areas in 1921 is compared with the present Ampara district, See G.H.Pieris, op.cit.

6 G.H.Pieris, op.cit.

7 Patrick Peebles, Colonization and Ethnic Conflict in the Dry Zone of Sri Lanka, The Journal of Asian Studies 49, No.1, February 1990

8 G.H.Pieris, op.cit

Trincomalee districts. There are several socio-economic processes that have contributed to these changes, of which settlements through colonization schemes have been one.

Table 2 Eastern Districts 1921 and 1981

	Sinhalese		Sri Lankan Tamils	
	1921	1981	1921	1981
Trincomalee	4.5	33.6	53.2	33.8
Batticaloa	1.9	3.2	68.5	70.8
Ampara	8.2	37.6	30.5	20.1

A concomitant result of these changes in the demographic composition has been redemarcation of administrative district boundaries. Thus with the increase of Sinhala population a separate district called Ampara district, with a significant proportion of Sinhalese was carved out in 1961. These changes in district boundaries show how Batticaloa district, the district with a largest concentration of the Tamil population in the East, has been losing areas under its control. Batticaloa district has been the Tamil majority area in the Eastern Province, but with shrinking boundaries.

Boundary changes of administrative districts, carried out by a centralised state controlled by the majority, have been a sensitive issue in ethnic politics. In multi-ethnic Sri Lanka these boundaries of the state are not "neutral" administrative units. Ethnicity and ethnic politics have a big say in their emergence, their identity and also background of personnel sent to staff these institutions. Colonisation schemes have contributed to changing such boundaries, and the creation of units with a greater Sinhala presence compared to the past, in the politically sensitive Eastern Province.

The other important development resulting from these demographic changes is shifts in the pattern of electoral representation in these areas. Given the ethnic composition, the political representation in the East has always been a delicate balance between political parties

supported largely by the majority ethnic groups, and those supported by minorities. In the past, minority ethnic groups have also been represented by independent candidates. Demographic changes in the Trincomalee and Ampara districts have given rise to new electorates in these districts which are always represented by majority political parties. Seruwila in the Trincomalee district and Ampara of the Ampara district are these electorates. This has meant a change in the electoral representation of the East as a whole, for the benefit of political parties representing the interests of the majority community.

The most critical and crucial relationship of these policies and the ethnic conflict arises because the demographic changes brought by them contribute to breaking of the Tamil-speaking demographic contiguity between the North and East. This has been viewed by Tamil political representatives as an attempt to undermine their political claims to these areas. This has been carried out by a highly centralised state, where the majority community has overwhelming power. Thus these policies have a direct bearing on worsening the ethnic relations in the country.

Land settlement programmes promoted as development policies, leading to changes in ethnic composition of regions, followed by ethnic conflicts, are common in many parts of the world. Unfortunately such projects are promoted with foreign assistance, and many who have been imbued with rural populism accept these interventions uncritically.

The development argument, which is based on a need for economic growth, and the agrarian populist argument based on the need to ease landlessness, do not deal with contradictions arising from such policies in a multi-ethnic society with uneven geographic distribution of ethnic groups. They just ignore the ethnic discourse of the link between land and ethnic identity and multiple effects that take place in various institutions of the state due to demographic changes.

The liberal argument of every individual having equal rights in distribution of state land, irrespective of ethnicity, is another ploy not to face these contradictions. Quite apart from the fact that this liberal principle never exists in reality, and in fact is an ideology to ignore the inequality between groups of individuals that is found in society, it does not meet the argument of a minority whose political

grievance has been changes that have taken place through a centralised state in the areas where they dominate.

In addition, when such projects are carried out through a highly centralised state in which the majority ethnic group has a greater degree of power, we have a formula for deterioration of ethnic relations. Ethnic minorities perceive these as an attempt by a centralised state dominated by the "other" to encroach on a territory where they form a majority. When it also results in changes in political power patterns, and is used to undermine the geographical basis of their demands, as has happened in Sri Lanka the results can be disastrous.

The critique of development arguments, which do not deal with ethnic contradictions, of course does not mean that we have to ignore the need for economic growth or the necessity for distribution of land to ease the question of landlessness. It is also not an argument for the acceptance of historically unchanging conditions of ethnic compositions or administrative structures in different areas of the country. In relation to ethnic relations the crux of the matter is the character of institutions which control and manage such policies in multi-ethnic societies. If they are carried out by highly centralised bodies, operating within a state which is controlled by the majority, they lead to contradictions in ethnic relations.

At the level of socio-economic relations even if the control of state land is devolved to regional bodies controlled by a regional elite, issues of economic growth in agriculture and the questions of landlessness need to be tackled. At present the prescriptions for this come from the orthodoxy of market oriented policies. The same World Bank Report which has pointed out the fact that the state is the largest landowner in Sri Lanka recommends the preparation of "a program to divest to the private sector all government-owned land presently devoted to agriculture, except for tracts where agriculture use may not be sustainable."<sup>9</sup> This is a part and parcel of the market oriented economic orthodoxy dominant at present which has been chipping away at various elements of the populist agrarian policies that Sri Lanka has followed. Whether the regional bodies even if they get

the control of state land in those areas will be able to achieve the socio-economic objectives in agriculture is an open question.

Agrarian populism has been a major argument for maintaining state control of land through a centralised state. The need to distribute land is a legitimisation for the central control of state land. At present, both the need to devolve power to manage ethnic relations, and the logic of the liberalised economic policies, have challenged this central control of state-owned land. It remains to be seen to what extent these two forces will be able to divest control of state land from the centralised state to any significant degree.

While both market oriented policies and the struggle of the minorities have been challenging the control of vast amount of land resources through institutions of the central government, the latest argument for maintaining the central control has come up on the basis of the need to protect the environment. The Sri Lankan government in the course of the discussions of the 13th Amendment to the Constitution, which devolved power over state land to the provincial bodies to a very limited extent, brought out this argument. This is also being supported by various environmental lobbies which also have strong support from foreign donors.

Apart from serious limitations of pure "protectionist" arguments on environment in a developing country with a large section of its population living below poverty line and not having basic amenities, looking at the track record of how centralised institutions have managed environment over the years does not give much of a basis for the argument that central control is needed to protect the environment. Centralisation does not imply any superior knowledge of protecting the environment, nor does it represent interests that want to protect it. Any serious attempt at protecting the environment has to go beyond the pure protectionist ideology, which looks for laws, fences, barbed wire, security guards, and a hopeful dose of what is called "awareness". It needs to tackle seriously the development issues which are closely related to the deterioration of environment, and that can be done at regional levels as well. At present the most important need is to see that the politics of environmentalism does not become an ally of the political forces who want to maintain central control of land for various reasons.

Finally a few words about dealing with the issue of devolution of land through the much-publicised debate on "traditional homelands". This is a debate carried out by nationalists from both sides who are basically trying to "prove" from historical "facts" who has the "true" claim to be the "sons of the soil". While one side tries to prove that they have a special claim for land due to historical reasons, the other side is attempting to contest it. Although politically these two groups of nationalists are on opposite sides they have very much in common because of the theoretical and ideological framework they use.

This type of writings, taken with the framework of positivist tradition, faces major methodological problems. It is difficult to come to any conclusions about "to which ethnic group does a piece of land belong", through a historical argument due to several methodological problems. In the first place there is the question of how far back in history should one go in order to establish an authentic link between an ethnic group and land. All present debates are limited by available statistical and other sources.

Secondly many of those engaged in this historical debate assume that ethnic identities are something that are given, and they have an unbroken continuity over long historical periods. "The 'historiographical' project undertaken by some Sinhala ethnonationalists has been the construction of a past in which Sinhala language and Sinhala ethnic identity had been always present since the beginning of history.... On the other hand, the Tamil ethnonationalists project is nothing less than the invention of a "classical age" for the Tamils of the Jaffna Peninsula."<sup>10</sup> In these "primordialist" positions on ethnicity, present identities have existed in same way from the beginning of history. These "primordialist" notions of ethnicity have been seriously questioned in much of the recent literature.<sup>11</sup> The

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- 10 R.A.L.H. Gunawardena, *Historiography in a time of ethnic conflict, construction of the past in contemporary Sri Lanka*, Social Scientists Association, Colombo 1995. See this publication for a discussion of these methodological problems when dealing with historical material.
- 11 See Paul R. Brass, *Ethnicity and Nationalism, Theory and Comparison*, Sage, New Delhi 1991, for a discussion and a critique on the "primordialist" positions on ethnicity.

further back in history one goes the more it is difficult is to equate the identities found in contemporary societies with those in the past. In other words, the further back in history we go to prove the "sons of the soil" thesis, the more difficult it becomes to link ethnic identities of contemporary society with those in the past.

The "traditional homeland" debate also simplifies the issues related to the question of devolution of state land. It specially ignores the political economy aspects in the continued control of state land by the central state. As we have tried to argue above this has been promoted by many interests and ideological positions in our society. It is perpetuated by some of the dominant thinking in development, interests supporting centralised institutions, and even by foreign donors. Of course at present this has been challenged by the contradictions generated by our inability to manage ethnic relations. But in making devolution of power over land a reality there are many forces that we need to battle with.

### **Devolving power on state land, contradictory positions**

The passage of the 13th Amendment to the Constitution and the establishment of Provincial Councils (PCs) that have emerged as a result of the ethnic conflict, were the first steps that have attempted to reform the centralised state structure of Sri Lanka. The 13th Amendment also contained provisions to devolve power over the control of state land to regional units. In general the PC system has serious limitations as a means of devolving power to the regions. There are many elements in the package which limit the powers enjoyed by the regions, and allow the centre to interfere even in the areas that have been devolved.<sup>12</sup> These limitations certainly have a bearing on the extent to which PCs can control state land in the regions.

<sup>12</sup> See Amita Shastri, *The Provincial Council System of Sri Lanka: A solution to the Ethnic Problem?*, Devolution and Development in Sri Lanka, Sunil Bastian (ed), Konark Publishers/ICES, 1994, for a survey of the limitations of the PC system as a whole.

Apart from the general limitations of the package as a whole, the specific provisions on devolution of power over state land are far less than what has been the demand by even moderate Tamil and Muslim political parties. This can be seen by comparing what has been offered through the 13th Amendment, and positions taken by political representatives of Tamils as well as Muslims on various occasions since the enactment of this Act.<sup>13</sup>

There are two principal issues that the devolution debate over state land needs to address. The first is the extent to which the regional units are given power and autonomy to control and manage state land in the region. The second is what needs to be reformed at the centre in order to make this a reality. Very often the second does not automatically follow from the first.

Taking the provisions of the 13th Amendment and critical comments that have been made by minority political representatives as a starting point, we summarise below some of the crucial issues that need to be addressed in order to achieve a greater degree of devolution on state land. These issues cover both questions with regard to powers of the regions as well as required reforms at the centre.

### **Powers of the President**

The ability of the centre to control land in the regions comes first of all from the powers vested in the President by the 1978 Presidential Constitution. Article 33 (d) of the constitution gives overall powers of disposition of land to the President of the Republic. This is an absolute power that the President of the Republic has under

<sup>13</sup> The material for this section is from several sources. At the time of the All Party Conference summoned by President Premadasa a questionnaire was circulated among political parties. The contents of the answers to this questionnaire, representations made to the Mangala Moonesinghe Committee and various statements and documents issued by Tamil political parties have been used in this survey. Muslim political opinion has been taken from the text of a joint proposal by Mr. Ashraff, the leader of the SLMC, and Mr. Thondaman, the leader of the CWC

the highly centralised Presidential system of Sri Lanka introduced in 1978. This provision is reiterated in Appendix II of the 13th Amendment, which sets out the limits of a province's power over land. It states that, "alienation or disposition of State land within a province to any citizen or to any organisation shall be by the President, on the advice of the relevant Provincial Council in accordance with the laws governing the matter."<sup>14</sup>

Absolute power of the President on the question of land has come under criticism both by the LTTE and TULF in some of their early responses to the 13th Amendment. In one of its documents, which is titled as "An Autopsy on Autonomy", the LTTE states that, "it is necessary to amend Article 33(d) of the Sri Lankan Constitution which gives the President power over state lands. A wide definitions of State Land in this provision will undermine any other provision relating to land. A list should be made of the type of land that could be regarded as State Land. The land that could be used within the Province by the Central Government should be defined in a list agreed upon after negotiations between the Province and the Central Government."<sup>15</sup> TULF also argued that it is unacceptable that this provision has been included in the Appendix on land and land settlement.<sup>16</sup>

These powers over land reflect a fundamental contradiction between a Presidential system that has centralised power to a great degree, and the attempt to devolve power to regions. The establishment of a highly centralised Presidential system was motivated primarily by the needs of a liberalised economy introduced since 1977. The contradictions between such centralising structures and the attempt to devolve power are bound to come up in many other areas as well.

- 14 The Constitution of the Democratic Socialist Republic of Sri Lanka, Appendix II, Land and Land Settlement, Article 1(1.3), Government Publication Bureau, 1991
- 15 An Autopsy on Autonomy, A provisional assessment of the Thirteenth Amendment to the Constitution of Sri Lanka, An LTTE publication
- 16 Our disappointment with proposals contained in the two Bills, Letter to Rajiv Gandhi, 28th October 1987, Towards Devolution of Power, Main Documents August 1983 to October 1987, Tamil United Liberation Front, Madras, 1988

## Vesting of provincial land

The provisions of the 13th Amendment continue to vest state land in the Central Government. The centre remains the owner of state land in the Provinces and the central government "shall make available to every Provincial Council State land within the province required by such Council for Provincial Council subjects."<sup>17</sup>

In contrast to this, proposals by Tamil, as well as Muslim, representatives have demanded that state land in the provinces be vested in the regional body. There is unanimity in the minority position in this regard. Once the land is vested in the provincial body, the national government can use land in concurrence with the Province.

An intermediary position, that emerged in the course of the discussions which led to the Indo-Sri Lanka Accord, was the establishment of a National Land Commission with representatives of the provinces who will hold state land in trust.<sup>18</sup> This body will then make state land available to the Province as well as the Central Government for their purposes. This intermediary position was not acceptable to the Sri Lankan government. Although the 13th Amendment accepted the idea of a National Land Commission, its functions were limited to policy making on land use.

## The extent of devolution

In the 13th Amendment the subject of state land is included in the Provincial and Reserve Lists. The powers given to the Provincial Councils are spelt out in the Provincial List as follows, "Land that is to say, rights in or over land, land tenure, transfer and alienation of

- 17 Constitution of Democratic Socialist Republic of Sri Lanka, Appendix II, Land and Land Settlement, Article 1(1.2), Government Publication Bureau, 1991
- 18 Working paper on Bangalore discussions, 18th November 1989 and Observations on the working paper on Bangalore discussions, 26th November 1986, Draft Proposals (30/8/85 to 19/12/86)

land, land use, land settlement and land improvement, to the extent set out in Appendix II.”<sup>19</sup> Provincial Councils have powers over the areas mentioned subject to the limitations spelt out in Appendix II.

The fundamental debate over this provision is with regard to the subject of land being included in the Reserve List, and the limitations that are set out in the Appendix II. These two combine to limit severely the powers that Provinces have over land.

As in the case of vesting of state land in the provinces, there is unanimity among the Tamil parties that land should be a subject that should figure only in the Provincial List. The TULF in a very early reaction to the provisions in the two Bills objected to the fact that the subject of state land had been included in the Reserve List. It further argued that the provisions allow the PCs to control only that land which is made available to them, and this is tantamount to a denial of the right of provinces to use state land for devolved subjects although the subject of state land is in the provincial list.<sup>20</sup>

The Appendix on the subject of land and land settlement is viewed by minority political parties as a ploy to maintain control of the centre. The LTTE view on this matter has been straightforward - “Appendix II in the List 1 should be removed in toto and item 18 of List 1 in Ninth Schedule should read as follows: Land - Land that is to say rights over land, land tenure, transfer and alienation of land, land use, land settlements and land improvement and all Colonisation within the province.”<sup>21</sup>

### Inter-provincial schemes

An analysis of the provisions of Appendix II on land settlement shows that the concept of “inter-provincial schemes” has been used to retain power at the centre over large-scale irrigation and settlement schemes. These are the schemes that actually matter, since they

involve extensive capital layouts for implementation and are also likely to be the ones that bring about significant socio-economic changes in the regions.

According to Appendix II there are three possible criteria which make a scheme an “inter-provincial scheme”. These are: 1. those utilizing water from rivers that run across provinces; 2. those utilising water diverted from outside the province; 3. all schemes where the command area falls within two or more provinces. In addition to all these criteria, the Mahaweli scheme is specially mentioned as an “inter-provincial scheme” in order to ensure that it falls within the powers of the centre.

In these schemes the principles and criteria regarding size of holdings is to be determined by the centre. This is to be done “in consultation with PCs”. However what this consultation means is not exactly clear. When it comes to implementation of these criteria, especially the actual selection of allottees which is crucial, what the wording means is not clear. As it stands both central government or the PCs could have the ultimate power in this regard.<sup>22</sup>

Having so-called inter-provincial schemes under the centre effectively means Provincial Councils will have control over only small irrigation schemes that use water from the Province, and whose command area falls within the Province.

The wide definition of inter-provincial schemes, and the powers given to the centre in these schemes, has been rejected by most minority representatives. The demand of almost all Tamil parties is for all irrigation schemes (including land coming under what are termed as inter-provincial schemes) whose command areas fall entirely within the Province, to be placed under the control of regional units. In the case of large schemes like the Mahaweli, the minority position is that the central authority should confine itself to planning, designing and construction of projects within the Province. All other aspects of managing these schemes should come under the Province. Although there were some indications of a compromise position, where there was a discussion about “multi-functional” schemes which could come

19 The Constitution of the Democratic Socialist Republic of Sri Lanka, Ninth Schedule, Article 18, Government Publication Bureau, 1991

20 Our disappointment with proposals contained in the two Bills, op.cit.

21 An autopsy of autonomy, op.cit.

22 Constitution of the Democratic Socialist Republic of Sri Lanka, Appendix II, Land and Land Settlement, Article (2.4), Government Publication Bureau, 1991

under the centre and some groups agreeing to the centre having a greater degree of responsibility over inter-provincial schemes, the present position seems to indicate that most parties want the control of all schemes that fall within Provincial Councils to be controlled by these Councils.

### Ethnicity and criteria for land settlement

As we shall discuss below, some of the provisions in the 13th Amendment try to use technical and other so-called "rational" arguments to undermine the minority demand for control of land in the North and East. But this technical rationality is completely forgotten when it comes to allocation of land in the inter-provincial schemes. The provisions stipulate that the "national ethnic ratio" will be the basis of selection of allottees in inter-provincial schemes. This will obviously benefit majority Sinhalese.

Clarifying further the criteria for land allocation in "inter-provincial schemes", the first priority is for people who could get "displaced by the project",<sup>23</sup> next in importance are the people of the district, and then the people of the province. In the case that an ethnic group cannot use its quota, they are to be given a quota from another scheme within a given time frame. However the time frame within which this should happen is not stipulated.

The provisions in the Appendix show a concern about disturbing the patterns of population distribution due to irrigation schemes, which have been a major factor for the present ethnic conflict. However the wording on this issue is very cautious and also does not specify that what needs to be stabilised is ethnic distribution. It states that, "the distribution of allotments in such projects on the basis of aforesaid principles would be done as far as possible not to disturb very significantly the demographic pattern of the Province and in accordance with the principle of ensuring community cohesiveness

<sup>23</sup> It is strange to see how in a country where there are hundreds of thousands displaced due to a conflict, the first priority is being given to those displaced by projects.

in human settlements".<sup>24</sup> Thus the objective is not to disturb a general category called "demographic patterns" and to maintain something called "community cohesiveness." There is no mentioning of ethnicity.

In the case of schemes controlled by the Provinces, settlement is to be on the basis of provincial ethnic ratios. However even in the case of land under Provinces, the Councils will have to follow the guidelines given by the National Land Commission.

For obvious reasons the Tamil representatives see the attempt to use "national ethnic ratios" as the basis for land settlement in inter-provincial schemes as a way of continuing the same process of changing demographic patterns in the North-East for the benefit of the majority community. This selective usage of ethnicity will result in the majority community enjoying the bulk of the allocations in inter-provincial schemes, while no safeguards are envisaged in order to ensure the present ethnic balance in the areas where people are settled.

In order to ensure that the demographic composition of areas is not disturbed, most Tamil parties demand that district ethnic ratios be the basis for settlement policies. The district is also the unit preferred by Muslim political parties. There are a few political groups who focus on the province as the possible unit, but for the bulk of Tamil representation maintaining a district ethnic balance has become the target. The tendency of minority political representatives therefore is to focus on smaller units as the basis for calculating ethnic ratios so as to ensure the stability of the ethnic composition.

Minority parties also want the special agreement on the future allocation of Mahaweli land, which was agreed upon in the course of negotiations with the participation of India, specifically included in the provisions. This agreement, which is a part of what are called The December 19th proposals, allocated ethnic quotas of settlement in future schemes of the Mahaweli project in the North-East Province.<sup>25</sup>

<sup>24</sup> Constitution of the Democratic Socialist Republic of Sri Lanka, Appendix II, Land and Land Settlement, Article 2(2.6), Government Publication Bureau, 1991

<sup>25</sup> Proposals sent to the government of India by the government of Sri Lanka based on discussions with the Indian delegation led by Hon.P.Chidambaram, Minister of State, Annexure on Mahaweli project, 9th July 1986, Draft Proposals 30/8/85 to 19/12/86

Absence of this agreement in the Bills to establish Provincial Councils was a criticism put forward by the TULF.<sup>26</sup> The CWC representing the Indian Tamil community, which sees this agreement as one of the first instances where the Indian Tamil population has been allocated land, has always been of the opinion that it should become part of the package to devolve power.

### **Institutional framework**

The discussion on devolution on land has also resulted in proposals for new institutions that will determine policies on land. This too is an area where there is a wide disparity between what has been proposed by the 13th Amendment and what the minority representatives demand.

The 13th Amendment proposed a National Land Commission with the participation of PCs. This body was to have the responsibility for determining national policy on land use. It will also have a "technical secretariat" to help in the implementation of policies. In exercising powers devolved to them, PCs should have "due regard" to the national policy.

The proposal of a National Land Commission with the participation of Provincial Councils would have been an important departure from the highly centralised institutions that had hitherto determined policies on state land. Land commissions appointed from time to time, and bodies such as Mahaweli Authority, established to manage special projects, are highly centralised institutions. These centralised institutions have been a key mechanism that has assisted the central control of state land and implementation of policies that have led to deterioration of ethnic relations.

These centralised institutions have always tried to disguise their role in ethnic politics by arguing that the policies on land should be based on so-called "rational" criteria. The same line of arguments is seen in the 13th Amendment. For example, speaking about the functions of the National Land Commission which will control

<sup>26</sup> Our disappointment with proposals contained in the two Bills, op.cit.

national policy on land, it states that "national policy on land use will be based on technical aspects (not on political or communal aspects) and the Commission will lay down general norms in regard to the use of land having regard to soil, climate, rainfall, soil erosion, forest cover, environment factors, economic viability, &c."<sup>27</sup> However the overall effect of the manner in which powers have been devolved was to maintain central control of land, which amounts to an act which is very "communal" to use the language of the framers. Not only that, so-called "communal" criteria are blatantly used when it is necessary to give a greater share of land to the majority community. Use of so-called "rational" arguments, using either technical or economic categories, in order to support politically the interests of one group or the other is very common in situations of ethnic conflict.

Tamil political parties have been suspicious of this Commission right from the beginning, precisely because it could be a mechanism to maintain the control of the centre. In some of the early discussions this institution was rejected precisely for this reason. Subsequently there is acceptance of the notion of a permanent Land Commission to determine policies on land, but demands are to ensure minority representation in the National Commission or land commissions at sub national levels. In more recent times, the minority demands have tended to emphasize that land commissions should be established only at sub-national or provincial level.

Reform of existing institutions that control state land is critical in seeing that regional bodies do have actual control over land of the regions. If the package for devolution of power is to have a meaning, highly centralised institutions which control state land for various purposes, (and there are quite a number of them) should hand over power to regions and become much smaller than they are now. The experience of the implementation of the 13th Amendment does not show any such trend.

<sup>27</sup> Constitution of the Democratic Socialist Republic of Sri Lanka, Appendix II, Land and Land Settlement, Article (3.3), Government Publication Bureau, 1991



## Redressing of past grievances

All minority proposals have within them suggestions aimed at redressing injustices done in the past through state-aided colonization schemes. This is an element totally absent in what is proposed by the central government. The latter position also means that the centre does not want either to accept or enter into discussions about what has happened in the past.

One of the methods by which minorities expect to get redress on past grievances is by proposing that census figures from the past be taken as the basis for defining ethnic ratios for allocation of land. The years suggested range from 1948, 1953, 1968, 1971, 1972, 1977, and 1983. Some of the more recent proposals have stuck to the ethnic composition at the time of independence as a suitable basis for calculation of ethnic ratios.

## New settlements

In trying to redress grievances of the past, minority parties do not demand dismantling of settlements carried out through development projects. However such demands have come up in relation to people settled in the course of the military conflict. With the escalation of the conflict, Tamil political parties argue that there has been an evacuation of the Tamil population from villages in some areas, either voluntarily or forcibly. Parallely it is alleged that there has been settlement of Sinhalese in certain strategic places as part of the military strategy. Recent settlements in what is called Weli Oya by the Sinhalese or Manal Aru by Tamils is a special case that has been documented by human rights activists.<sup>28</sup> According to the same sources, there are similar controversial settlements in the Batticaloa and Trincomalee

<sup>28</sup> See University Teachers for Human Rights (Jaffna), From Manal Aru to Weli Oya and the spirit of July 1983, Special Report 5, 15th September 1993 for a detailed documentation of the establishment of Manal Aru/Weli Oya settlements.

districts.<sup>29</sup> Return of this Tamil population to their villages, and dismantling of settlements that were established as a part of the military strategy, is bound to become a major issue in the discussions of future land policy in a devolved structure.

A parallel demand is to prevent Sri Lankan security forces getting engaged in administration of land, including land alienation and colonization schemes. In areas where settlements promoted through military strategies has taken place, the role of the military establishment on day-to-day management affairs has expanded. Termination of this process of militarisation of administrative and management structures and handing over powers to devolved units have become an important issue in matters over state land.

## Displaced people

The ethnic conflict which has progressed to a level of a civil war has resulted in large scale displacement of people from the places of their normal residence. According to government sources at the end of April this year a total of 128,295 families were displaced. 69% of these families were living outside camps, while the balance 31% were in camps. The bulk of these displaced were located in the North-East Province. The Northern Province accounted for 72% of the displaced families, while the Eastern Province had 11.6%. Puttalam, Gampaha and Anuradhapura districts with 9343, 3974 and 3129 families are the districts in the rest of the country with a sizable displaced population.<sup>30</sup>

For the framers of the 13th Amendment to the Constitution the category of displaced was only those associated with "projects". This is a common malady of the dominant development discourse which has difficulties of incorporating the changes brought about in society due to the ethnic conflict into development discussions. On the contrary it will be difficult to discuss future land settlement policies without giving a priority to people who have had to move away from their land due to the prevailing conflict situation.

<sup>29</sup> University Teachers for Human Rights (Jaffna), op.cit.  
<sup>30</sup> Report of the families drawing dry rtion as at 30th April 1995, Ministry of Shipping, Ports and Rehabilitation, (mimeo)

The above survey demonstrates the significant gap that exists between the first attempt at devolving power on state land and the present demands by minority political parties. Any future discussion on this subject needs to address these questions.

### Remarks on new proposals

The set of proposals that has been presented by the PA government is the most recent attempt at trying to resolve the ethnic conflict. The basic rationale and concepts of these proposals were spelt out in a speech by President Kumaranatunga to the nation and published in newspapers. On the same day the newspapers carried the outline of the proposals.

There is no doubt that the ideas embodied in these proposals go far beyond anything that any government has tried to do so far in order to meet the grievances of the Tamil minority. In her speech to the nation the President openly admitted that, "during the 50 years since the end of the colonial era, the aspirations of the Tamil people were not adequately fulfilled within the parameters of the political process"<sup>31</sup> and as a prerequisite for finding a solution there is a need for "a new approach predicated on the unqualified acceptance of the fact that the Tamil people have genuine grievances for which solutions must be found."<sup>32</sup> Such a candid acceptance of the grievances of the Tamils has been rare for a head of state of Sri Lanka.

In the outline of the proposals presented there are concepts which transcend the limitations of the 13th Amendment.<sup>33</sup> The willingness to do away with the notion of a unitary Constitution is the most important one. This idea, introduced in the 1972 constitution which made the parliament the supreme institution, has been a stumbling block towards greater devolution. The government has also

<sup>31</sup> Ceylon Daily News, 4th August 1995

<sup>32</sup> Ceylon Daily News, 4th August 1995

<sup>33</sup> Ceylon Daily News, Text of the Government's Devolution Proposals, 4th August 1995

proposed to delete articles in the present Constitution which prevent parliament from alienating its powers to any other institution.

The other welcome features in the proposals are, looking for ways of redemarcating the East in order to begin a fresh discussion about the unit of devolution; limiting the powers of the Governor to intervene in regional affairs; doing away with the concurrent list; more powers given to the regions in financial and investment matters; and the idea of a permanent commission on devolution that would deal with centre-regional disputes.

On the issue of state land the present proposals mark a significant progress by vesting state land within regions in the regional councils. Land needed for the purposes of the centre is to be utilized in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law. The regional list given as an Appendix to the proposals specifically states that the regions will have power to alienate and dispose state land. In this alienation of land, priority is to be given to persons first of the district and then of the region.<sup>34</sup>

The proposal to vest land in regional bodies and the acceptance of the principle that smaller units such as the district are to be the basis for land alienation meet concerns of minorities. The fact that the subject of state land does not appear in the list allocated for the centre and doing away with the concurrent list, should also limit the possibility of centre interfering. All these mark a significant progress on the debate on devolution of power over land.

A much more debatable issue than what has been stated is the stipulation that inter-provincial irrigation schemes are a reserved or a central subject. At the moment it is not clear what does this stipulation exactly mean. For example, does it mean that central institutions will control all aspects of inter-provincial irrigation schemes which includes formulation of projects, raising funds, management of headwork and canals, settlement of people and managing social and economic infrastructure in these projects? Or does it mean something less than that? This needs to be clarified clearly because as we have argued above it is these "inter-provincial schemes" that really matter when it

<sup>34</sup> Text of the Government's proposals on devolution - op.cit

comes to land settlement. The 13th Amendment also used a very wide definition of “inter-provincial” schemes in order to maintain power at the centre. This needs clarification.

While accepting the fact that the new proposals are a significant improvement over the 13th Amendment in devolving power over land, it is also important to note there are many areas of debate and clarification that need to be discussed. For example a careful survey has to be done on existing land laws so that the “due process of law” does not give room for the Centre to acquire land in the regions arbitrarily. There are bound to be contradictory demands for state land by the centre and the regions. It is also necessary to see how existing land use will clash with future demands of regional councils. These problems will differ from region to region due to diversity of existing land use patterns.

As we have argued above, genuine devolution of power to the regions should result in significant changes in the highly centralised institutions which manage vast tracts of state land. Future discussions have to focus on this question.

Finally the most difficult issue in finding an implementable answer to the issue of devolving power over land will come if there is a continuation of the military offensive along with the attempt to find a political answer. Unfortunately this seems to be the strategy pursued by the government at present. In fact the continued military strategy seems to be the way in which the government is trying to sell the political package to the hardline opinion in the “South”. If this policy continues, military logic will be the dominant factor that decides who manages land, who controls land and even some of the settlement policies carried out. As we have shown in the earlier section this is the ground situation in many parts of the North-East even now. If the policy of continuing with the war continues, such complications will multiply, and will form a great barrier to making devolution of power a reality.

## Chapter 8

# The Structure and Content of Education: Policy Choices and Problems of Implementation in the Context of the Devolution Proposals

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Sasanka Perera

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## Introduction

In 1919 H. G. Wells in his book *The Outline of History* noted that “human history becomes more and more a race between education and catastrophe.” In Sri Lanka, irrespective of the significant quantitative expansion of education since independence, the catastrophic quality of the ethnic conflict that we have brought upon ourselves has not been any less. That, I think says something about the quality of our education. Simply being “educated” does not mean that a person has acquired human values that would be necessary for living in an increasingly complicated and plural society — among other things. Thus, the value of a quality education for the development of a nation and its future is a foregone conclusion.

In this brief essay I would attempt to assess the impact the proposed form of devolving powers and responsibilities governing education may have on the country. In doing so, however, I would focus on two selected issues rather than focussing on an entire range of issues. The issues I have selected to focus on were selected because of their relative invisibility in the sphere of social research in Sri Lanka irrespective of their importance. These two issues are the hierarchy

of education and the content of education. Obviously, there is no academic crystal ball that one can gaze into and suggest what the future may hold. Thus by definition this is a speculative essay primarily concerned with identifying problem areas and positive features in any future devolution of educational responsibilities and services to the Regions.

One of the main campaign issues of the People's Alliance during its election campaign for parliamentary elections in 1994 was the promise to bring peace to the country by finding a "political solution" to the country's continuing inter-ethnic conflict. The same campaign slogan dominated its campaign for the Southern Provincial Council in early 1994, and the presidential elections consequent to the conclusion of the parliamentary elections. This campaign was launched and maintained under serious and overt racist political tactics used by sections of the opposition. Most of these negative tactics were in the form of posters catering to the collective fears of the Sinhala suggesting that any vote to the PA would mean a division of the country or the selling of the nation to the LTTE. Despite this sustained and rather sinister campaign the PA was victorious in all three elections, and thus the new government and the President were voted into power on a platform for peace — among other things.

The problem however was that the political solution which the new rulers were going to find seemed to be rather elusive during its first few months in power. In fact the words "political solution" had acquired certain negative connotations within certain sections of the Southern polity. They seem to suggest things that could not be achieved, dangerous to the Sinhala people, leading to the division of the country, giving into separatism, and so on. Thus when the government's proposals for devolution were finally presented in public it was done in a context which was marked by both an expectation of peace and sheer irritation at what seemed to be total inactivity of the new government in any direction. Generally speaking it seems to me that these feelings were shared by many segments of both the Tamil and Sinhala societies.

Then on the 3rd of August 1995, the President addressed the nation and offered in outline a set of proposals which were supposed to find a lasting solution to the state of war engulfing Sri Lanka. In

making the devolution proposals public the President observed that "the aspiration of the entire Sri Lankan populace is that the current national crisis centered around the North and East, be brought to a peaceful, just and honourable settlement, ushering in an era of tranquility and harmony" (ICES 1995: 1).

Despite the President's expectations of tranquility and harmony, those were the very features that were most manifestly absent in the political discourse in the South in the aftermath of making the proposals public. Much of the negative interventions came from sections of the Sinhala polity. However, none of these interventions reached the point of political violence, which in itself was clearly a positive development in the Sri Lankan political process. This was clearly not the case when the Indian brokered peace pact was signed in the late 1980s. At the present moment the seemingly strong and vociferous opposition to the proposals is being presented through the media as well as through political meetings held in public. A number of reasons paved the way for such a state of affairs to emerge:

First, the nature of the opposition itself suggested that the proposals presented by the government went far beyond anything any previous government had offered. It simply shocked many segments of the Sinhala populace. Many thought that if the proposals were implemented they would impact negatively on the Sinhala people. The most sensitive areas were land alienation, access to the ocean and other natural resources as well as the status of Buddhism in any future Regions. Most of these concerns emanated from the belief that at least some (particularly the North and the East) of the future Regions would turn out to be ethno-religious (Tamil-Hindu) enclaves within which the rights of the Sinhala would be marginalized.

Second, many people failed to understand that what was presented was merely a set of proposals which was subject to revision and re-writing. This occurred irrespective of the government's clear invitation to democratic debate in order to revise the proposals when and if necessary. They were simply seen as something concrete and final and inspired by Tamil and foreign conspiratorial intervention. Of course the emergence of conspiracy theories in any society experiencing socio-political instability — as is the situation in Sri Lanka — is only to be expected.

Third, the government itself made the avoidable blunder of presenting the proposals without fine-tuning some of the key and sensitive issues such as those clauses relating to land alienation and the nature of the central control over the Regions. The point is that, if any set of proposals of this nature are to be of practical utility, they have to be accepted by a majority of both the Tamil and the Sinhala polities. Directing it to merely one section of the total population is not going to be helpful in the long run. It is also bad politics. Moreover, making amendments and revisions of key issues under criticism is not generally seen as a democratic practice in a pauperized and subverted democracy such as Sri Lanka. Such a practice would be viewed by many Sinhala with suspicion, as an act of a government trying to hide something. On the other hand revisions introduced to certain key areas would be perceived by many Tamils as the government giving into the demands of Sinhala nationalists. Already both of these sentiments have been expressed.

Fourth, as vociferous and emotional as the opposition to the proposals may have been in the South, whether that opposition had captured the public imagination in general has not been quite clear. In the South the opposition as well as the support for the proposals thus far has been orchestrated by segments of the Sinhala middle classes based in the urban sectors. For instance, most of the academics and professionals who wrote letters and essays to the newspapers or appeared on television in support of or in opposition to the proposals are individuals who depend on the cities and their facilities for their living. Similarly, when opposition political meetings were organized in the outlying areas, the key speakers were the same individuals who had already established their opposition through newspapers and television to which they had easy access.

During this time it was also clear that the government was becoming quite unpopular in the rural sector as well. But here its unpopularity emanated from its mishandling of the economic sphere and its generally perceived inactivity rather than as a result of specific opposition to the devolution proposals. In fact, in many interior villages in Kurunegala and Galle Districts which I visited in August, September and October 1995, the opposition to the government from its own supporters came from its inability to find solutions to the

people's economic problems, such as increasing food prices and general unemployment.

In the midst of this confusion and emotional debate, key issues such as land alienation, the future status of Buddhism and so on have overdetermined other equally if not more important issues. However, at this particular point in time these forgotten issues do not have the same emotional value as those mentioned earlier. One such underemphasized issue is the future of formal education if the proposals for devolution are implemented. It is then in this context that this essay should be placed.

## **The Devolution Proposals as They Pertain to Education**

As a point of departure I would like to begin this analysis by looking at the government's political proposals as they pertain to education. Education is the subject matter dealt with in section five (5) of the devolution proposals:

- “5.1 Education and Higher Education will be devolved subjects included in the regional list.
- 5.2 Certain specified schools and universities may be declared “national” institutions administered by the centre.
- 5.3 The recruitment, transfer and disciplinary control of teachers other than those in national schools will be the responsibility of the Regional Council.
- 5.4 Training of teachers will be the responsibility of both the Centre and the Regional Councils, depending on whether such teachers are to be recruited to the national or regional councils.
- 5.5 Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the centre.

5.6 There will be a national Education Commission composed of representatives of the Centre and the Regions entrusted with the following functions:

- (a) Identifying "National" schools and Universities in consultation with regional chief ministers and stipulating criteria for admission into these national schools and universities.
- (b) Setting minimum standards with regards to training, examination, curriculum, and employment of teachers" (ICES 1995: 16-17).

As I had mentioned earlier, the text of the government's devolution proposals does not constitute a final or complete document. It is then from such a document that the clauses quoted above have been taken. As such, it is on the basis of such non-final ideas that this analysis has to proceed. Therefore, my method of analysis here would be to assume that the provisions dealing with education in this document would be adopted at some time in the future. If such an outcome is a future reality, I would like to speculate what kind of impact it would have on the country's education in particular, and its future in general. I would situate part of this analysis within clusters of knowledge and information we already have on Sri Lankan education.

It seems reasonable to assume that any serious political solution to a vexed and utterly mismanaged inter-ethnic conflict that also has certain clear territorial imperatives (i.e. the majority of Tamils are living in the present Northern and Eastern Provinces) may be found in the kind of radical devolution of power and administrative responsibilities as the government has proposed in its devolution proposals. The assumption here of course is that if the Regions are allowed to be in charge of their own affairs problems of discrimination would tend to arise in reduced consistency. If that is the case, it also seems reasonable to assume that all aspects of governance should be devolved to the regions except for key issues such as national defense, finance and so on.

In this sense, educational responsibilities surely would seem like one of those areas that can, and should be, devolved without encountering too many problems. In fact it is perhaps that very assumption that kept education out of the debate involving the devolution proposals. However, despite its soundness in theory, is the devolution of educational responsibilities to Regions in practice such a simple task with no serious consequences? This then, is the fundamental question I would attempt to answer in a provisional manner.

One could argue from a comparative perspective that such an exercise is in fact a practical and achievable one. For example, one may even quote relatively successful examples of this situation from countries where education—among other things—has been devolved to the states or provinces as the case may be. The most quoted examples are the United States of America, Canada, Australia, and India. Even in Sri Lanka under the existing Provincial Councils, the routine administration of education comes under the purview of the Provincial governments. But under the prevailing system provincial authority over key aspects of education has clearly been restricted and retained by the Government in Colombo. Thus the existing provincial administrations have no authority to train teachers, curriculum formulation or the administration of institutes of higher education. Those restrictions clearly indicate the highly centralized nature of Sri Lankan administration despite the establishment of the Provincial Council system. However, the envisaged devolution of education to the Regions would offer the Regions much more power over education than we have hitherto experienced or even perceived. In fact, this aspect of devolution is in keeping with the radical and progressive nature of the present devolution proposals.

### **National and Regional Institutions: The Problems of Internal Differentiation**

According to section 5.2 of the devolution proposals, selected schools and universities can be categorized as "national" institutions which will be administered by the Centre. In addition, all other

institutions of education not identified as "national" would come under the purview of the Regions. This is clearly stipulated in section 5.1 of the proposals. In general, the formulation of regional and national institutions of education is not a new or radical development in the realm of devolution of power. Such institutions already exist in other parts of the world where systems similar to federal systems of administration have been established.

However, what seems manageable and appropriate in theory may not in fact be so in practice. Similarly, a certain innovation — such as the devolution of education responsibilities and powers to the regions — which has worked well in one location need not work with similar success and efficiency elsewhere. Such successes and failures have to be understood not so much from a comparative perspective, but rather from the point of the historical and socio-political realities within which such innovations are located.

What are the likely problems that could emerge as a result of categorizing education institutions (eg. schools, universities or other institutions of higher education such as technical colleges) on a national and regional basis? One possible problem area is likely to be the relative status positions these institutions could acquire in the future, and the consequences of such an outcome. Sri Lanka is clearly a hierarchical society. Sri Lankans under most circumstances perceive and come to terms with reality by organizing the social world around them in a stratified fashion. In the pre-colonial past the entire Sri Lankan social organization was based on a clearly stratified caste system. While that system is still in place we have added a class system based on people's access to means of production.

This sense of hierarchy and stratification permeates most aspects of Sri Lankan life. For instance, people perceive our hospital system as well as the entire health care system in terms of stratification. Hospitals are stratified, as are doctors, and even entire medical systems. Similarly, the existing system of education is also clearly stratified — both officially as well as in terms of public perception.

We know that certain government owned schools located in the urban sectors are classified as "A grade" schools. These are among the most sought after schools by both students as well as by teachers. In addition, there are private schools owned by various Christian

denominations for the financially wealthier sections of the populace. In these schools members of the particular religious denominations to which the schools belong are usually preferred. There are also a large number of yet other Christian denominational schools which are not vested with the same status symbols and value as the schools mentioned above. They, as well as smaller government-owned schools in the peripheral areas as well as urban centres are placed rather low in the school hierarchy. Then there are the so called international schools exclusively catering for the wealthiest sections in the country and the expatriate community who want to offer their children what they perceive as an "American" or "British" education. Currently, these kinds of schools are at the zenith of the school hierarchy while other public schools such as the central schools, *maha vidyalayas* and lesser known denominational schools are located at lower levels of the educational hierarchy. What is clear is that it is generally difficult to gain access to schools located at higher levels of the education hierarchy.

At the same time those who graduate from these prestigious institutions have better opportunities in obtaining lucrative employment, particularly in the private sector. This is both as a result of the real and sometimes perceived high quality of education one receives from these schools. More importantly, such an outcome is also possible due to the ubiquitous and powerful alumni networks one forms by virtue of being in one of these schools. Such networks play an important part in placing graduates from these institutions in lucrative fields of employment.

It is then clear that there is a strong and obvious system of internal differentiation already in place within Sri Lankan education which clearly manifests itself in the hierarchy of the school system. I would argue that given such a strong and entrenched negative legacy the same kind of internal differentiation could manifest itself when national and regional systems of education are introduced. This is likely to occur in a number of different ways. National schools, universities and other institutions of higher education may be vested with higher prestige value over regional institutions. Moreover, national institutions are likely to be infused with more funding and other resources such as external and international networks. Given

such a possibility it is likely that students who graduate from such institutions would be preferred over others in certain sectors of employment, particularly for employment in key areas of the central government. There would also be severe competition both on the part of students and teachers to gain access to such institutions. It is unlikely that such an outcome may be prevented by regulation alone. As we can see already, regulation introduced to ensure that parents living in a certain locality have preferential access to schools in their locality has failed in a spectacular fashion with regards to prestigious schools. In such a context, there is reasonable space to speculate that the categorization of national and regional educational institutions could lead to the entrenchment of internal differentiation.

On the other hand, a similar situation could also emerge between different Regions. For instance, Regions can legislate that graduates from regional schools be given preference in all sectors of employment located within particular regions. Similar legislation can also give preference to students resident within a Region in determining admission to particular institutions. Such legislation is not only possible, but perfectly reasonable in the given context, and should be expected in terms of the proposed devolution package. In fact, if we take the United States of America as an example, state universities do allocate greater percentage of placements for state residents. Students from other states also have to pay higher tuition fees. Such preferential treatment is not a problem within the kind of massive state and national education as well as employment markets that countries such as the USA can offer. By comparison, Sri Lanka has a miniscule education system, and a rather restricted field of employment. The kind of restrictions envisaged above is likely to impact negatively on the education system, and by extension on the national economy. That is, while in theory regional educational and employment sectors may expand, a situation of chronic educational and employment restrictions could emerge on a national scale. Thus the problem of internal differentiation and the problem of employability of graduates from different regional and national schools should be a serious consideration that should be paid attention to in the process of devolving education responsibilities to the regions.

Moreover, one could argue that the small size of the country

does not warrant the devolution of education facilities and services to the Regions. In a recent essay educationist Ranjit Ruberu has argued that given the relatively small size of the country and its schools system, it is not difficult to manage such a system from the centre:

“The small size of the country does not Justify a highly devolved educational system, even with a Union of Regions or Federal government. According to the school census of 1993 Sri Lanka school system has only 10, 160 schools of diverse levels, and size; 186, 793 teachers and a pupil population of 4, 174, 881. Such a comparatively small schools system and a teacher pupil population does not justify a highly devolved educational system in the interest of economy and efficiency” (Island, 1 September 1995).

In terms of simple mathematical tabulation Ruberu makes a valid point. The crux of his argument and others like it contend that given the miniscule size of the school system it can be effectively administered from the centre. As such, there is no need to devolve educational responsibilities to the regions. This argument would not change even if one were to add the existing universities and other institutions of higher education to this number of schools.

However, based on the same kind of figures presented above one could also present an argument in exactly the opposite direction. That is, precisely because as a whole the Sri Lankan education system is such a miniscule one, the re-distribution of educational institutions and responsibilities among the Regions would mean that each region would get a relatively small number of institutions to administer. Even if regional governments were to add to this list (as they surely would) the administration of such a small number of educational institutions and associated services would be a relatively simple and efficient task.

Here, it seems to me the point of argument really should not be at the level of simple mathematics. One could then simply argue that since the Sri Lankan land mass is such a small area in extent, why devolve anything to the Regions at all? In fact this is one of the



unimaginative hard-line arguments that has already emerged. Therefore I would suggest that we move beyond these figures and attempt to confront the real issues hidden behind these figures.

To me what is important is not the miniscule size of the overall education system. What is more important is where specific educational services and institutions are currently located. I would argue that the present location of these institutions and services is clearly discriminatory and lop-sided when it is placed in the national context. Such location may also impact on the future of education in the regions. In a sense this is linked to the system of hierarchy of education and the internal differentiation of education which I discussed earlier. For a long time, educationally the most privileged districts were Colombo, followed by Jaffna before that area was transformed into a war zone. The second best in this list of educational privileges were the urban centres in other districts such as Kandy, Matara, Galle, Kalutara and so on. There were other districts which were completely backward in terms of access to and quality of education. Hambantota, Ampara, Monaragala, Batticaloa, Mannar, Vavuniya are some of these districts.

In such a context what is the obvious question we can ask in terms of future education in the Regions? What regions would benefit from the current location of educational services and facilities? Clearly, which ever regions are entrusted with the educationally more privileged areas would be better off — educationally speaking. They would benefit from the facilities which already exist. In comparison, the regions that are entrusted with areas such as Ampara, Hambantota, Monaragala and so on would continue to be educationally underprivileged. In fact, they may be worse off than under the current system, since the Regions themselves will be expected to look after these “problem” areas, and not the centre. What this means in real terms is that certain regions are likely to be educationally underprivileged as opposed to others. What is more problematic is the fact that some of the educationally most disadvantaged areas (according to present reckoning) would also be located in economically backward regions. Uva and Sabaragamuwa for instance are two good examples of this situation. Thus one possible consequence of the re-distribution of education could be the pauperization of education in certain areas.

## **Parochialization of Education: The Problem of Competing Cultural Identities**

Another potential problem that may manifest itself as a result of devolving education responsibilities to the regions is the potential parochialization of the content and nature of education based on competing cultural identities. As we know at all levels education is not merely the acquisition of formal and technical knowledge for employment purposes or for the sake of knowledge in itself. It is also a means of transmitting culture — values, norms, attitudes, and notions of ethnocentrism. I would suggest that it is in this sphere that some future problems may be located.

Parochialization of the content of education can occur for a number of reasons. These reasons may vary from the mistakes of incompetent policy makers to the hegemonic aspirations of ethno-religious or social groups wielding power in a particular context. For instance, every culture has its own heroes who tend to manifest themselves within the pages of textbooks, course outlines and lessons. This would be possible only if those cultures are politically influential to get such symbolic figures included in the curriculums (Perera 1994). However, the problem is not with the mere inclusion of culture heroes in the content of education. The problem is when such inclusions with potent symbolic value are utilized for parochial purposes such as to legitimize exclusivist ethnic or religious claims over a certain territory.

Many of the Sinhala language textbooks currently used in Sri Lanka for example, are replete with the heroic exploits of Sinhala heroes such as King Dutugemunu. The inclusion of such heroic and mythical figures is not in themselves problematic. As I have noted earlier what is of concern is when such figures are used for exclusivist ideological purposes. For instance most of the time when the figure of king Dutugemunu appears in Sinhala language textbooks, he is presented as an anti Tamil hero. Moreover, that is also the manner in which many teachers present the story given the fact that they are not specifically trained to handle sensitive issues such as those dealing with the past in a multi-ethnic society. However, such a presentation is too simplistic as well as historically inaccurate. The references to

Dutugemunu's alleged respect for his South Indian (Tamil) rival Elara as well as Elara's respect for Buddhism which mark both the historical and popular discourse of the battle between these two leaders are generally left out from textbook accounts. Instead, the battle is depicted mostly as a heroic battle against Tamils (Perera 1991).

Similarly, images of Buddhism and Sinhala rituals are also quite visible in these texts. However in comparison, the cultural heroes or the socio-cultural practices of other people who are also members of the Sri Lankan plural society cannot be easily located in most of the existing textbooks or in terms of curriculums (Perera 1991, 1992, 1994). This shows that much of what is transmitted through education is usually decided by those who are culturally and politically dominant in a given society (Perera 1994). In this case the operative hegemonic influence was that of the Sinhala Buddhists.

Tamil language texts currently in use also show a similar pattern. However, these texts are also compiled by the state. As such they do not have potent Tamil nationalist myths and other such symbolic references as in Sinhala texts. But they are also marked by their almost total silence when it comes to non-Tamil Sri Lankan reality (Perera 1991). At the same time like their Sinhala counterparts, Tamil teachers who are also untrained to handle the challenges of multi-ethnic Sri Lanka play a negative role in transmitting Tamil nationalist myths to their students, and in general perpetuate the inter-ethnic conflict (Perera 1992).

However, we should also note that these kinds of practices are not unique to Sri Lankan education only. Elsewhere too, particularly problematic historical legacies are often left out of history lessons. For example, official Japanese history texts and courses make no mention of the atrocities the Japanese military committed in China, Korea and other Asian countries they occupied during and prior to world war two. Similarly, American children who are taught about the heroism and greatness of Abraham Lincoln and Thomas Jefferson would very rarely hear about the atrocities their European ancestors committed against the Native Americans (Perera 1994).

One of the unfortunate realities of the Sri Lankan education as whole is its overt ethnic and religious bias. If one were to take the school system it would be obvious that schools are largely segregated

on the basis of ethnicity/language, and to lesser extent on the basis of religion. What is clear is that the school system reflects the social organization of the larger society where a certain degree of segregation is voluntarily constructed and enforced (Perera 1991, 1992). What is worse is that teacher training programmes have not seriously considered how teachers should be trained in order to face the challenges of plural Sri Lanka. In fact most teachers are also trained under segregated circumstances which also play a significant role in aggravating the ethnic conflict among both Sinhals and Tamils (Perera 1992).

It seems to me axiomatic that those who are vested with the responsibility of designing textbooks, curricula, as well as training teachers should be attuned to the realities that surround the society in which they live. As a whole education in a society like ours is a sensitive intellectual exercise marked by national concerns and socio-political realities. In such a context textbooks have to be designed to reflect the reality of the society in which the school system is located. Ideally they would also teach the students something of the world beyond the society in which they live. For instance, textbooks currently in use in schools in the American states of New York and California were introduced after long periods of consultations with experts and interested groups. An equally long period was spent on designing these texts to reflect the religious, ethnic and other features of those societies. Despite all these attempts many ethnic and religious groups, particularly in the case of the recently introduced American history texts in the state of California complained that their sensitivities have been overlooked or violated (Perera 1994).

In Sri Lanka however, such concerns are generally not shown by the state which usually designs and writes textbooks. On the other hand, as I have already suggested Sri Lankan texts tend to be Sinhala centric, generally depicting history and cultural sensitivities of the majority community. Such a depiction does not play a constructive role in attempting to teach students from different ethnic or religious backgrounds some basic factors about themselves or dispelling misconceptions about each other. Thus despite the great strides Sri Lankan education has taken in many directions, when it comes to the ethnic conflict it has not yet been properly utilized to control the destructiveness of that conflict (Perera 1994).

What I want to suggest at this point is that education is a particularly useful and powerful means of constructing cross cultural understanding in plural societies. Such attempts have been launched with varying degrees of success in such places as Canada, the United States of America and Australia. In this sense, given the unfolding ethnic conflict in Sri Lanka, education ideally could have played a constructive role in controlling this spiralling problem. It would be obvious that in a society divided on the basis of religion, language or ethnicity the school system would be one of the best ways of achieving some degree of integration, or at the very least schools would seem the ideal place where such a programme could be launched (Perera 1994).

At this point one may pose the question what all this has to do with education and the proposed devolution package. Well, everything. What I have described above is the nature of our education system as it exists today, particularly in the context of the ethnic conflict. Moreover, what we have to remember here is that all these problems have occurred within the context of a highly centralized education system. That is, all these negative legacies which were initially introduced during the British colonial period have been reinforced under successive independent Sri Lankan governments.

So when the educational responsibilities are devolved to the Regions, is it reasonable for us to expect that these currently existing limitations and parochialisms in the content and nature of education would be eradicated? On the basis of the kind of material that has been presented above I would be compelled to argue in the negative. It seems to me that these kinds of parochialisms would be more entrenched and even expand under regional administration of education. Except for a few functions (such as the administration of a few institutions like the proposed national schools) all responsibilities of education will be devolved to the regional administrations. This would include the administration of regional schools and universities, recruitment and training of teachers for these institutions and the designing of curricula and textbooks for these institutions. These responsibilities are clearly stipulated in the following clauses of the devolution proposals:

- “5.3 The recruitment, transfer and disciplinary control of teachers other than those in national schools will be the responsibility of the Regional Council.
- 5.4 Training of teachers will be the responsibility of both the Centre and the Regional Councils, depending on whether such teachers are to be recruited to the national or regional councils.
- 5.5 Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the centre” (ICES 1995: 16-17).

In addition, section 5.6 (b) of the devolution proposals state that a National Education Commission will be formed. It will be composed of representatives from the Regions as well as the Centre (ICES 1995: 16-17). Among other things, this Commission will be required to set “minimum standards with regards to training, examination, curriculum, and employment of teachers” (ICES 1995: 16-17).

In this light one could always argue that the standards of education inclusive of its contents will be maintained under regional administration since the proposed National Education Commission will set the minimum standards, and will hopefully guarantee that these standards are adhered to. However, the standards this national body is supposed to set are the minimum standards, and there is nothing in the current proposals that would give this Commission any policing powers that would assure that even these minimum standards would be adhered to. Moreover, in many spheres in Sri Lanka there has always been a vast gap between policy and practice. In such a context I would argue that the overall standards of education are likely to deteriorate while the parochialisms in the content of education would correspondingly increase at the same time.

How can such an eventuality come by? Part of the problem would be the fairly wide-ranging powers given to the Regions under the proposed devolution package. However, if any serious exercise in devolution of power to peripheral units is expected to work, there will have to be a significant devolution of power as well as responsibilities to those peripheral units. The kind of power offered to the Regions

make sense in terms of the above notion. However, that kind of power in the context of polemical regionalisms and ethnic as well as religious identities could lead to serious problems in the content of education. This would also seriously impact on the future social health of the country.

The problems I have already identified, such as the Sinhala and Buddhist bias in the content of Sri Lankan education resulted from the ability of the Sinhala Buddhists to exert their social and political will at the national level. That influence has clearly impacted negatively on Sri Lankan inter-ethnic relations by constructing problematic stereotypes and offering polemical and antagonistic accounts of the past as well as legitimizing antagonistic and competitive ethno-cultural identities (Perera 1991).

It seems to me that under the proposed devolution scheme a similar situation could also occur at the regional level. The regions have the power to design syllabi, train teachers, write texts and decide on the content of education. In such a context, it is entirely possible that regionalisms as well as exclusivist ethno-religious claims can emerge, which may be legitimized and transmitted via regional education. For instance, a future Tamil-dominated Northern Region can construct a polemical past for the Tamils in that area on the basis of existing political myths as well as new ones and a militantly Hindu-centric cultural identity that may compete directly with a Buddhist Sinhala identity. This in fact may occur as part of educational policy, and would be perfectly legal and reasonable in the context of power and educational responsibilities that would be offered to the Regions.

A similar situation could also emerge in future Southern Region dominated by Sinhala Buddhist interests or in the Central Region dominated by Kandyan regional and Sinhala Buddhist interests. Such a situation can also occur anywhere else. Clearly, these are all speculations, and one could even argue that these are merely the nightmares of an anthropologist. None of these may actually happen. On the other hand, they might. On the basis of our past experiences at the national level and in terms of what the Regions can do, and the general lack of central control over regional educational activities, such eventualities are not impossible. Thus we have to ask now what can be done at this moment in time to avoid such case scenarios?

Whatever strategies that may be available, have to be considered now, and not when it is too late. As a nation Sri Lanka has always been good at taking ineffective steps to combat socio-politically dangerous situations when it is too late. The history of the current ethnic conflict will be the best example of this situation.

## In Place of a Conclusion

As I had noted at the outset of this essay, by definition this is a speculative essay. As such, I cannot offer any concrete conclusions. I would merely restrict myself to offering certain observations based on the ideas presented thus far. Devolution of power to the Regions seems to be the minimum reasonable principle on which the continuing inter-ethnic conflict may be brought to some kind of a conclusion — if at all. Moreover, the powers that are to be devolved to the regions would have to be substantial if they are to satisfy most Tamil political parties as well as people who have been betrayed by generations of negative ethnic politics since independence. That would also be necessary in principle, to organize a strong Union of Regions as the government proposes. Given this scenario it is pointless to argue against the plan.

What needs to be done is to make sure that most possible problems in the proposed system are ironed out before things get too complicated and intractable. In doing so we have to pay close attention to all responsibilities and powers that would be devolved to the Regions and not merely to the issues that have undue emotional value attached to them. Moreover, we cannot assess this kind of situation from a mere emotional perspective. In this context, what kind of observations can one make regarding the devolution of educational responsibilities to the Regions?

There is no point in arguing that all educational responsibilities should be retained by the centre. It seems to me that educational management could be better handled by the Regions. By this I mean the routine administration of schools and technical colleges and responsibilities over recruitment of teachers, and their transfers. It seems reasonable to argue that the Regional governments would have

a better sense as to how to run their schools. For a long time Sri Lanka's out-station schools have had a problem of attracting competent teachers. This problem may also be resolved to a certain degree, if individuals from the Region itself—particularly from the areas where the schools are located—are recruited as teachers. Comparatively, they will have lesser distances to travel, and would have deeper roots in the areas where they serve, and hopefully a vested interest to see their area developed.

However, what about regional responsibilities in teacher training, designing syllabi and compiling texts? This is likely to be a more sensitive and problematic area than the mere administration of schools. On the basis of the past experiences in the nature of what I have presented in this essay, this is an area in which we have to exercise extreme caution. If not, one mechanism introduced to resolve one problem could easily pave the way for the emergence of many others. What is also equally clear is that retaining the above responsibilities by the centre may mean a cumbersome system where the Regions and the Centre would be in constant conflict. On the other hand, it seems equally clear that some of the proposed regional responsibilities in education may have to be restricted irrespective of possible vehement opposition.

I would suggest that teacher training can be carried out by Regional governments under strict rules and formats agreed upon by both Regional and Central interests. Moreover, the interests and challenges of the entire country needs to be taken into account when training teachers and compiling texts and syllabi. They should not be decided merely by Regional and parochial interests. I would also suggest that the designing of key texts and syllabi should be vested with the National Education Commission which represents both regional and central interests.

This does not mean however, that certain courses and texts that the Regions consider important for their areas cannot be compiled by the Regions on their own for any secondary courses. Courses on regional natural resources or collections of poetry and short stories by authors from the Regions could constitute some of these courses. But they should also come under the supervision of the National Educational Commission. There should also be a clear set of enforceable guidelines

indicating the kinds of things that should not constitute course contents, and the steps the Centre can take in arresting problem situations in the interest of the country. In other words the National Education Commission should have more powers to intervene decisively in the kind of problematic situations I have envisaged, and not merely to set "minimum" standards.

It seems to me that it would be impossible to eradicate the entrenchment of the existing internal differentiation of schools. As such, all we can expect would be to attempt to control the situation. Unnecessary inter-regional competition would clearly be detrimental to the national interests. So, instead of setting minimum standards, the National Education Commission should be constantly monitoring the quality of education and services in all schools through regional offices. While this will impact on the independence of regional authority over education, that would have to be considered as a necessary compromise in the national interest.

The devolution proposals also provides for the establishment of regional universities. In theory this is consistent with the idea of devolution as currently envisaged by the government. However, in practice in the Sri Lankan context I would argue that this would be a negative development. Already, the quality of Sri Lankan higher education has considerably deteriorated over the last decade or so. The main reason for this is the unplanned expansion of the university system and the recruitment of under-trained teachers. Since the PA government has come to power a political decision has been taken to establish three more universities.

This alone shows how issues dealing with higher education have become political issues to which ad hoc political solutions are offered without considering the long term consequences of such decisions. While buildings may be found for these institutions it would be impossible to find properly trained teachers to teach in these institutions. As it is, established universities have a serious problem in attracting well trained teachers, particularly in the social sciences and humanities. As such, graduates from these new universities would be worse off than those in more established universities. The quality of their education is likely to be quite low. They would also face more difficulties in obtaining employment since graduates from

more established universities would be preferred — particularly by private sector employers.

These negative trends would expand further if Regions also begin to establish their own universities. Currently we do not have the intellectual infra-structure to expand university education on a decentralized regional basis. In this context I would argue that all universities should remain under central control, and their standards should be internally increased. This would also compel Regional schools to upgrade the quality of their school education in order to assure that their students can gain admission to these national institutions.

Finally, it seems to me that while devolution of power may be a sensible tool to deal with some of the socio-political problems Sri Lanka is currently facing, it is an exercise that needs to be cautiously implemented. It is not merely a political exercise, but also an intellectual one. It has to be worked out on a rational basis without allowing the kind of sectarian sentiments that have aggravated the continuing inter-ethnic conflict to direct its future course.

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## Appendices

**A**

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**President  
Chandrika Kumaratunga's  
Address to the Nation**

**August 3, 1995**

"Most venerable Members of the Maha Sangha, members of the clergy, brothers and sisters,

We Sri Lankans today are faced with the most decisive and challenging moment in our centuries old history. The decisions we make today are so fundamental that they will deeply influence and shape our destiny for many generations.

The aspiration of the entire Sri Lankan populace is that the current national crisis centred around the North and the East, be brought to a peaceful, just and honourable settlement, ushering in an era of tranquillity and harmony. This crisis has, for the last few decades, drawn the entire Sri Lankan people without discrimination, be they Sinhala, Tamil, Muslim or Burgher to the point of ruin, impacting adversely on all aspects of our national life. The ultimate consequence of this debilitating conflict is that a pall of gloom is cast over the life of the nation.

It is not only the wealth of the nation, not only the security and prosperity of our people that is at stake, but the very future of our children is now placed at risk. It is the major obstacle in the path of our progress, as a country and a nation. The reversal of our development efforts, increasing inflation and the cost of living and erosion of investor confidence further exacerbating the problem of unemployment



are all direct results of the war. This is true, not only of economic development, but democratic values and basic human freedoms are all endangered, driving our nation to the brink of disaster.

The tragic loss of the nation's children of all communities is woefully apparent. Murders, shootings, bombings and the like have created a situation where it is impossible for a person to walk on the streets devoid of fear for his or her life.

It is vital that we liberate ourselves from this unmitigated crisis. This is the challenge facing us. The only way this can be achieved is by eschewing divisions based on race, religion and political orientation and forging ahead, united in thought and deed, as one people. This is the central challenge faced by every Sri Lankan and this is the only means by which we can resolve this crisis.

The one major factor readily apparent to an objective analyst of the genesis and history of this national question is this: during the 50 years since the end of the colonial era, the aspirations of the Tamil people were not adequately fulfilled within the parameters of the political process. Instead a regrettable feature of the history of contemporary attempts to address their demands consisted of the disingenuous methods resorted to by successive governments. These resulted in acts of outright violence leading to the entrenchment of inter-racial anger, animosity and mutual mistrust amongst the Sinhala, Tamil, Muslim and Burgher communities. Consequently, we have had to suffer the bitter experience of witnessing the end of peaceful coexistence, so much a part of our cultural heritage built up over 2,500 years. The humanistic principles which formed an integral part of the social fabric of Sri Lanka were shattered during "black July" of 1983, an event which made a bloody imprint on the pages of history and which serves as a constant reminder of our unhappy quandary.

### **Fellow citizens -**

I would like you to reflect on two further aspects of the current situation. Firstly, you who are heirs to this country's heritage need not bear the weight of these shameful memories any longer. You are ready to cast off this burden from your shoulders. Secondly, we who have

been entrusted with the governance of this country are equally ready to shun the lust for power, the instrumentality of state sponsored violence and the pursuit of narrow short-term political gain. Our government which bears the responsibility for conducting matters of state, stands ready to repudiate former attitudes and strategies.

### **What, then, is the responsibility devolving on us all?**

It is the identification of the root causes underlying the current crisis which has persisted for so many years and the evolution of a rapid solution to these vexed issues. The first task is, therefore, a new approach predicated on unqualified acceptance of the fact that the Tamil people have genuine grievances for which solutions must be found.

The polity of a country must be structured on the basic premise that all sections of society are entitled to recognition as constructive partners in a pluralistic democracy. This is the fundamental principle on which our political vision is based.

In our view, therefore, the solution to the current problem lies in the implementation of a viable political solution of the contentious issues. This belief is at the very core of our political outlook which was in the Manifesto of the People's Alliance. This has been endorsed in the most emphatic terms possible by millions of people who voted for the Alliance at two consecutive elections. We have received the people's unequivocal mandate to resolve this problem through the implementation of a political solution.

The attainment of this goal represents a challenge which is daunting by its enormity. We have the courage to accept this challenge and the commitment to carry it through to an end.

### **Series of proposals**

My Government and I, with total sincerity of conviction, now place before you a series of proposals aimed at a lasting political solution. The proposals have not been prepared in consultation with

many responsible persons who have gained an insight into the current crisis. In essential terms, they represent continuity with similar attempts which have been made in the past in many policy-making fora. Each and every one of you will be afforded the opportunity of actively engaging in this exercise by articulating your views as the debate progresses. Your reactions in the immediate future will also assist us in giving full effect to the principle of complete openness with regard to the policy decisions of the Government.

From the inception of the present administration, the Government demonstrably displayed its honest commitment to the achievement of peace, but the LTTE spurned the hand of friendship extended to them, and is now engaged in fighting a war against the Government and against a peaceful resolution of the crisis. The LTTE are prosecuting the war by usurping the democratic rights of the people whom they claim to represent.

The armed forces of the Sri Lankan Government are seeking to free the people of the North in an effort to give position to their hopes and aspiration for peace. The current military action is not, by any means, one directed against the Tamil people but is a battle for peace waged only against the enemies of peace.

## Only goal is peace

The war is being fought according to a well defined strategy. Our only goal in this war is peace. The Tamil people are aware that there is now in power a Government which is prepared to address their problems and propose pragmatic solutions at the political level. Recourse to arms is therefore unnecessary; all that is now required is the spirit of goodwill and co-operation among all the groups concerned in working out, with thoroughness and determination, the basis of political settlement which will bring peace, stability and prosperity to the Sri Lankan community as a whole.

Our armed forces have demonstrated their ability and willingness to take on and overcome the LTTE. They have fully accepted that the war is being fought not against the Tamil people, but against the LTTE. The heads of the armed forces have directed their

officers in keeping with the above policy and along the lines of a well-planned campaign.

I wish to express my gratitude and that of the government of Sri Lanka to those members of our Armed Forces, the Police and the Homeguards who have fought heroically and selflessly for the achievement of these ends, sometimes at the cost of their lives. We express our boundless gratitude and appreciation to them.

Venerable members of the Maha Sangha, Rev. Sisters and my fellow Sri Lankans;

We are meeting the armed attacks of the LTTE with a well planned military campaign. But military means alone cannot solve the minority problems of the people of Sri Lanka. For a lasting solution to the prevailing crisis, we have to evolve political solutions. My government is now ready to face the challenge effectively and honestly. As we express these thoughts, we are acutely aware that extremist forces which are against the government and peace, are striving directly and indirectly to frustrate our efforts. The first comment I would make regarding such forces is that they have not propounded a viable alternative to the measures proposed by us. Their course of action consists of exhorting others to make war, while they themselves hide behind, follow extremist views filled with hatred. I earnestly urge you to reject.

We have travelled far in a very short time along the path we have chosen. Our passage was rendered smooth by the support you gave us. We have received wide spread approval from the international community. Even in the midst of a war, we have received hitherto unprecedented commitments of foreign aid. Many nations in Asia, the Middle-East and the West have expressed their support for the Government, and their strong displeasure with the LTTE's course of action.

We request your continued support and blessings in our quest for peace. We are unshaken in our commitment to achieve the reconstruction of a new society based on equality, justice and mutual co-operation. My earnest wish is that we go forward fortified with your good wishes.

## New vision of Sri Lanka

In our policy statement on January 6th 1995, we reiterated our commitment to a new vision of Sri Lanka grounded on the principles of equality, accommodation and tolerance. WE stated in the statement "we have a vision of sri Lanka where all communities can live in safety and security, where human dignity is valued and equality of treatment is an accepted norm of public life. We believe that all communities must be given the space to express their identity, and participate fully in the life of the nation, whether it be at the national, provincial or local level..." With this objective in view, the government is seeking to rebuild the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka. This Republic will be a union of Religions. This exercise is based on the following principles:

- (a) An effective constitutional framework for the devolution of power to regions based on credibility, clarity, and an internally consistent and coherent value system, which is capable of effective implementation and include structures for the just resolution of centre-region disputes;
- (b) to encourage the regions and communities which inhabit them to become constructive partners of a stable and pluralistic democracy;
- (c) to ensure that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any discrimination and in full quality before the law;
- (d) to give recognition to Sinhala and Tamil as official languages and to thereby accord equality of status to the official languages, and to recognise English as a link language;
- (e) to protect the identity of distinct communities and create conditions for the promotion of that identity, including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language, and to transact business with the state in the national language of their choice.

## Summary of proposals

We may now proceed to summaries the proposals on the devolution of power to regions. The scheme of devolution envisages constituting regional councils for every province with exclusive legislative and executive competence. In the north-east, there would be a redemarcation of existing provincial boundaries with full consultation to ensure a reconciliation of Sinhala, Tamil and muslim interests.

Each Region would have a Regional Council with the legislative competence within the devolved sphere and a governor and a Board of Ministers who will exercise the executive power of the region. The Governor will be appointed by the President with the concurrence of the Chief Minister and the Governor shall act on the advice of the Chief Minister and the Board of Ministers. The Governor will call upon the person who commands the confidence of the majority in the Regional Council to form the Regional Administration. The Chief Minister cannot be removed from office so long as he enjoys the confidence of the regional council.

The subjects to be devolved and those to be retained by the centre are set out in detail in the proposals. In the demarcation of the relative powers and responsibilities of the centre and the region, there would be no concurrent list. In this regard, the Centre would retain defence, national security, foreign affairs, immigration, currency, international economic relations, monetary policy, airports and harbours, inter-regional transport, national media, national archives and museums, and archaeological sites declared by law to be of national importance, banking and insurance, Buddhism and inter-regional irrigation. The full list of subjects reserved to the centre will be in the proposals. The subjects and functions exclusively devolved on the region would include education and educational service, local government, housing and construction, agriculture, health, irrigation within a region, transport, industries and industrial development, fisheries and social security.

## In the field of Law and Order

There would be a national police service responsible for investigating the offences against the state, and threats to national security and it would be headed by a national IGP who would be responsible to the central government.

There will be a regional police service responsible to the relevant Chief Minister.

A Regional Police Commission will be responsible for the recruitment and disciplinary control of the members of the regional police service.

Land will be a devolved subject and state land within a region will be vested in the regional councils. State land within a region required for the purposes of the Centre in respect of a reserved subject shall be utilised by the Centre in accordance with such procedures as may be established by law.

There will be a High Court and a Regional Judicial Service Commission in every region. The High Court will exercise criminal, appellate and writ jurisdiction within the region. There would also be a Regional Public Service and the Regional Public Service Commission which will be responsible for recruitment and disciplinary control of all persons employed by or seconded to the Regional Councils.

Regional Councils will have powers of taxation and there would be other arrangements for the sharing and assignment of revenue. A devolution Commission will seek to resolve through mediation and adjudication centre - regional disputes.

The Constitutional framework relating to devolution will ensure that Sri Lanka is a united and sovereign Republic and that it is a union of regions.

## Cross-roads of history

Our nation is on the cross-roads of history. Our most formidable challenge is to build a nation with which all communities and religious groups can identify and feel part of. Many previous attempts to evolve a durable solution to the ethnic conflict have failed for a want of

sincerity, resolve and imagination. Those who examine these proposals will find that our government has made a genuine and serious attempt to share power with regions while retaining the unity of the Republic. As early as in 1926, Mr. S.W.R.D. Bandaranaike prophesied that 'In Ceylon, each province should have complete autonomy..... A thousand and one objections could be raised against this system, but when objections were dissipated.... it would be (acknowledged as) the only solution' I urge all political parties and concerned groups to support these proposals which are intended to resolve the crisis in the north-east within a framework which reconciles the interests of all communities.

My late father speaking at the dawn of independence at the assembly hall in Torrington Square stated as follows:

"Compared with the great and powerful nations of the world, we are but a small people living in a small country but our history is rich with examples of the noblest impulses that move mankind - heroism, chivalry, piety, sacrifice and service. We shall need them all, if we are to triumph in the dark and difficult days that lie before us".

This is time today than it was then.

This is our moment in history. Let us together grasp it and dispel hatred and distrust and frame a common future which we can be all proud of.

**May the noble Triple Gem Bless you."**

## B

### **Text of Government's Devolution Proposals of August 3, 1995**

These proposals seek to redefine the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka based on the following principles.

- a) promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- b) ensuring that all communities be given the space to express their distinct identity and promote that identity including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language including the right to transact business with the state in the national language of their choice;
- c) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law;
- d) giving recognition to Sinhala and Tamil as official languages and recognising English as a link language;
- e) providing an effective constitutional framework for the sharing of power with the regions based on an internally consistent

and coherent value system. There would be clarity and consistency in the distribution of power between the centre and the regions and the scheme would be one which is capable of effective implementation and include structures for the just and equitable resolution of centre region disputes;

- f) ensuring that all communities participate fully in the life of the nation whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

#### **I. Structure of Devolution**

##### **1.1 Unit of Devolution**

A regional council will be established for every province identified by a new schedule to the Constitution. One of the regions would be constituted by redemarcating the existing boundaries of the present North-East Province in full consultation with a view to reconciling Sinhala, Tamil and Muslim interests.

##### **1.2 Regional Councils**

A Regional Council will consist of such number of members as may be determined by law. A Regional Council will, unless sooner dissolved, continue for a period of five years. There will be a Speaker and a Deputy Speaker for each Council.

- 1.2.1 Legislative power in the region will be vested in the Regional Council. Every region may make laws applicable to the region with respect to any subject set out in the regional list. The Regional Council will have no jurisdiction over the Reserved List.

##### **1.3 Governor**

There will be a Governor for each region for which a Regional Council has been established, appointed by the President with the concurrence of the Chief Minister of the Region.

1.3.1 The Governor will vacate his office upon; (a) resignation; (b) a two-thirds majority of the Regional Council passing a vote of no confidence; (c) removal by the President.

1.3.2 The Governor may summon, dissolve and prorogue the Regional Council on the advice of the Chief Minister.

#### **1.4 Chief Minister and the Board of Ministers**

The Governor will call upon the person who commands the confidence of the majority in the Regional Council to form the Regional administration.

1.4.1 The Chief Minister cannot be removed from office so long as he enjoys the confidence of the regional council.

1.4.2 Executive power in the Region will be vested in the Board of Ministers who will be appointed by the Governor on the advice of the Chief Minister. The Board of Ministers and the Chief Minister will be collectively responsible to the Regional Council.

#### **1.5 Capital territory**

The territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte will be excluded from the jurisdiction of the Regional Council constituted for the Western Region and will be administered directly by the Centre in such manner as the Centre may think fit.

### **II. Finance**

2.1 There will be a National Finance Commission entrusted with allocating grants to the region, keeping in mind the objectives of balanced regional development.

2.2 Regional Councils will have the powers of taxation in certain specified areas, and the Constitution will require other revenue sharing arrangements.

2.3 Regional Councils will have the power to borrow as well as to set up their own financial institutions. International borrowings above a prescribed limit will require the concurrence of the Centre.

2.4 Regional Councils may regulate and promote foreign direct investment, international grants and development assistance, subject to such conditions as may be specified by the Centre.

### **III. Law and order**

3.1 There will be a regional police service headed by a Regional Police Commissioner appointed by the Chief Minister, in consultation with the Governor of the Region. The Regional Police Commissioner will be responsible to, and function under the control of, the relevant Chief Minister. The Regional police service will investigate all offences against persons and property.

3.2 There will be a national police service responsible for investigating offences against the state, threats to national security, offences related to elections, inter province crimes and international crimes. The national police service will be headed by the National Police Commissioner and will be responsible to the Central Government.

3.3 The recruitment, transfers within the region, dismissal and disciplinary control of members of the regional police service will be the responsibility of the Regional Police Commission.

3.4 There will be a National Police Commission, the functions of which will include the transfer of police officers from one region to another in consultation with the Regional Police Commission.

- 3.5 The National Police Commission and the Regional Police Commission will both be appointed by the Constitutional Council. In the case of appointment of the Regional Police Commission, the Constitutional Council will act in consultation with the Chief Minister of the region in question.

#### **IV. Land and Land Settlement**

- 4.1 Land will be a devolved subject and State land within a region will be vested in the Regional Councils. State land within a Region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation with the relevant Regional Council in accordance with such procedures as may be established by law.
- 4.2 Priority in future land settlement schemes will be given to persons first of the district and then of the Region.

#### **V. Education**

- 5.1 Education and Higher Education will be devolved subjects included in the regional list.
- 5.2 Certain specified schools and universities may be declared "National" institutions administered by the Centre.
- 5.3 The recruitment, transfer and disciplinary control of teachers other than those in National Schools will be the responsibility of the Regional Council.
- 5.4 Training of teachers will be the responsibility of both the Centre and Regional Councils, depending on whether such teachers are to be recruited to the national or regional councils.
- 5.5 Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the Centre.

- 5.6 There will be a National Education Commission composed of representatives of the Centre and the regions entrusted with the following functions:-

- (a) identifying "National" schools and Universities in consultation with regional chief ministers and stipulating criteria for admission into these national schools and universities;
- (b) setting minimum standards with regard to training examination, curriculum and employment of teachers.

#### **VI. Administration of justice**

- 6.1 There will be a High Court in every region. The High Court will exercise criminal, appellate and writ jurisdiction within the region.
- 6.2 The Regional Judicial Service Commission, which will be appointed by the Constitutional Council in consultation with the Chief minister of the region, will consist of the Chief Judge of the High Court and the two High Court judges next in seniority.
- 6.3 Regional Judicial Service Commission will be responsible for the appointment of Regional High Court Judges and minor judiciary within the Region. The Regional Judicial Service Commission will consult with the National Judicial Service Commission with regard to the transfer of judges.
- 6.4 The Governor will appoint a Regional Attorney-General who will advise the Governor on the constitutionality of laws passed by the Regional Council. If a law is seen to be unconstitutional, the Regional Attorney-General, after consultation with the Governor, will institute action before the Supreme Court or any other tribunal specially set up to resolve disputes between the Centre and the Region.

**VII. Public Service**

- 7.1 There will be a Regional Public Service Commission (appointed by the Constitutional Council in consultation with the relevant Chief Minister) responsible for the recruitment, disciplinary control and dismissal of all persons employed by, or seconded to, the Regional Councils.
- 7.2 The Regional Public Service Commission will consult with the National Public Service Commission (also appointed by the Constitutional Council) in effecting the transfer of all such persons outside the Region.

**VIII. Commission on devolution**

- 8.1 There will be a Permanent Commission on Devolution appointed by the Constitutional Council to resolve disputes between the Centre and a region or disputes among the regions. The Commission will have powers of mediation as well as adjudication.

**IX. Framework relating to devolution**

- 9.1 The Constitution will provide:
- (a) that the Republic of Sri Lanka shall be united and sovereign. It shall be a Union of Regions;
  - (b) that the territory of the Republic will consist of regions, the names of which are set out in the first schedule, and its territorial waters;
  - (c) that the legislative power of the people will be exercised by Parliament, Regional Councils and the People at a Referendum to the extent hereinafter provided; and
  - (d) that the executive power of the People will be exercised by the President of the Republic acting on

the advice of the Prime Minister and the Cabinet of Ministers, and the Governors acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided.

- 9.2 Article 76 of the existing constitution will be deleted.

**X. Substance of devolution**

- 10.1 Regional Councils will exercise exclusive legislative and executive competence within the devolved sphere. The subjects and functions will be distributed between the Centre and the Regions as set out in the appendix.

**Appendix - Lists****(A) The Regional List**

1. Health and indigenous medicine;
2. Education and Educational Services, excluding national school and national universities and the setting of minimum standards for training, examination, curriculum, and teacher qualifications;
3. Agriculture and agrarian services;
4. Irrigation within a region;
5. Animal husbandry;
6. Fisheries;
7. Forestry and Protection of the Environment within a Region;
8. Industries and Industrial Development;
9. Energy;
10. Transport;
11. Minor Ports and Harbours;
12. Roads and Waterways;
13. Housing and construction;
14. Urban Planning;
15. Rural Development;
16. Local Government;



17. Co-operatives;
18. Supply and distribution of food within the region;
19. Promotion of tourism;
20. The regulation of cultural activity within a region, including public performances;
21. Broadcasting and media, including television;
22. Relief, Rehabilitation and Reconstruction;
23. Social Security;
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of reserved subject may be utilized by the Centre in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law);
25. Regional Police and law and order.
26. Administration of Borstal and reformatory institutions;
27. Regional Public Service;
28. Sports;
29. Regulation of unincorporated associations and societies within the region;
30. Regional debt;
31. Domestic and International borrowing (international borrowings above a specified limit would require the concurrence of the Centre);
32. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the region;
33. Regional financial and credit institutions;
34. Excise duties to be specified;
35. Turnover taxes on wholesale or retail sales to the extent to be specified;
36. Betting taxes, taxes on prize competitions and lotteries other than National Lotteries;
37. Motor vehicle licence fees;
38. Stamp duties on transfer of properties, such as land and motor cars;
39. Fines imposed by courts;
40. Court fees, including stamp fees on documents produced in courts;

41. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes;
42. Taxes on mineral rights;
43. Offences against laws with respect to any of the matters specified in the List;
44. Fines in respect of the matters in the Regional List;
45. Planning at the regional level.

**(B) Reserved List (Central Government List)**

1. Defence, national security, national police, and the security forces;
2. Immigration, Emigration and Citizenship;
3. Foreign Affairs;
4. National Census and Statistics;
5. National Planning;
6. Currency and Foreign Exchange, international economic relations and monetary policy;
7. Public Debt of the Government of Sri Lanka;
8. Foreign loans of the Government of Sri Lanka;
9. Regulation of banking and other financial institutions;
10. Insurance,
11. Stock exchange and futures markets;
12. Audit of the Government of Sri Lanka;
13. Taxes on income, capital and wealth of individuals, companies and corporations;
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions);
15. Turnover taxes and stamp duties, goods and services taxes (including those taxes and duties devolved on the regions);
16. Pensions payable by the Government of Sri Lanka or out of the consolidated fund;
17. Atomic Energy;
18. Maintenance and management of the National Grid;
19. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products);

20. National rivers;
21. Airports, harbours and ports with international transportation;
22. Inter-regional transport and railways;
23. Civil Aviation;
24. Inter-regional highways;
25. Shipping and navigation; Maritime Zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf);
26. Elections (excluding elections to Local Authorities);
27. Post and telecommunications;
28. National Public Service and the National Public Service Commission;
29. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national universities; Training, education and research relating to Health; Development of National Health Standards; Administration of all special programmes);
30. Drugs, poisons and narcotics;
31. Administration of justice;
32. National universities;
33. National standards with regard to professions, occupations and training;
34. National standards relating to research development and training in the area of agriculture;
35. Inter-regional irrigation schemes;
36. Fishing beyond the territorial waters;
37. Management of central policy and research institutions in the field of education eg. National Institute of Education; Management and supervision of national schools; conduct of national public certification examinations, imposition of minimum standards for training, curriculum and teacher qualifications;
38. Adoption of children;
39. National Industrial Research and Training;
40. Regulations of activities for the enhancement of quality standards;
41. Foreign trade inter-regional trade and commerce;

42. Patents, inventions, designs, copyright, trademarks and merchandise marks;
43. Monopolies and merges;
44. Inter-regional food distribution;
45. National media including Central Government Broadcasting and Television Institutions;
46. National Archives and Museums, and archaeological sites declared by law to be of national importance;
47. National Environment and National Policy on Tourism;
48. Specialised National Housing Programmes;
49. Specialised National Poverty Alleviation Programmes;
50. Youth and Women's Affairs;
51. Buddhism;
52. Development of National sports administration and infrastructure;
53. Intervention in instances of National (natural and environmental) disasters and epidemics;
54. Labour regulation and standards;
55. Surveys for the purpose of any matters enumerated in the Reserved List;
56. Offences against Laws with respect to any of the matters in the List;
57. Fees in respect of any of the matters in the List, but not including fees taken in any Court;
58. Public utility infrastructure development.

## C

### **Text of Government's Devolution Proposals of January 16, 1996**

#### **Preamble**

Whereas it is the will of the people of Sri Lanka to establish an order

Wherein the sovereignty of the people is assured and the exercise of authority by their freely chosen representatives is in the nature of a sacred trust;

Wherein the principles of democracy, freedom, humanity, tolerance and justice shall be fully observed;

Wherein the dignity of the individual shall be upheld through the guaranteeing of human rights and fundamental freedoms without distinction and in full equality before the law;

Wherein the territories constituting the nation shall form one indissoluble union, the units whereof will be characterized by such boundaries and limitations on their powers and authority as may be prescribed;

Wherein the territorial integrity, independence and unity of the nation including its sovereign rights over land, sea and air shall be safeguarded;

Wherein peace and fraternity between all communities shall be secured and provision made enabling all communities to enjoy and

nurture their distinct culture, practise and profess their own religion and promote their own language, thus preserving the rich cultural and ethnic diversity typifying a plural society:

Now, therefore, we the people of Sri Lanka having solemnly resolved to constitute Sri Lanka into a free, sovereign, united and independent Republic.

Cognizant of the sacrifices made by the people in the cause of sustaining the unity and sovereignty of the Republic;

Mindful of our obligation to succeeding generations of Sri Lankans and the World;

Inspired by the vision of a nation where all communities can co-exist in safety, security and contentment;

Conscious of the desire to achieve rapid, sustainable and equitable development so that the people of Sri Lanka may prosper and attain their rightful place among the community of nations:

do, on this (DAY) acting through our freely chosen representatives constituting the 10th Parliament of Sri Lanka established by us hereby adopt, enact and give to ourselves.

This constitution as the Supreme Law of the Republic of Sri Lanka.

## I

### **The People, the State and Sovereignty**

1. Sri Lanka is a united and sovereign Republic and shall be known as the Republic of Sri Lanka. The Republic of Sri Lanka shall be an indissoluble Union of Regions.
2. (1) The territory of the Republic shall consist of Regions, the names, boundaries and area of which are set out in the First Schedule, the Capital Territory and its territorial waters.

- (2) No Regional Administration or Regional Administrations shall attempt, by direct or indirect means, to promote or otherwise advocate an initiative towards:
- (a) the separation or secession of such Region or Regions from the Union of Regions constituting the Republic of Sri Lanka;
  - (b) alteration of the area of such Region or Regions;
  - (c) alteration of the boundaries of such Region or Regions;
  - (d) alteration of the name or names of such Region or Regions;
  - (e) formation of a new Region by separation of territory from any Regions or by uniting two or more Regions or parts of Regions or by uniting any territory with a part of any Region.

Provided that nothing in this paragraph shall be read and construed as prohibiting a Regional Administration from making representations to the Central Government regarding the matters referred to in sub-paragraph (c) of this paragraph.

3. In the Republic of Sri Lanka, sovereignty is in the people and is inalienable. Sovereignty includes the powers of Government, fundamental rights and the franchise and shall be exercised and enjoyed in the following manner.
- (a) the legislative power of the People shall be exercised by Parliament, Regional Councils and the People at a Referendum;
  - (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 the Governors

- acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided;
- (c) the judicial power of the People shall be exercised through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law;
  - (d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided; and
  - (e) the franchise shall be exercisable at the election of Members of Parliament, and of the Members of Regional Councils, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.
4. The National Flag of the Republic of Sri Lanka shall be the Lion Flag depicted in the Third Schedule.
5. The National Anthem of the Republic of Sri Lanka shall be *Sri Lanka Matha*, the words and music of which are set out in the Fourth Schedule.
6. The National Day of the Republic of Sri Lanka shall be the fourth day of February.

## II

**Buddhism**

- 7\* (1) 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 assuring to all religions the rights granted by Articles 15 (1) and 15(2)\*\*
- (2) The State shall consult the Supreme Council in all matters pertaining to the protection and fostering of the Buddha Sasana.
- (3) For the purpose of this Article Supreme Council means a Council established by law in consultation with the Maha Sangha.

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\* Article 7 (formerly Article 6 in the Working Drafts of the New Constitution), shall be an entrenched provision requiring a 2/3 majority in Parliament and the approval of the People at a referendum for amendment.

\*\* Article 15 (1) and 15 (2) refer to the rights declared in the Chapter on Fundamental Rights in the revised working draft of the Constitution which was published in the media on 21/05/95 (these rights were contained in Articles 10 and 14 (1) (e) of the First Working Draft of the Constitution presented to the Parliamentary Select Committee on the Constitution). Articles in question will be renumbered.

## III

**THE DEVOLUTION OF POWER TO REGIONS****Establishment of Regional Councils**

8. (1) A Regional Council shall be established for every Region specified in the First Schedule with effect from such date or dates as the President may appoint by Order published in the Gazette. Different dates may be specified in respect of different Regions.
- (2) The Capital Territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte will be excluded from the jurisdiction of the Regional Council established for the Western Region under paragraph (1) and will be administered by the Centre.

**Election of Members**

9. Every Regional Council established under Article 8 (1) shall be constituted upon the members of such Council being elected in accordance with the law relating to Regional Council elections.

**Governor**

10. (1) There shall be a Governor for each Region for which a Regional Council has been established in accordance with article 8.
- (2) The Governor shall be appointed by the President on the advice of the Chief Minister of the region.
- (3) The Governor may, by writing addressed to the President, resign his office.

- (4) (a) A Regional Council may, subject to paragraph (b), present an address to the President advising the removal of the Governor on the ground that the Governor-
- (i) has intentionally violated the provisions of the Constitution;
  - (ii) is guilty of misconduct or corruption involving the abuse of power of his office; or
  - (iii) is guilty of bribery or an offence involving moral turpitude, if a resolution for the presentation of such address is passed by not less than two-thirds of the whole number of members of the Council (including those not present).
- (b) No resolution for the presentation of an address to the President advising the removal of the Governor on the grounds referred to in sub-paragraph (a) shall be entertained by the Speaker of the Regional Council or discussed at the Council, unless notice of such resolution is signed by not less than one half of the whole number of members present.
- (5) Subject to the provisions of this Article, the Governor shall hold office for a period of five years from the date he assumes office.
- (6) Every person appointed as Governor shall assume office upon taking or subscribing the oath or making or subscribing the affirmation, set out in the Schedule, before the President.
- (7) Upon such assumption of office, a Governor shall cease to hold any other office created or recognized by the Constitution and if he is a Member of Parliament or a Member of a Regional Council shall vacate his seat in Parliament or in the Regional Council. The Governor shall not hold any other office or place of profit.
- (8) (a) The Governor may from time to time summon a Regional Council to meet at such time and place as it thinks fit, but two

- months shall not intervene between the last sitting in one session and the date appointed for the first sitting of the next session.
- (b) The Governor may, from time to time, prorogue the Regional Council
  - (c) The Governor may dissolve the Regional Council
  - (d) The Governor shall exercise his power under this paragraph in accordance with the advice of the Chief Minister, as long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Regional Council.
  - (9) The Governor of a region shall have the power to grant pardon to every person convicted of an offence against a statute made by the Regional Council of that region or a law made by Parliament on a matter in respect of which the Regional Council has power to make statutes, and to grant a respite or remission of punishment imposed by Court on any such person.
  - (10) The Governor may address the Regional Council and may for that purpose require the attendance of members.
  - (11) Parliament shall by law or resolution make provision for the salary, allowances, age of retirement and pension entitlement of holders of the office of Governor.

#### Executive Powers of the Region

11. The executive power of the Region which shall extend to the matters with respect to which a Regional Council has power to make statutes, shall be vested in the Governor acting on the advice of the Chief Minister and the Board of Ministers and shall

be exercised by the Board of Ministers either directly or through the Chief Minister and the Ministers of the Board of Ministers or through subordinate officers, in accordance with this Chapter.

### Membership of the Regional Council

12. A Regional Council shall consist of such number of members as may be determined by or under law, having regard to the area and the population of the Region for which that Regional Council is established.

### Term of Office

13. A Regional Council shall, unless sooner dissolved, continue for a period of five years from the date appointed for its first meeting, and the expiry of the said period of five years shall operate as the dissolution of the Council.

### Board of Ministers

14. (1) There shall be a Board of Ministers with the Chief Minister as the Head and not more than six other Ministers to aid and advise the Governor of a Region in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.
- (2) The question of whether any and, if so, what advice was tendered by a Minister to the Governor shall not be inquired into in any Court.
- (3) The Governor shall appoint as Chief Minister the member of the Regional Council established for that Region who, in

his own judgement and opinion, is best able to command the support of a majority of the members of that Council.

Provided that where more than one half of the members elected to the Regional Council are members of one political party, the Governor shall appoint the leader of that political party in the Council as Chief Minister. (A Transitional Provision will provide for the appointment of the First Chief Minister by the President).

- (4) The Governor shall, on the advice of the Chief Minister appoint, from among the members of the Regional Council constituted for that Region, the other Ministers.
- (5) The Board of Ministers shall be collectively responsible, and answerable, to the Regional Council.
- (6) A person appointed to the office of Chief Minister or member of the Board of Ministers shall not enter upon the duties of his office until he takes and subscribes the oath or makes and subscribes the affirmation set out in the Fifth Schedule.
- (7) (a) Upon the death or resignation of the Chief Minister or where the Chief Minister is deemed to have resigned, the Board of Ministers shall stand dissolved, and the Governor shall appoint a Chief Minister, and a Board of Ministers in accordance with this article.
- (b) If the Regional Council rejects the statement of policy of the Region or the Appropriation Bill or passes a vote of no-confidence in the Regional administration, the Chief Minister shall be deemed to have resigned.

### Legislative Power

15. (1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in list I of the Second Schedule (referred to as the Reserved List) and with respect to the matters in list II in the Second Schedule (referred to as the Regional List) in relation to the Capital Territory referred to in Article 8 (2).
- (2) The Regional Council of a Region has exclusive power to make statutes for such Region or any part thereof with respect to any of the matters enumerated in list II of the Second Schedule (referred to as the Regional List).
- (3) When there is a law with respect to any matter in the Regional List in force on the date on which this Chapter comes into force, and a Regional Council established for a Region subsequently makes a statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of that law shall, with effect from the date on which that Regional Council statute receives assent, remain suspended and be inoperative within that Region, to the extent of such inconsistency.

### When a Draft Statute becomes Law

16. (1) Every Draft Statute passed by a Regional Council shall come into force upon the certificate of the Speaker being endorsed thereon.
- (2) The Speaker shall endorse on every Draft Statute passed by the Regional Council a certificate in the following form:  
  

“This Draft Statute (state the short title of the Draft Statute) has been duly passed by the Regional Council”.

### Regional Judiciary

17. (1) There shall be a High Court for every Region with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Region.
- (2) Every such Regional High Court shall exercise, according to law:
  - a) the original criminal jurisdiction of the High Court of Sri Lanka on the day preceding the commencement of the Constitution, in respect of offences committed within the Region;
  - b) appellate and revisionary jurisdiction in respect of convictions, sentences and orders imposed by Magistrate's Courts and Primary Courts within the Region; and
  - c) such other jurisdiction and powers as Parliament may, by law, provide.
- (3) Every such High Court shall have jurisdiction to issue according to law -
  - a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Region; and
  - b) orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Region, any power under -
    - (i) any law, or
    - (ii) any statute made by the Regional Council established for that Region in respect of any matter set out in the Regional List.



- (4) Subject to the provisions of this Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs 17. (2) and 17. (3), may appeal therefrom to the Court of Appeal.
18. (1) There shall be a Regional Judicial Service Commission for every Region which shall consist of three retired judges or sitting judges of the Supreme Court, the Court of Appeal or the High Court, appointed by the Constitutional Council in consultation with the Chief Minister of the relevant region:
- Provided that where a sitting judge is appointed, he shall relinquish his judicial office.
- (2) The appointment, transfer, dismissal and disciplinary control of judicial officers within the Region is vested in the Regional Judicial Service Commission of that Region:
- Provided that the National Judicial Service Commission shall provide for and determine all matters relating to judicial officers and the principles and procedure to be followed by Regional Judicial Service Commissions for the exercise of the powers of appointment, transfer, dismissal and disciplinary control of judicial officers including formulation of schemes of recruitment and principles to be followed in making promotions and transfers.
- (3) The Chairman of the Regional Judicial Service Commission or any Judge of the Regional High Court authorized by the Chairman of the Commission shall have full power and authority to inspect any court of first instances in the Region or the records, registers or other documents maintained in such court and hold such inquiry as may be necessary.

### The Regional Attorney-General

19. (1) The Governor of each region shall appoint a person who is qualified to be appointed as a judge of a Regional high Court, to be the Regional Attorney-General.
- (2) It shall be the duty of the Regional Attorney-General to give advice to the Governor, the Chief Minister and the Board of Ministers upon such legal matters and perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Chapter or such other law as may be enacted by Parliament.
- (3) The Regional Attorney-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.
- (4) (a) It shall be the duty of the Regional Attorney-General to examine every Draft Statute proposed to be passed by the Regional Council for any contravention of the Constitution, and the Regional Attorney-General or any officer assisting the Regional Attorney-General in the performance of his duties under this Article shall be afforded all facilities necessary for the performance of such duties.
- (b) If the Regional Attorney-General is of the opinion that a Draft Statute contravenes the Constitution, he shall communicate such opinion to the Governor, the Chief Minister and the Board of ministers:

Provided that, in the case of an amendment proposed to a Draft Statute in the Regional Council, the Regional Attorney-General shall communicate his opinion to the Speaker at the stage when the Draft Statute is ready to be put to the Regional Council for its acceptance.

(c) Where a Draft Statute is passed, despite the opinion of the Regional Attorney-General that it contravenes the Constitution, it shall be the duty of the Regional Attorney-General to invoke the jurisdiction of the Supreme Court to determine the constitutionality of such statute or any part thereof.

#### Finance Commission

20. (1) There shall be a Finance Commission consisting of \_ three members representing the three major communities each of whom shall be a person who has distinguished himself or held high office, in the field of finance, law, administration, business or learning who shall be appointed by the President on the recommendation of the Constitutional Council
- (2) Every member of the Commission, unless he earlier dies, resigns or is removed from office, shall hold office for a period of three years.
- (3) The 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 Regions.
- (4) 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 government for the use of Regions, should be apportioned between the various Regions;
  - b) the principles on which the sharing and/or assignment of revenue between the Centre and the Regions 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 Regional finance.
- (5) 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 population of each Region;
  - b) the per capita income of each Region;
  - c) the need, progressively, to reduce social and economic disparities; and
  - d) the need, progressively, to reduce the difference between the per capita income of each Region and the highest per capita income among the Regions.
- (6) The Commission shall determine its own procedure and shall have such powers in the performance of its duties as Parliament may, by law, confer on it.
- (7) The President shall cause every recommendation made by the Finance Commission under this Article to be laid before Parliament, and shall notify Parliament as to the action taken thereon.
- (8) No court or tribunal shall 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.

#### Regional Public Service Commission

21. (1) There shall be a Regional Public Service Commission which shall consist of not less than five persons appointed by the Constitutional Council in consultation with the Governor. The Constitutional Council shall nominate one of the members of the Commission to be the Chairman.

- (2) No person shall be so appointed or continue as a member of the Regional Public Service Commission if he is a Member of Parliament, a Member of a Regional Council, a public officer, a judicial officer or an officer of a Regional Public Service.
- (3) Every member of a Regional Public Service Commission shall hold office for a period of five years from the date of his appointment unless he earlier resigns his office by writing under his hand addressed to the Governor of the Region or is removed from office by the Constitutional Council, in consultation with the Governor for cause assigned, but shall be eligible for reappointment.
- (4) A member of a Regional Public Service Commission shall be paid such salary as may be determined by the Regional Council for that Region. The salary payable to any such member shall be charged on the regional consolidated fund and shall not be diminished during his term of office.
- (5) A Regional Public Service Commission shall have the power to act notwithstanding any vacancy in its membership, and no act or proceedings of such Commission shall be deemed to be invalid by reason only if any such vacancy or any defect in the appointment of a member.

#### Regional Public Service

22. (1) The appointment, transfer, dismissal and disciplinary control of officers of the Regional Public Service in each Region is hereby vested in the Regional Public Service Commission.
- (2) The Regional Public Service Commission shall provide for and determine all matters relating to officers of the Regional Public Service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principles to be followed in making promotions and transfers

and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers.

- (3) Every person who otherwise than in the course of duty directly or indirectly, by himself or by any other person, in any manner whatsoever, influences or attempts to influence any decisions of a Regional Public Service Commission or any member thereof shall be guilty of an offence and shall on conviction by a High Court after trial without a jury be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment:

Provided that nothing in this Article shall prohibit any person from giving a testimonial or certificate to any applicant for any office in the Regional Public Service Commission.

#### Property, Contracts, Rights, Liabilities, Obligations and Suits

- 23 (1) (a) All lands, mineral and other things of value underlying the ocean within the territorial waters, or the continental shelf or the exclusive economic zone of Sri Lanka, shall continue to vest in the Centre and be held for the purposes of the Republic.

(b) All other resources of the exclusive economic zone of Sri Lanka shall also continue to vest in the Centre and be held for the purposes of the Republic.

(c) The limits of territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of Sri Lanka shall be such as specified, from time to time, by any laws made by Parliament.

- (2) (a) All contracts made in the exercise of the executive powers of a Region shall be expressly made by the Governor

of the Region, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the Governor by such persons in such manner as he may direct or authorize.

(b) The Governor shall not be personally liable in respect of any contract or assurance made or executed for the purposes of this Article. Nor shall any person making any such contract or assurance on behalf of the Governor be personally liable in respect thereof.

#### State Land

24. (1) State land within a region shall vest in the Region and shall, subject to this Article, be at the disposal of the Regional Council for the purposes set out in the Regional List.

(2) The Regional administration shall be entitled to exercise rights in or over such land, including land tenure, transfer or alienation of land, land use, land settlement and land improvement in accordance with applicable laws.

Provided that priority in future land settlement schemes shall be accorded first to persons of the district and then to persons of the Region.

(3) If the Centre is satisfied that State Land in a Region is needed for the purpose of a reserved subject, the Centre may, after consultation with the relevant Regional administration, require the Regional administration to make available to the Centre, or to such public authority as the Centre may specify, such land as may be required for such purpose, and the Regional administration shall comply with such requirement.

(4) Inter-regional irrigation projects are schemes where the command area falls within two or more Regions. These shall be the responsibility of the Centre.

#### Law and Order

25. (1) Law and order shall be a subject devolved on the regions and shall include public order in the region and the exercise of police powers.

(2) National defence and national security shall be reserved subjects.

(3) (a) There shall be a Regional Police Service headed by the Regional Police Commissioner who shall be appointed by the Chief Minister of the Region in consultation with the Governor of the Region.

(b) There shall be a Regional Police Commission consisting of the Regional Police Commissioner, and two others appointed by the Constitutional Council.

(c) The Regional Police Commission shall be responsible for the recruitment, transfer, promotion and disciplinary control of officers in the Regional Police Service. The Regional Police Commission in exercising its powers under this Article may, if it deems it appropriate, adopt any criteria specified by the National Police Commission in respect of these matters.

(4) The following offence shall not be investigated by the Regional Police Service;  
 Offences against the Republic,  
 Offences relating to the army, navy and air force,  
 Offences relating to elections except local authority elections,  
 Any offence committed against the President,  
 Any offence committed against the Prime Minister, the Speaker, a Minister a Deputy Minister or a Member of Parliament,  
 Any offence committed against a Member of the National Judicial Service Commission, a Member of the National

Public Service Commission, the Secretary General of Parliament, a member of the President' Staff or a Member of the Staff of Parliament,

Any offence prejudicial to national security or the maintenance of essential services,

Offences relating to coins, currency and Government stamps,

Any Offence relating to property belonging to the Republic or a State Corporation, Company or Establishment, the whole or part of the capital whereof has been provided by the Republic,

Any offence under any law relating to any matter in the Reserved List,

Any offence in respect of which courts in more than one Region have jurisdiction, and

International crimes.

- (5) The Regional Police Service shall consist of the Regional Police Commissioner, Regional Deputy Police Commissioners, Regional Senior Superintendents of Police, Superintendents of Police, Assistant Superintendents of Police, Chief Inspectors, Inspectors of Police, Sergeants and Constables and other ranks recruited to the Region and/or seconded to the Region.
- (6) All police officers serving in the Region shall function under the Regional Police Commissioner of that Region.
- (7) The Regional Police Commissioner shall be responsible to, and be under the control of, the Chief Minister in respect of the maintenance of public order in the Region.
- (8) The Regional Police Service shall be responsible for the prevention, detection and investigation of all offences (except the offences specified in paragraph (4) and the institution of prosecutions in the relevant courts in respect of such offences. In the discharge of these functions, the Regional Police Service shall be under the direction, control and the superintendence of the Regional Police Commission.

- (9) There shall be a National Police Service headed by the National Police Commissioner, and including the National DPCs, SSPs, ASPs, and other ranks recruited at the national level.
- (10) There shall be a National Police Commission consisting of the National Police Commissioner and two others appointed by the Constitutional Council.
- (11) The National Police Commission shall be responsible for recruitment, transfer, promotion and disciplinary control over officers in the National Police Service and the transfer of officers of the Regional Police Service from one Region to another.

#### State of Emergency within a Region

26. (1) Where the President is of opinion that the security or public order in a Regions threatened by armed insurrection, or grave internal disturbances, or by any action or omission of the Regional administration which presents a clear and present danger to the unity and sovereignty of the Republic, he may make a proclamation bringing the provisions of the law relating to Public Security into force in the Region.
- (2) Upon such proclamation, the President may by order deploy in aid of the civil power, the armed forces or any unit of the national police service for the purpose of restoring public order:

Provided that every such proclamation shall be revoked, as soon as the President is satisfied that public order has been restored.

- (3) Where the Chief minister seeks the assistance of the National Police Service to preserve public order within a region, the

National Police Commissioner shall deploy such personnel as are necessary for the purpose.

- (4) (a) If the President is satisfied that a situation has arisen in which the Regional administration is promoting armed rebellion or insurrection or engaging in an intentional violation of the Constitution which constitutes a clear and present danger to the unity and sovereignty of the Republic, the President may by Proclamation assume to himself all or any of the functions of the administration of the region and all or any of the powers vested in, or exercisable by, the Governor, the Chief Minister, the Board of Ministers or any body or authority in the region. The President shall also have the power to dissolve the Regional Council in these circumstances.
- (b) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (c) Every Proclamation under this Article shall be laid before Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of 14 days unless, before the expiration of that period, it has been approved by a resolution of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when Parliament is dissolved or the dissolution of Parliament takes place during a period of fourteen days referred to in this subparagraph but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution, unless before the expiration of such period of fourteen days a resolution approving the Proclamation has been passed by Parliament.

- (d) Notwithstanding anything in this Article, the President may within fourteen days of his making a Proclamation under sub-paragraph (a) and for the purposes of satisfying himself with regard to any other matter referred to in that paragraph, direct a tribunal constituted in the manner provided for in subparagraph (e) of this paragraph, to inquire into and report upon such matters within a period of sixty days. Upon receipt of the report of such tribunal, the President may revoke the Proclamation made under sub-paragraph (a)
- (e) The tribunal referred to in sub-paragraph (d) of this paragraph shall be constituted by the Centre and the relevant Regional Council acting in consultation with the Chief Ministers' Conference. The tribunal shall consist of a member appointed by the Centre, a member appointed by the Chief Ministers' Conference on the recommendation of the relevant Regional Council and a Chairman nominated by the members so appointed.

Where there is no agreement on the nomination of a Chairman, the Chairman shall be nominated by the Constitutional Council.

- (f) A Proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court, and no Court shall inquire into, or pronounce on, or in any manner call in question, such Proclamation or the grounds for making thereof.

## Finance

27. (1) No tax shall be levied or collected except by or under law.
- (2) (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 Region, all funds of the Republic 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 Republic. All revenues received by a Regional Council and all loans raised by that Regional Council by the issue of Treasury bills, loans and ways and means advances, and all money received by that Council in repayment of loans shall form one consolidated fund to be called the "Consolidated Fund of the Region."

- (b) All other public money received by or on behalf of the Government of Sri Lanka or a Regional Council shall be credited to the public account of Sri Lanka or the public account of the Region as the case may be.
- (c) No money out of the Consolidated Fund of Sri Lanka or the Consolidated Fund of the Region shall be appropriated except in accordance with law statute and for the purposes and in the manner provided in this Constitution.
- (3) (a) Notwithstanding any of the provisions of this chapter, Parliament may by law create a contingency fund for the purpose of providing for urgent and unforeseen expenditure.
- (b) The Minister in charge of the subject of Finance, if satisfied, (i) that there is need for any such expenditure, and (ii) that no provision for such expenditure exists, may with the consent of the President authorize provision to be made therefore by an advance from the contingency 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) The Regional Council may by statute establish a contingency fund in the nature of an imprest to be entitled the Contingency

Fund of the Region into which shall be paid from time to time such sums as may be determined by such statute and the said fund shall be placed at the disposal of the Regional Minister in charge of the subject of Finance to enable advances to be made by him out of such fund with the consent of the Chief Minister for the purpose of meeting unforeseen expenditure pending authorization of such expenditure by the Regional Council.

- (4) (a) Such excise duties as may be prescribed by the Finance Commission shall be levied by the Government of Sri Lanka but shall be collected (i) in the case where such duties are leviable within the Capital Territory, by the Government of Sri Lanka, and (ii) in other cases by the Regions within which such duties are respectively leviable.
- (b) The proceeds of any financial year of any such duty leviable within any region shall not form part of the Consolidated Fund of Sri Lanka and shall be assigned to that region.
- (5) (a) Taxes on wholesale and retail sales (other than sales by manufacturers) shall be levied and collected by the Government of Sri Lanka but shall be assigned to the Regions in the manner provided in sub-paragraph (b).
- (b) The net proceeds in any financial year of any such tax except in so far as those proceeds represent proceeds attributable to the Capital Territory shall not form part of the Consolidated Fund of Sri Lanka but shall be assigned to the Region within which such tax is leviable in that year in accordance with such principles of apportionment as may be formulated by the Finance Commission.
- (c) The Finance Commission shall also formulate principles for determining when a sale or purchase or consignment of goods takes place in the course of inter-regional trade or commerce.

- (6) (a) Such other taxes on sales or income shall be levied and collected by the Government of Sri Lanka and be distributed between the Republic and the Region in the manner provided in subparagraph (b).
  - (b) Such percentage as may be prescribed by the Finance Commission of the net proceeds in any financial year of any such tax not attributable to the Capital Territory shall not form part of the consolidated fund of Sri Lanka but shall be assigned to the Region within which tax is leviable in that year and shall be distributed amongst those Regions in such manner, and from such time, as may be prescribed by the Finance Commission.
  - (7) 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 Region as Parliament may determine to be in need of assistance, and different sums may be fixed for different Regions.
28. (1) The property of the Government of Sri Lanka shall, save as so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a Region.
- (2) The property and income of a Region shall be exempt from taxation by the Centre.
- (3) The executive power of the Region extends to domestic and international borrowing upon the security of the Consolidated Fund of the Region. International borrowing shall be subject to such criteria and limitations specified by, and would require the concurrence of, the Centre.
- (4) The limits as regards domestic borrowing and the limitations and criteria as regards international borrowing by each Regional administration for each financial year will be laid down by the Minister in charge of the subject of Finance of

the Republic of Sri Lanka before the thirtieth day of September of the preceding financial year. In laying down these limits and criteria, the Minister in charge of the subject of Finance shall take into consideration the requirements of prudent fiscal policy and the demands of monetary stability as well as the repayment capacity of each Regional administration.

- (5) Any agreements negotiated and entered into by Regional 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 the Parliament of the Republic.

#### Chief Minister's Conference

29. (1) There shall be established a Chief Ministers' Conference which will consist of the Chief Ministers of all the regions.
- (2) The Chairman of the Chief Ministers' Conference shall be elected by the Chief Ministers in rotation, so however, that each Chief Minister shall hold office as Chairman for a period of 3 months. The Chairman so elected will represent the Chief Ministers' Conference on the Constitutional Council.
- (3) The Conference shall have the power:
- (a) to take all such actions and measures as are necessary to ensure full compliance with the provisions of this Chapter in accordance with the spirit and intention of the Constitution;
  - (b) to inquire into and to settle any dispute which may have arisen between regions;



(c) to investigate and discuss subjects in which some or all of the Regions have a common interest, and to make recommendations for the better co-ordination of policy and action in respect of that subject.

(4) The Conference shall endeavour to settle any dispute referred to it, in terms of sub-paragraph 3 (b) of this Article, by mediation and conciliation.

(5) Where such efforts at mediation and conciliation fail, such dispute shall be referred for adjudication to a tribunal established, in accordance with this Article, by the relevant Regional Councils.

(6) The tribunal shall consist of member each appointed by the disputant Regional Councils and a Chairman nominated by the members so appointed.

Where there is no agreement on the nomination of a Chairman, the Chairman shall be nominated by the Constitutional Council.

(7) The practices and procedures of the tribunal shall be regulated by rules framed by the Conference. Any award or determination made by such tribunal shall be binding on the parties to the dispute.

(8) The Conference shall regulate its own procedures and shall meet once every month, unless otherwise determined by the Conference.

## Lists

### SECOND SCHEDULE

#### List I

##### (Reserved List)

1. Defence, national security, national police, and the security forces
2. Immigration, Emigration and Citizenship
3. Foreign Affairs
4. National Census and Statistics
5. National Planning
6. Currency and Foreign Exchange, international economic relations, monetary policy
7. Public Debt of the Government of Sri Lanka
8. Foreign loans of the Government of Sri Lanka
9. Regulation of banking and other financial institutions
10. Insurance
11. Stock Exchange and futures markets
12. Audit of the Government of Sri Lanka
13. Taxes on income, capital and wealth of individuals, companies and corporations
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions)
15. Turnover taxes and stamp duties, goods and services taxes
16. Any other taxes, duties or levies not mentioned in the Regional List
17. Pensions payable by the Government of Sri Lanka or out of the consolidated fund
18. Atomic Energy
19. Maintenance and management of the National Grid
20. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products)

21. National rivers
22. Airports, harbours, ports with international transportation
23. Inter-regional transport and railways
24. Civil Aviation
25. Inter-regional highways linking district capitals
26. Shipping and navigation; Maritime Zones including historical waters and territorial waters, Exclusive Economic Zone and Continental Shelf
27. Elections (excluding elections to Local Authorities elections to be administered by Local Authority Election Commissions in each region)
28. Posts and telecommunications
29. National Public Service, National Public Service Commission
30. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national Universities; Training, coordination of education and research relating to Health; Development of National Health Standards; Administration of all special programmes)
31. Drugs, poisons and narcotics
32. Administration of Justice
33. National universities
34. National standards with regard to professions, occupations and training
35. National standards relating to research, development and training in the area of agriculture
36. Inter-regional irrigation schemes
37. Fishing beyond the territorial waters and rights relating to traditional migratory fishing
38. Management of central policy and research institutions in the field of education e.g. National Institute of Education, Management and supervision of national schools, conduct of national public certification examinations, educational training, imposition of minimum standards for such examinations, curriculum and teacher qualifications
39. Adoption of children
40. National Scientific and Industrial Research and Training
41. Regulation of activities for the enhancement of quality standards

42. Foreign trade, inter-regional trade and commerce
43. Patents, inventions, designs, copyright, trademarks and merchandise marks
44. Monopolies and mergers
45. Inter-regional food distribution
46. National media including Central Government Broadcasting and Television Institutions
47. National Archives and Museums, ancient and historical monuments, archaeological sites and records declared by law to be of national importance
48. National Environment and National Policy on Tourism
49. Specialized National Housing Programmes
50. Coordination of Specialized National Poverty Alleviation Programmes
51. Youth and Women's Affairs
52. Buddhism
53. Development of National sports administration and infrastructure
54. Intervention in instances of National (natural and environmental) disasters and epidemics
55. Labour regulation and standards
56. Surveys for the purpose of any matters enumerated in the Reserved List
57. Offences against Laws with respect to any of the matters in the List
58. Fees in respect of any of the matters in the List, but not including fees taken in any Court.
59. Public utility infrastructure development
60. National Libraries and the National Library Services Board
61. Educational publications
62. Industrial Development
63. National Lotteries

## List II

## The Regional List

1. Health and indigenous medicine
2. Higher Education, Education and Educational Services, excluding national schools and national universities and the setting of minimum standards for examination, curriculum and teacher qualifications and teacher training
3. Agriculture and agrarian services
4. Irrigation
5. Animal husbandry
6. Fisheries and Aquatic Resources excluding rights relating to traditional migratory fishing
7. Forestry and Protection of the Environment within a Region
8. Industries and Regional Industrial Development
9. Energy
10. Transport
11. Minor Ports and Harbours
12. Roads and Waterways
13. Housing and construction
14. Urban Planning and Public Utilities
15. Rural Development
16. Local Government
17. Co-operatives
18. Supply and distribution of food
19. Promotion of tourism
20. Regional libraries and museums, archaeological sites, ancient and historical monuments and records (excluding those sites declared by law to be of national importance) and the regulation of cultural activity, including public performances
21. Broadcasting and media, including television
22. Relief, Rehabilitation and Reconstruction
23. Social Security
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation

- with the relevant Regional Council and in accordance with such procedures as may be established by law)
25. Regional Police and law and order
  26. Administration of Borstal and reformatory institutions
  27. Regional Public Service
  28. Sports
  29. Regulation of unincorporated associations and societies within the region
  30. Public debt of a Region
  31. Domestic and international borrowing (international borrowings shall be subject to such criteria and limitations specified by, and would require the concurrence of, the Centre)
  32. The regulation and promotion of foreign direct investment, international grants and development assistance to the region
  33. Regional financial and credit institutions
  34. Excise duties to be specified
  35. Betting taxes, and taxes on prize competitions and such other lotteries to be specified
  36. Motor vehicle licence fees
  37. Stamp duties on transfer of immovable properties and motor vehicles
  38. Fines imposed by courts
  39. Court fees, including stamp fees on documents produced in courts
  40. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes
  41. Taxes on mineral rights
  42. Offences against laws with respect to any of the matters specified in the List
  43. Fines in respect of the matters in the Regional List
  44. Planning and Plan implementation at the regional level
  45. Law and order to the extent provided in Chapter III.
  46. Administration of Justice within a region

## D

## A Commentary on the Devolution Proposals of the Government January 16, 1996

G.L.Peiris

All Sri Lankans, irrespective of distinctions of race, religion or social status have, for the past several years, suffered the debilitating effects of one fundamental problem. It is the ethnic crisis which has evolved into the war which currently engulfs the North East. It has adversely affected every facet of Sri Lankan public life, seriously impairing every progressive move that we, as a nation, have striven to make.

It is with a view to liberating our people from this menace that, at many critical periods in our history, attempts have been made to devise a solution to this seemingly intractable problem. These attempts have failed for a variety of reasons. The result of such failures was that an increasing number of invaluable lives was lost. Property was destroyed. A vast volume of resources that might have been invested in development, in our future, was sacrificed to the war effort instead. If we do not escape the clutches of this crisis, if we do not resolve this dilemma, our future will continue to be shrouded by the shadow of conflict. This is why the Government of Mrs. Chandrika Bandaranaike Kumaratunga, buoyed by the resounding mandate for peace it received, has accorded the highest priority to the search for an acceptable peaceful resolution to this problem. The Government today has accepted that this crisis can only be finally resolved by a

political solution, a view shared by the majority of Sri Lankans, whatever their ethnicity or religion may be. All ethnic groups - Sinhalese, Tamils, Moors, Malays and Burghers - and adherents of all religions - Buddhists, Christians, Hindus or Muslims have, by and large, endorsed this view. It is with the intention of providing such a political solution that the Government has presented its proposals for a scheme of devolution of power.

The President, outlining the Government's policy at the inauguration of a new session of Parliament on January 6, 1995, elucidated the nature of the proposed solution in the following terms:

*Our Government is committed to a peaceful resolution of the ethnic conflict. We have a vision of Sri Lanka where all communities can live in safety and security, where human dignity is valued, and equality of treatment is an accepted norm of public life. We believe that all communities must be given the space to express their identity and to participate fully in the life of the nation, whether it be at the national, provincial or local level.*

### Distribution of power

The proposed political solution referred to has, as its objective, the widespread distribution of power among the people, and was prepared in accordance with the following principles:

- (1) promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- (2) ensuring that all communities be given the space to express their distinct identity and promote that identity, including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language, including the right to transact business with the State in the national language of their choice;

- (3) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law;
- (4) giving recognition to Sinhala and Tamil as official languages and recognizing English as a link language;
- (5) providing an effective constitutional framework for the sharing of power with the regions, based on an internally consistent and coherent value system. There would be clarity and consistency in the distribution of power between the centre and the regions, and the scheme would be one which is capable of effective implementation and includes structures for the just and equitable resolution of centre-region disputes;
- (6) ensuring that all communities participate fully in the life of the nation, whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

A study of the proposals which are based on the above ideals, must necessarily be undertaken within the wider context of the overall process of constitutional reform initiated by the Government. This process was begun in response to the widespread demand, arising from all segments of society, for reformation of the constitutional structure. The larger objectives of the constitutional reform process such as the vesting of executive power in a democratic institution free from the taint of autocracy and the strengthening of the human rights protection regime are central to the whole effort. A proper understanding can only be achieved if the proposals are viewed in conjunction with these related concepts.

### Seeds of disharmony

The recognition of the need for a political solution based on the devolution of power is not unknown in Sri Lanka's political

history. From the inception of the ethnic conflict, when the seeds of disharmony were sprouting, through to the present day when the ethnic issue has assumed catastrophic proportions, our recent history is replete with instances of the political leadership proposing solutions to this national question. Some of the more significant proposals are:

- (a) The Bandaranaike - Chelvanayakam pact of 1957;
- (b) The agreement concluded between Dudley Senanayake and S. J. V. Chelvanayakam in 1965;
- (c) The Indo-lanka Accord and the subsequent 13th Amendment to the Constitution in 1987;
- (d) The Democratic People's Alliance (D.P.A.) proposals of 1988;
- (e) The interim report of the Mangala Moonesinghe Parliamentary Select Committee in 1992; and
- (f) The Gamini Disanayake proposals contained in the United National Party manifesto for the Presidential Elections of November 1994.

This clearly demonstrates that during the past 40 years, the idea of a political solution based on devolution of power has been a recurrent part of the political discourse aimed at the resolution of this national issue. However, it must be noted that all these attempts have proved unsuccessful.

There are two principal reasons that have contributed to their failure, namely;

- (1) the inherent weakness of the proposals themselves; and
- (2) the resolve of the political leadership being undermined in the face of opposition from various forces holding extreme points of view.

The result has been an exacerbation of the crisis leaving us heirs to a legacy of war and strife. The entire nation has been forced to endure the continuing loss of life brought about by the conflict. The People's Alliance Government is determined to make an attempt to find a lasting solution to the crisis. These proposals are consistent with, and would significantly assist in, the realisation of the aspirations of all Sri Lankans. They are not a novel or alien conception but represent continuity with the previous proposed solutions, containing many measures that were contained in preceding proposals. They have drawn inspiration from the more practical suggestions that have emerged over the past 40 years, and the distinguishing feature of the Government's proposals is that they are a coherent and logical conclusion of a historical process of similar attempts which, upon implementation, would enable a substantial degree of devolution of power within the framework of a united Sri Lanka. The shortcomings of the earlier solutions have been circumvented, and the weaknesses which made those proposals unworkable have been excluded.

### **Democratic ideals**

The Government's strong belief is that the implementation of the proposals must be in accordance with democratic ideals and traditions. The concurrence of all sections of society must be assured for successful implementation. A healthy public debate on all aspects of the proposals must be encouraged. It was with the intention of initiating such a discourse that the President placed before the people the outlines of the Government's proposals on August 3, 1995.

The Government is taking serious note of all constructive criticism and suggestions that the presentation of the proposals has elicited.

The process to be followed in order to implement the proposals has been initiated. The procedure to be followed may be briefly indicated as follows:

Presentation of the proposals to the public and generating public awareness;

- Submission of the proposals in legislative form - as a draft Chapter of the Constitution - to the Parliamentary Select Committee on the Constitution;
- Obtaining Parliamentary assent with a 2/3 majority; and
- Seeking the public's approval at a referendum.

The second stage of this process has now been reached. This analysis is based on the draft Chapter of the Constitution which is structured in the following manner:

1. The People, the State and Sovereignty,
2. Buddhism,
3. Devolution of Power to Regions,
4. State Land,
5. Law and Order,
6. State of Emergency within a Region,
7. Finance,
8. Chief Ministers' Conference, and
9. Lists.

### **The people, the State and sovereignty**

According to the proposals, Sri Lanka will be a united and sovereign Republic and shall be known as the Republic of Sri Lanka. The Republic of Sri Lanka shall be a union of Regions.

For the realistic devolution of power to take place it is necessary to bypass certain constitutional, legal and practical constraints which may otherwise hamper effective implementation. For this reason it is necessary to redefine the concept of the unitary state which hitherto underpinned the Constitution. This is sought to be achieved by the definition of Sri Lanka as a Union of Regions. This change is proposed with the sole intention of providing the constitutional means whereby the devolution of power could be made a practical reality. It will not in any way impact adversely on the ability of the

central government of the Republic to administer its affairs, nor will there be any impairment of the power to legislate on all matters of national importance including the preservation of the Island as a sovereign Republic bounded by its territorial waters.

The proposals have given rise to the apprehension that the departure from the unitary concept would lead to division of the country which would inevitably result in the disintegration of Sri Lanka. This fear is totally without foundation. The new Constitution declares, in no uncertain terms, that the phrase describing the nature of the State as a Union of Regions is qualified as being indissoluble. This feature, in conjunction with the postulates of sovereignty and unity which epitomize the entire Constitution, provides a compelling safeguard for the continued existence of the nation as one entity.

Furthermore, express provisions are incorporated in Article 2 of the new Constitution that prohibit a Regional Council from espousing any cause promoting separation from the rest of the nation. These provisions, therefore, preclude an attempt by a Region to make any unilateral variation in the *status quo* established by the Constitution. The only initiative that a regional administration can make in this field is with regard to the alteration of boundaries. This is in the interest of administrative expediency and can only be effected by Parliament acting upon the request of the regional administration. Parliament may, however, if it so desires, amend these provisions in keeping with the procedures laid down in the Constitution.

At the heart of a democratic state lies the sovereignty of the people. This connotes that the supreme power in the country is vested in its citizens. The people's supreme power is threefold:

- i. The Legislative power of the people;
- ii. The Executive power of the people; and
- iii. The Judicial power of the people.

### Maximising opportunities

The objective of the proposals is the distribution of this power to such an extent that power is devolved to the smallest constitutive

unit of society, thus maximizing the opportunities available to the people to exercise their power. The Constitution, therefore, envisages that the legislative power of the people - the power to make laws - would be exercised in 3 ways.

1. By Parliament which consist of elected representatives who will legislate on all matters of national importance;
2. By Regional Councils which will legislate on socio-cultural matters and development issues at a regional/local level; and
3. By the People themselves at a referendum when a matter having exceptional national significance has to be decided upon.

The exercise of the legislative power of the people in the above manner is in accordance with the concept of a democracy where the people elect their Government.

The proposals envisage that the Executive power of the people is vested in an institution which would be a democratic structure far removed from the potential constitutional autocracy that exists at present. This power takes 2 forms:

1. According to the proposals, the country will continue to have a President. However, the Presidency that is conceived of will not be the Executive Presidency that prevails under the present Constitution, but rather a Presidency of a ceremonial or titular nature. The President wields the executive power of the people in accordance with the advice of the Prime Minister and Cabinet, and is thus accountable to Parliament.
2. Regionally, the executive power of the people will be exercised by the Governor who is appointed to that particular region. The Governor will act upon the advice of the Regional Board of Ministers headed by the Chief Minister of the Region.

## Power of the people

The judicial power of the people will be exercised by constitutionally recognized Courts such as the Supreme Court of Appeal, Regional High Courts and other courts and tribunals established by law and by Parliament in relation to Parliamentary Privileges.

The supreme power of the people is exercised through these institutions within an environment where significant emphasis is placed on the securing of fundamental human rights. The rights that find expression in the draft Constitution have drawn greatly on international human rights instruments and may be said to offer a more clear, concise and complete expression of human rights than was achieved by previous constitutional provisions in this regard. The civil and political rights of all sections of the community are secured by this chapter, and a positive duty with regard to the fostering, advancement and securing of such rights is cast on all organs of government. This would greatly facilitate a more realistic devolution of power.

The current provisions in the Constitution that proclaim Sri Lanka's identity, both nationally and internationally, are retained unchanged.

**National Flag:** The National Flag of the Republic will be the Lion Flag (depicted in the 3rd Schedule)

**National Anthem:** The National Anthem of the Republic of Sri Lanka will be "Sri Lanka Matha" (words and music contained in the 4th Schedule)

**National Day:** Sri Lanka's National Day will remain the 4th of February.

## Buddhism

The second Chapter of the draft Constitution is devoted to provisions relating to Buddhism. The protection and fostering of

Buddhism has long prevailed as a traditional practice of Sri Lanka's rulers. This received constitutional expression consequent to the promulgation of the 1978 Constitution. These provisions, according to Buddhism the foremost place, are also included in the present draft. There is also the additional proviso whereby the Chapter on Buddhism is "**entrenched**", i.e. it cannot be changed merely by obtaining a 2/3 majority but would also require approval at a referendum for amendment. The draft Chapter does not confine itself to a mere constitutional declaration of protection of Buddhism but also envisages the additional practical measure of a Supreme Council being constituted in consultation with the Buddhist clergy. This Council will be entrusted with the task of advising the Government in the performance of its constitutionally appointed task - the protection and fostering of Buddhism.

## The devolution of power to regions

### I. Establishment of Regional Councils

The Government's devolution proposals envisage a division of powers between the Central Government and regional units. These units are necessary to exercise the devolved powers in order to achieve regional development in keeping with the needs of the particular locality. The proposals envisage the establishment of units referred to as "**Regional Councils**". Devolution proposals advanced in the past have also suggested similar units.

A few examples are:

1. **The Bandaranaike-Chelvanayakam pact (1957) - Regional Councils (Rata Sabha)** which would exercise power in relation to:- Agriculture, Cooperatives, Land and Land Development, Colonization, Education, Health, Industries and Fisheries, Housing and Social Services, Energy, Irrigation Schemes and Highways;



2. **The Dudley Senanayake-Chelvanayakam agreement (1965)** considered the prospect of devolution on a wide scale to units known as "District Councils";
3. **The Mangala Moonesinghe Parliamentary Select Committee** in its interim report (1992), suggested units constituted along the lines of "States", similar to those which exist in India.
4. The system of "Provincial Councils" that functions today fulfills the proposals contained in the **Indo-Lanka Accord of 1987**, made operative by the 13th Amendment to the Constitution.

While the Government's current proposals envisage the devolution of power to newly established units to be referred to as "Regional Councils", they also seek to avoid the pitfalls that have beset all previous proposals. The first schedule to the new Constitution will enumerate the Regions which would constitute the Republic of Sri Lanka. The current demarcation of Provinces will, to a large extent, prevail but changes will be necessitated with regard to the present North-Eastern Province which has given rise to much controversy.

#### **Temporary merger**

A long expressed demand of minority groups has been that the Northern and Eastern Provinces be regarded as one administrative unit. The 13th Amendment to the Constitution, currently in force, stipulates that this question should be put to a referendum if the temporary merger is to be made permanent. Groups representing the nation's majority have consistently asserted that the Northern and Eastern Provinces should not be joined. The Government's proposals **do not** in any way, suggest that the present Northern Province be linked up with the present Eastern Province. Instead, it is proposed that the boundaries of both areas be redemarcated. The proposals

further state that the demarcation should be done after all communities' interests - Sinhala, Tamil and Muslim - are given the fullest consideration with a view to achieving a formula acceptable to all.

## **II. Regional Councils**

Each Region identified in the above manner will have its own Regional council. The members of the respective Councils will be voted into office by the inhabitants of each Region. The electoral system to be adopted will be enshrined in constitutional provisions relating to elections. The number of members for each Regional Council will be determined according to area and the population of that Region. The term of office of the Regional Council will be 5 years. Upon the expiration of that period, the Council will be deemed to have been dissolved.

## **III. The Governor**

The executive power of the people of a Region will be exercised by the Regional Governor. A governor will be appointed, upon nomination, to each Region. The Governor will be appointed by the President acting upon the advice of the relevant Chief Minister. The Governor's term of office will be 5 years. Among the Governor's powers will be the power to summon, prorogue and dissolve the Regional Council.

## **IV. The Regional Board of Ministers**

Each Region will have a Board of Ministers, headed by the Chief Minister, which will aid and advise the Governor in the exercise of executive power in the Region. The maximum number of members (excluding the Chief Minister) will be 6. The Chief Minister will be the person who commands the confidence of the majority of the Council's members.

## V. The Legislative Power of the Region

Regional Councils may exercise legislative power. This law-making power may be exercised in respect of subjects devolved to the Regions. If devolution of power is to be meaningful, the power to enact laws on devolved subjects should be vested in the Regional Councils. A pragmatic measure such as the devolution of power cannot be realized if the supreme legislative power in the country is exclusively vested in one institution or individual. This concentration of power also makes the achievement of the goals of equity and justice increasingly difficult. Thus, the exclusive power to legislate upon subjects that are devolved should necessarily vest in the Regional Councils. The subjects so devolved have been identified in the two lists, with clarity and certainty being the governing consideration.

All proposals put forward consequent to the 13th Amendment have recognized this necessity in no uncertain terms. The government's proposals, therefore, emphasize the necessity for this idea of regional legislative power, within specifically defined limits.

Accordingly, the Regional List embodied in the proposals contains 46 subjects, and legislative power in respect of these subjects vests in the Regional Councils.

## VI. Regional Judiciary

Judicial power relating to affairs at a regional level being exercised by regional institutions, is the hallmark of a workable scheme of devolution. The Government's proposals envisage the existence of High Courts, District and Magistrate's Courts at the regional level. However, the Supreme Court and the Appeal Court at the national level, will continue to be one organ at the national level. The highest court that can be established in a region will, therefore, be the High Court. This Court may function as a court of original jurisdiction in respect of offences committed within the Region. The High Court may exercise powers of appeal and revision in relation to sentences and orders of primary courts in the Region. In addition, orders in the nature of the writ of *Habeas Corpus*, may be issued in

respect of persons unlawfully detained in the Region and may, in the case of a person exercising power in respect of subjects in the Regional List, issue orders in the nature of the writ of certiorari, prohibition, procedendo, mandamus and quo warranto against such person.

## VII. Regional Attorney-General

There shall be a Regional Attorney-General for every Region who will be appointed by the Governor. His primary function will be to advise the Governor, the Chief Minister and the Board of Ministers on legal matters pertaining to the administration of the region. The Regional Attorney-General will hold office at the pleasure of the Governor.

## VIII. Regional Public Service

### The Regional Public Service Commission

An important feature of a realistic scheme of devolution is the practical extent of the powers to be exercised by the decentralized administration. This is, to a large extent, facilitated by the independence guaranteed to the Regional Public Service. The Government's proposals contain measures whereby a Regional Public Service Commission will be established which would oversee the functioning of the Regional Public Service. This element of an efficient regional administration is thereby well provided for. This Commission will be appointed by the Constitutional Council consequent to consultation with the Governor. The maximum number of Commissioners will be five, one of whom is to be its Chairman. The principal tasks entrusted to the Commission will be the appointment, transfer, dismissal and disciplinary control of members of the Regional Public Service in the various Regions.

## IX. Matters pertaining to Sri Lanka's coastline

The extent of Sri Lanka's territory is defined by its coastal waters. The new constitutional provisions do not envisage any change in its ownership. Accordingly, rights in anything of value, be it the sea-bed, minerals or any such property accrue to the Central Government. Thus, the Central Government may exploit such resources as it sees fit for the purposes of the Republic.

## X. State land

The pivotal question at the centre of the political discourse on the proposed devolution of power in Sri Lanka is that of land. The Government's monopolistic control over State land, which has been a feature of our contemporary history, is a legacy of Sri Lanka's experience as a colony, functioning under the dictates of an imperial system of government. Powers relating to land being devolved to regional units does not connote the loss of State authority over land but rather involves a sharing of such powers. The relaxing of legal and administrative barriers regarding land utilization is essential for the achievement of balanced and equitable development. This is the reason why the proposal relating to powers over land being devolved to regional units received the approval of many proponents of previous political solutions.

Many of those proposals are very similar to the Government's current proposals. **The Bandaranaike - Chelvanayakam Pact** proposed, with regard to land colonization, that the power to decide on who was to be settled on land within a particular region be devolved to Regional Councils with no preconditions attached. Similar provisions were contained in the **Dudley Senanayake - Chelvanayakam agreement**. **The Mangala Moonesinghe Select Committee** proposed powers over land predicated on the Indian model based on "States." The 13th Amendment to the Constitution provides for the subject of land to vest in the Provincial Councils (but land per se was not vested in them).

The Government's proposals envisage practical measures

that will ensure a realistic degree of devolution of power. Thus, authority over land situated in a Region is vested in the Council in fact as well as being a devolved subject. However, if the Central Government requires land for a purpose in the reserved list, the Regional Council is bound to make such land available to it after consultations with the Government. Furthermore, inter-regional schemes that involved two or more Regions also fall exclusively within the purview of the Central Government.

## XI. Law and Order

The preservation of law and order would ordinarily be devolved to regional Councils as envisaged by the Government's proposals. Regional Councils would thereby wield police powers in the interest of maintenance of civic order.

All ramifications of the devolved subject should be carefully considered in the implementation of a scheme, if the primary objective of practicability is to be realized. On the one hand, limitless powers devolved to the regional unit would result in a repressive regional administration. At the other extreme, no police powers being devolved would result in a serious threat to tranquillity and peace. Therefore, the current proposals envisage a sharing of power arising from sensitivity of perception and a close appraisal of existing realities. More important is the expectation that the Police is not an instrument of repression but rather an invaluable public service. It is this expectation that is uppermost in the mind of the Government in designing the structures for devolution in this context.

Thus, each Region will have its own Regional Police Service headed by the Regional Police Commissioner. The Police Commissioners will be appointed by the Chief Ministers subsequent to consultation with the respective Governors.

A Regional Police Commission will be appointed comprising the Commissioner and two others to be nominated by the Constitutional Council. The responsibility of this Commission will include appointment of members to the Regional Police Service, transfers and disciplinary control.

## REGIONAL POLICE SERVICE

All officers in the Region will serve under the control of the Regional Police Commission. The Regional Police Service will consist of the following ranks:

1. Regional Police Commissioner,
2. Regional Deputy Police Commissioners,
3. Senior Superintendents of Police,
4. Superintendents of Police,
5. Assistant Superintendents of Police,
6. Chief Inspectors,
7. Inspectors of Police,
8. Sub-Inspectors of Police,
9. Police Sergeants,
10. Police Constables, and
11. Other ranks deemed necessary.

The Regional Police Commissioner is accountable to the Chief Minister. The Regional Police Service so established will conduct investigations and initiate legal proceedings in respect of offences relating to matters contained in the Regional List.

The Regional Police Service has no powers of investigation in respect of the following offences:

- \* Offences against the Republic;
- \* Offences relating to the army, navy and air force;
- \* Offences relating to elections except local authority elections;
- \* Any offence committed against the President;
- \* Any offence committed against the Prime Minister, the Speaker, a Minister, a Deputy Minister or a Member of Parliament;
- \* Any offence committed against a Member of the National

Judicial Service Commission, a Member of the National Public Service Commission, the Secretary General of Parliament, a member of the President's Staff or a Member of the Staff of Parliament;

- \* Any offence prejudicial to national security or the maintenance of essential services;
- \* Offences relating to coins, currency and Government stamps;
- \* Any offence relating to property belonging to the Republic or a State Corporation; Company or Establishment, the whole or part of the capital whereof has been provided by the Republic;
- \* Any offence under any law relating to any matter in the Reserved List;
- \* Any offence in respect of which courts in more than one Region have jurisdiction, and International crimes.

Investigations in respect of the above can only be conducted by the National Police Service which functions under the control of the Central Government.

The preservation of national security and safety is a responsibility of the Central Government and, as such, will be entrusted to the National Police Service. This Service will be headed by the National Police Commissioner. The National Police Commissioner together with two others appointed by the Constitutional Council will constitute the National Police Commission. The responsibilities of the National Police Commission include the appointment, transfer and disciplinary control of persons in the National Police Service as well as inter-regional transfers of members of the Regional Police Services.

## **XII. States of emergency within a Region**

A misapprehension entertained by persons who have viewed devolution of power in an unfavourable light is that this political measure will lead to a fragmentation of the country. Their mistaken belief is that the devolution of power, as described above, could lead to a situation where a Region could proclaim itself a separate nation. This is a totally erroneous conception.

Subjects and functions are conferred on Regions within the strict limitations prescribed in the Lists. No additional powers may be exercised by them. They cannot in any way act contrary to, or in derogation of, the fundamental features of the Republic of Sri Lanka — namely, its unity and sovereignty. If any Regional Council purports to act in an unlawful manner, thereby endangering the two sacrosanct principles mentioned above, the proposals contain sufficient means whereby such moves could be effectively forestalled.

## **XIII. The President's power of dissolution of a Regional Council**

If some regional administrative authority attempts to act in a manner which endangers the unity and sovereignty of the nation, the proposals contain sufficient measures whereby the Central Government may assume such authority or cause that administration to be dissolved. These powers of the Central Government will be exercised through the President. The proposals entitled "State of emergency within a Region" provide for the President's powers of dissolution and of acquisition of authority. Consequently, if the President is convinced that the: (a) security or public order in a Region is threatened by armed insurrection or (b) grave internal disturbances are occurring, or (c) any action or omission of the regional administration presents a clear and present danger to the unity and sovereignty of the Republic, he may declare an emergency in the Region bringing the laws relating to public security into force.

The President also may deploy the armed forces or the Police in that Region for the purpose of restoring public order.

If the President is satisfied that a situation has arisen in which the regional administration is: (a) promoting armed rebellion or insurrection or (b) intentionally violating the Constitution in a manner which constitutes a clear and present danger to the unity and sovereignty of the Republic, he may acquire all powers exercised by any authority in the region or dissolve the Council.

A proclamation made in this manner or the reasons for such proclamation may not be questioned in any court of law.

## **ARMED AGGRESSION**

The above clearly demonstrates that there is no probability of a Regional Council or administration exceeding the powers devolved to it as set out in the Constitution. Armed aggression against the Republic of Sri Lanka is therefore not possible in practice.

The new Constitution prohibits a regional administration, in terms of Article 2, from promoting, by direct or indirect means, any of the following:

- (a) the separation or secession of such Region or Regions from the Union of Regions constituting the Republic of Sri Lanka;
- (b) alteration of the area of such Region or Regions;
- (c) alteration of the boundaries of such Region or Regions;
- (d) alteration of the name or names of such Regions or Regions;
- (e) formation of a new Region by separation of territory from any Region or by uniting two or more Regions or parts of Regions or by uniting any territory with a part of any Region.

While the regional administration may make representations to the Centre regarding (c) only so far as administrative needs require it, it cannot take any positive action by itself to put its proposals into practice. All the above can only be dealt with by Parliament in whom power to amend the Constitution is exclusively vested.

If a regional administration purports to effect these changes, then it clearly is acting in violation of the Constitution and, as such, the President may take action as described above.

#### **XIV. Finance**

Throughout the history of attempts at devolution of power in Sri Lanka, one element that was repeatedly stressed was that, if power was to be devolved with the goal of promoting balanced national development, the regional units should be vested with a degree of fiscal competence. For instance, the Mangala Moonesinghe Select Committee placed special emphasis on the fact that the powers so devolved should exceed general powers such as Health and Transport and should extend to monetary powers as well. It is with the object of devolution of power that would provide for balanced national development on a practical and effective basis that measures relating to finance are included in the proposals.

#### **XV. Finance Commission**

The task of assignment of finances to Regional Councils is entrusted to an independent Commission. This Commission will be known as the Finance Commission. Its members will be appointed by the President upon the recommendation of the Constitutional Council. The Finance Commission will consist of 3 members. They will represent the three major communities of the nation. The term of office of the Commission will be 3 years. The central administration will allocate funds to the Regions in accordance with the recommendations of the Commission.

Regions will have the power to levy taxes in respect of certain specified areas and also the ability to establish financial institutions.

While Regions have the ability to obtain domestic and international loans, they will have to do so within the limitations and in accordance with the criteria prescribed by the Centre. Furthermore, the ability to obtain foreign direct aid, be it grants or development

assistance, is conditional upon conformity with national policy with regard to such matters, as determined by the Cabinet and approved by Parliament.

#### **XVI. Chief Ministers' Conference**

Finally, in order that the devolution of power is successfully implemented and continued with, a novel concept of a Chief Ministers' Conference is proposed. The members will be the Chief Ministers of all Regions. This Conference, therefore, will comprise all popularly elected heads of the regional executive in the Republic. Its principal function will be that of ensuring that devolution would be a continual process.

The Conference will meet once a month. The Chairman will be elected from among the Chief Ministers on a rotational basis which would enable each Chief Minister to hold office as Chairman of the Conference. The Conference will continue to operate regardless of changes in its membership brought about by regional elections, and Chief Ministers will become members on their election to office.

The responsibilities of the Conference are threefold. The Conference will:

1. continuously monitor measures taken to ensure that devolution is an ongoing process and that the constitutional provisions relating to devolution in every sphere are adhered to;
2. upon examination of controversies that may arise among Regions, attempt to conciliate such dispute or disputes, and
3. inquire into subjects which contain a commonality of interest among the Regions and prescribe measures to make administration relating to these subjects more efficient.

#### **CONTENTIOUS ISSUES**

While the principal instruments of dispute resolution will be conciliation and mediation, in instances where such measures prove unsuccessful

the proposals provide for the establishment of a tribunal whereby disputes may be settled. Such a mechanism whereby consensus can be achieved on contentious issues is of primary importance in the context of a scheme of devolution. Regional autonomy will be meaningless if the Centre has to intervene and settle disputes between Regions.

This measure, therefore, provides a forum where such issues may be resolved. However, where questions of legality arise, involving interpretation of the Constitution the jurisdiction of the Supreme Court - the principal arbiter on matters relating to the Constitution - will necessarily supersede that of the tribunal set up under these provisions. Similarly disputes between the Centre and the Regions will require invocation of the jurisdiction of a competent judicial body. The assignment of arbitral powers to a non-judicial body that would seek to resolve disputes between a relatively small regional administration and a monolithic Central Government may provoke allegations of bias. If the interests of even handed treatment are to be fully served, the referral of such disputes to a judicial entity, whose independence is assured by the Constitution is preferable.

## XVII. Lists

The proposals demarcate consistently, clearly and with certainty, the powers to be exercised by the Regions and the Centre. The subjects and functions of the Regions and the Centre are, therefore, contained in two lists known as the Reserved List and the Regional List. There will be no Concurrent List.

### List I (*Reserved List*)

This list contains those subjects and functions to be exercised by the Centre

1. Defence, national security, national police, and the security forces,
2. Immigration, Emigration and Citizenship,

3. Foreign Affairs,
4. National Census and Statistics,
5. National Planning,
6. Currency and Foreign Exchange, international economic relations, monetary policy,
7. Public Debt of the Government of Sri Lanka,
8. Foreign loans of the Government of Sri Lanka,
9. Regulation of banking and other financial institutions,
10. Insurance,
11. Stock Exchange and futures markets,
12. Audit of the Government of Sri Lanka,
13. Taxes on income, capital and wealth of individuals, companies and corporations,
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions),
15. Turnover taxes and stamp duties, goods and services taxes,
16. Any other taxes, duties or levies not mentioned in the Regional List,
17. Pensions payable by the Government of Sri Lanka or out of the consolidated fund,
18. Atomic Energy,
19. Maintenance and management of the National Grid,
20. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products),
21. National rivers,
22. Airports, harbours, ports with international transportation,
23. Inter-regional transport and railways,
24. Civil Aviation,
25. Inter-regional highways linking district capitals,
26. Shipping and navigation, Maritime Zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf),
27. Elections (excluding elections to Local Authorities elections to be administered by Local Authority Election Commissions in each region),
28. Posts and telecommunications,

29. National Public Service, National Public Service Commission,
30. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national Universities, Training, coordination of education and research relating to Health, Development of National Health Standards, Administration of all special programs),
31. Drugs poisons and narcotics,
32. Administration of Justice,
33. National universities,
34. National standards with regard to professions, occupations and training,
35. National standards relating to research, development and training in the area of agriculture,
36. Inter-regional irrigation schemes,
37. Fishing beyond the territorial waters and rights relating to traditional migratory fishing,
38. Management of central policy and research institutions in the field of education eg. National Institute of Education, Management and supervision of national schools, conduct of national public certification examinations, educational training, imposition of minimum standards for such examinations, curriculum and teacher qualifications,
39. Adoption of children,
40. National Scientific and Industrial Research and Training,
41. Regulation of activities for the enhancement of quality standards,
42. Foreign trade, inter-regional trade and commerce,
43. Patents, inventions, designs, copyright, trademarks and merchandise marks,
44. Monopolies and mergers,
45. Inter-regional food distribution,
46. National media including Central Government Broadcasting and Television Institutions,
47. National Archives and Museums, ancient and historical monuments, archaeological sites and records declared by law to be of national importance,
48. National Environment and National Policy on Tourism,
49. Specialised National Housing Programs,

50. Coordination of Specialized National Poverty Alleviation Programs,
51. Youth and Women's Affairs,
52. Buddhism,
53. Development of National sports administration and infrastructure,
54. Intervention in instances of National (natural and environmental) disasters and epidemics,
55. Labour regulation and standards,
56. Surveys for the purpose of any matters enumerated in the Reserved List,
57. Offences against Laws with respect to any of the matters in the List,
58. Fees in respect of any of the matters in the List, but not including fees taken in any Court,
59. Public utility infrastructure development,
60. National Libraries and the National Library Services Board,
61. Educational publications,
62. Industrial Development and
63. National Lotteries.

#### **List II (The Regional List)**

This list contains those subject and functions to the Regional Councils

1. Health and indigenous medicine,
2. Higher Education, Education and Educational Services, excluding national schools, and national universities and the setting of minimum standards for examination, curriculum and teacher qualifications and teacher training,
3. Agriculture and agrarian services,
4. Irrigation,
5. Animal husbandry,
6. Fisheries and Aquatic Resources excluding rights relating to traditional migratory fishing,



7. Forestry and Protection of the Environment within a Region,
8. Industries and Regional Industrial Development,
9. Energy,
10. Transport,
11. Minor Ports and Harbours,
12. Roads and Waterways,
13. Housing and construction,
14. Urban Planning and Public Utilities,
15. Rural Development,
16. Local Government,
17. Co-operatives,
18. Supply and distribution of food,
19. Promotion of tourism,
20. Regional libraries and museums, archaeological sites, ancient and historical monuments and records (excluding those sites declared by law to be of national importance) and the regulation of cultural activity, including public performances,
21. Broadcasting and media, including television,
22. Relief, Rehabilitation and Reconstruction,
23. Social Security,
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law),
25. Regional Police and law and order,
26. Administration of Borstal and reformatory institutions,
27. Regional Public Service,
28. Sports,
29. Regulation of unincorporated associations and societies within the region,
30. Public debt of a Region,
31. Domestic and international borrowing (international borrowings shall be subject to such criteria and limitations specified by, and would require the concurrence of the Centre),
32. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the region,

33. Regional financial and credit institutions,
34. Excise duties to be specified,
35. Betting taxes, and taxes on prize competitions and such other lotteries to be specified,
36. Motor vehicle licence fees,
37. Stamp duties on transfer of immovable properties and motor vehicles,
38. Fines imposed by courts,
39. Court fees, including stamp fees on documents produced in courts,
40. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes,
41. Taxes on mineral rights,
42. Offences against laws with respect to any of the matters specified in the List,
43. Fines in respect of the matters in the Regional List,
44. Planning and Plan implementation at the regional level,
45. Law and order to the extent provided in Chapter III and
46. Administration of Justice within a region.

The Prime Minister stated that as mentioned by him earlier it was not possible for him to take any steps that would abrogate the Official Language Act.

After discussion it was agreed that the proposed legislation should contain recognition of Tamil as the language of the national minority of Ceylon and that the four points mentioned by the Prime Minister should include provision that, without infringing on the position of the Official Language as such, the language of administration of the Northern and Eastern Provinces be Tamil, and that any necessary provision be made for the non-Tamil speaking minorities in the Northern and Eastern Provinces.

Regarding the question of Ceylon citizenship for the people of Indian descent and the revision of the Citizenship Act, the representatives of the Federal Party put forward their views to the Prime Minister and pressed for an early settlement.

The Prime Minister indicated that the problem could receive early consideration.

In view of these conclusions the Federal Party stated that they were withdrawing their proposed satyagraha.

### **Part B**

1. Regional areas to be defined in the bill itself by embodying them in a Schedule thereto.
2. That the northern Province is to form a regional area whilst the Eastern Province is to be divided into two or more regional areas.
3. Provision is to be made in the Bill to enable two or more regions to amalgamate even beyond provincial limit ; and for one region to divide itself subject to ratification by Parliament. Further provision is to be made in the Bill for two or more regions to collaborate for specific purposes of common interests.

## **E**

### **Bandaranaike-Chelvanayakam Pact of 1957**

#### **Part A**

Representatives of the Federal Party had a series of discussions with the Prime Minister in an effort to resolve the differences of opinion that had been growing and creating tension.

At an early stage of these conversations it became evident that it was not possible for the Prime Minister to accede to some of the demands of the Federal Party.

The Prime Minister stated that, from the point of view of the Government, he was not in a position to discuss the setting up of a Federal Constitution, or regional autonomy or take any step that would abrogate the Official Language Act.

The question then arose whether it was possible to explore the possibility of an adjustment without the Federal Party abandoning or surrendering any of its fundamental principles or objectives.

At this stage the Prime Minister suggested an examination of the government's Dratt Regional Council Bill to see whether provision could be made under it to meet, reasonably, some of the matters in this regard which the Federal Party had in view.

The agreements so reached are embodied in a separate document.

Regarding the language issue, the Federal Party reiterated its stand for parity but in view of the position of the Prime Minister in this matter they came to an agreement by way of adjustment. They pointed out that it was important for them there should be a recognition of Tamil as a national language and that the administration of the Northern and the Eastern Provinces should be done in Tamil.

4. Provision is to be made for direct election of regional councillors. Provision is to be made for a delimitation commission or commissions for carving out electorates. The question of MPs representing districts falling within regional areas to be eligible to function as chairman is to be considered. The question of Government Agents being regional commissioners is to be considered. The question of supervisory functions over larger towns, strategic towns and municipalities is to be looked into.
5. Parliament is to delegate powers and to specify them in the Act. It was agreed that regional councils should have powers over specified subjects including agriculture, cooperatives, lands and land developments, colonization, education, health, industries, fisheries, housing, social services, electricity, water schemes and roads.

Requisite definition of powers will be made in the Bill.

6. It was agreed that in the matter of colonisation schemes the powers of the regional councils shall include the power to select allottees to whom lands within their area of authority shall be alienated and also power to select personnel to be employed for work on such schemes. The position regarding the area at present administered by the Gal Oya Board in this matter requires consideration.
7. The powers in regard to the regional council vested in the Minister of Local Government in the draft bill to be revised with a view to vesting control in Parliament wherever necessary.
8. The Central Government will provide block grants to the regional councils. The principles on which the grants will be computed will be gone into. The regional councils shall have powers of taxation and borrowing.

## F

### Dudley Senanayake- Chelvanayakam Pact of 1965

Mr. Dudley Senanayake and Mr. S.J.V. Chelvanayakam met on the 24-3-1965 and discussed matters relating to some problems over which the Tamil-speaking people were concerned, and Mr. Senanayake agreed that action on the following lines would be taken by him to ensure a stable government:

- (1) Action will be taken early under the Tamil Language Special Provisions Act to make provision of the Tamil Language of Administration and of Record in the Northern and Eastern Provinces.

Mr. Senanayake explained that it was the policy of his party that a Tamil-speaking person should be entitled to transact business in Tamil throughout the island.

- (2) Mr. Senanayake stated that it was the policy of his party to amend the Language of Courts Act to provide for legal proceedings in the Northern and Eastern Provinces to be conducted and recorded in Tamil.
- (3) Action will be taken to establish District Councils in Ceylon vested with powers over subjects to be mutually agreed upon between the two leaders. It was agreed, however, that the government should have power under the law to give directions to such councils under the national interest.

- (4) The Land Development Ordinance will be amended to provide that citizens of Ceylon be entitled to the allotment of land under the Ordinance.

Mr. Senanayake further agreed that in the granting of land under colonization schemes the following priorities be observed in the Northern and Eastern provinces.

- (a) Land in the Northern and Eastern provinces should in the first instance be granted to landless persons in the district.
- (b) Secondly, to Tamil-speaking persons resident in the northern and eastern provinces.
- (c) Thirdly, to other citizens in Ceylon, preference being given to Tamil citizens in the rest of the Island.

Sgd. Dudley Senanayake  
24. 3. 65

Sgd. S.J.V.Chelvanayakam  
24. 3. 65

## G

### Annexure C

In terms of paragraph six of President's statement of December 1st, 1983, the following proposals which have emerged as a result of discussions in Colombo and New Delhi are appended for consideration by the All-Party Conference. These proposals are in the context of united and integrity of Sri Lanka and will form the basis for formulating the Agenda of the All-Party Conference.

- (1) The District Development Councils in a Province be permitted to combine into one or more Regional Councils if they agree by decisions of the Councils and approved by Referendum in that district.
- (2) In the case of District Councils of Northern and Eastern Provinces, respectively, as they are functioning due to the resignation of the majority of members, their union within each province to be accepted.
- (3) Each Region will have a Regional Council if so desired. The convention will be established that the leader of party which commands a majority in the Regional Council would be formally appointed by the President as the chief minister of the Region. The Chief Minister will constitute a Committee of ministers of the Region.
- (4) The President and the Parliament will continue to have overall responsibility for all subjects not transferred to the Region and generally for all other matters relating to maintenance of sovereignty, integrity, unity, and security and progress and development of the Republic as a whole.

- 5) The legislative power of the region would be vested in the Regional Councils which would be empowered to enact laws and exercise executive powers in relation thereto on certain specified listed subjects including the maintenance of Internal Law and Order in the Region, the administration of justice, social and economic development, cultural matters and land policy. The list of subjects to be allocated to the Regions will be worked out in detail.
- (6) The Regional Councils will have powers to levy taxes, cess of fees and to mobilize resources through loans, the proceeds of which will be credited to a Consolidated Fund set up for that particular Region to which also will be credited grants, allocations or subventions made by the Republic. Financial resources will be apportioned to the Region on the recommendations of the representative Finance Commission appointed from time to time.
- (7) Provisions will be made to constitute High Courts in each region. The Supreme Court to Sri Lanka will exercise appellate and constitutional jurisdiction.
- (8) Each Region will have a Regional Service constituting (a) officers and public servants of the Region and (b) such other officers and public servants who may be seconded to the Region. Each Region will have a Regional Public Service Commission for recruitment and for exercising disciplinary powers relating to the members of the Regional Service.
- (9) The armed forces of Sri Lanka will reflect the national ethnic composition. In the Northern and Eastern Provinces the police force for internal security will also reflect the ethnic composition of these Regions.
- (10) A Port Authority under the Central Government will be set up for administering the Trincomalee Port and Harbor. The area that will come under the Port Authority as well as the powers to be assigned to it will be further discussed.

- (11) A national policy on land settlement and the basis on which the government will undertake land colonization will have to be worked out. All settlement schemes will be based on ethnic proportion so as not alter the demographic balance subject to agreements being reached on major projects.
- (12) The constitution and other laws dealing with the official language Sinhala and the national language Tamil be accepted and implemented as well as similar laws dealing with National Flag and Anthem.
- (13) The Conference should appoint a committee to work out constitutional and legal changes that may be necessary to implement these decisions. The Government will provide its secretariat and necessary legal offices.
- (14) The consensus of opinion of the All-Party Conference will itself be considered by the United National Party Executive Committee and presumably by the executive body of the other parties as well before being placed before Parliament for legislative action.

lingual and multi-religious plural society, in which all citizens can live in equality, safety and harmony, and prosper and fulfil their aspirations;

## H

### Text of the Indo-Sri Lanka Agreement of July 29, 1987

The Prime Minister of the Republic of India, His Excellency Mr. Rajiv Gandhi and the President of the Democratic Socialist Republic of Sri Lanka, His Excellency Mr. J. R. Jayewardene having met at Colombo on 29 July 1987.

Attaching utmost importance to nurturing, intensifying and strengthening the traditional friendship of India and Sri Lanka and acknowledging the imperative need of resolving the ethnic problem of Sri Lanka, and the consequent violence, and for the safety, well-being and prosperity of people belonging to all communities in Sri Lanka.

1. Having this day entered into the following Agreement to fulfil this objective.
  - 1.1 desiring to preserve the unity, sovereignty and territorial integrity of Sri Lanka;
  - 1.2 acknowledging that Sri Lanka is a multi-ethnic and a multi-lingual plural society consisting, inter alia, of Sinhalese, Tamils, Muslims (Moors), and Burghers;
  - 1.3 recognising that each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured;
  - 1.4 also recognising that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups;
  - 1.4 conscious of the necessity of strengthening the forces contributing to the unity, sovereignty and territorial integrity of Sri Lanka, and preserving its character as a multi-ethnic, multi-

#### 2. Resolve that:

- 2.1 Since the Government of Sri Lanka proposes to permit adjoining Provinces to join to form one administrative unit and also by a Referendum to separate as may be permitted to the Northern and Eastern Provinces as outlined below:
- 2.2 During the period, which shall be considered an interim period (i.e.) from the date of the elections to the Provincial Council, as specified in para 2.8 to the date of the Referendum as specified in para 2.3, the Northern and Eastern Provinces as now constituted, will form one administrative unit, having one elected Provincial Council. Such a unit will have one Governor, one Chief Minister and one Board of Ministers.
- 2.3 There will be a Referendum on or before 31 December 1988 to enable the people of the Eastern Province to decide whether:
  - (A) The Eastern Province should remain linked with the Northern Province as one administrative unit, and continue to be governed together with the Northern Province as specified in para 2.2, or
  - (B) The Eastern Province should constitute a separate administrative unit having its own distinct Provincial Council with a separate Governor, Chief Minister and Board of Ministers.

The President may, at his discretion, decide to postpone such a Referendum.
- 2.4 All persons who have been displaced due to ethnic violence, or other reasons, will have right to vote in such a Referendum. Necessary conditions to enable them to return to areas from where they were displaced will be created.
- 2.5 The Referendum, when held, will be monitored by a committee headed by the Chief Justice, a member appointed by the President, nominated by the Government of Sri Lanka, and a member appointed by the President, nominated by the representatives of the Tamil speaking people of the Eastern Province.

- 2.6 A simple majority will be sufficient to determine the result of the Referendum.
- 2.7 Meeting and other forms of propaganda, permissible within the laws of the country, will be allowed before the Referendum.
- 2.8 Elections to Provincial Councils will be held within the next three months, in any event before 31 December 1987. Indian observers will be invited for elections to the Provincial Council of the North and East.
- 2.9 The emergency will be lifted in the Eastern and Northern Provinces by 15 August 1987. A cessation of hostilities will come into effect all over the Island within 48 hours of the signing of this Agreement. All arms presently held by militant groups will be surrendered in accordance with an agreed procedure to authorities to be designated by the Government of Sri Lanka. Consequent to the cessation of hostilities and the surrender of arms by militant groups, the army and other security personnel will be confined to barracks in camps as on 25 May 1987. The process of surrendering of arms and confining the security personnel moving back to barracks shall be completed within 72 hours of cessation of hostilities coming into-effect.
- 2.10 The Government of Sri Lanka will utilise for the purpose of law enforcement and maintenance of security in the Northern and Eastern Provinces the same organisations and mechanisms of Government as are used in the rest of the country.
- 2.11 The President of Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism Act and other emergency laws, and to combatants, as well as to those persons accused, charged and/or convicted under these laws. The Government of Sri Lanka will make special efforts to rehabilitate militant youth with a view to bringing them back to the mainstream of national life. India will cooperate in the process.
- 2.12 The Government of Sri Lanka will accept and abide by the above provisions and expect all others to do likewise.
- 2.13 If the framework for the resolutions is accepted, the Government of Sri Lanka will implement the relevant proposals forthwith.

- 2.14 The Government of India will underwrite and guarantee the resolutions, and cooperate in the implementation of these proposals.
- 2.15 These proposals are conditional to an acceptance of proposals negotiated from 4.5.1986 to 19.12.1986. Residual matters not finalised during the above negotiations shall be resolved between India and Sri Lanka within a period of six weeks of signing this Agreement. These proposals are also conditional to the Government of India cooperating directly with the Government of Sri Lanka in their implementation.
- 2.16 These proposals are also conditional to the Government of India taking the following actions if any militant group operating in Sri Lanka does not accept this framework of proposals for a settlement, namely:
  - (A) India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.
  - (B) The Indian Navy/Coast Guard will cooperate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.
  - (C) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals the Government of India will cooperate by giving to the Government of Sri Lanka such military assistance as and when requested.
  - (D) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.
  - (E) The Governments of India and Sri Lanka will cooperate in ensuring the physical security and safety of all communities inhabiting the Northern and Eastern Provinces.
- 2.17 The Government of Sri Lanka shall ensure free, full and fair participation of voters from all communities in the Northern and Eastern Provinces in electoral processes envisaged in this Agreement. The Government of India will extend full cooperation to the Government of Sri Lanka in this regard.

2.18 The official language of Sri Lanka shall be Sinhala, Tamil and English will also be official languages.

3. This Agreement and the annexure thereto shall come into force upon signature.

In witness whereof we have set our hands and seals hereunto.  
Done in Colombo, Sri Lanka, on this the twenty-ninth day of July of the year one thousand nine hundred and eighty-seven, in duplicate, both texts being equally authentic.

Rajiv Gandhi

Prime Minister of the Republic of India

Junius Richard Jayewardene

President of the Democratic Socialist Republic of Sri Lanka

#### ANNEXURE TO THE AGREEMENT

1. His Excellency the Prime Minister of India and His Excellency the President of Sri Lanka agree that the Referendum mentioned in paragraph 2 and its sub-paragraphs of the Agreement will be observed by a representative of the Election Commission of India to be invited by His Excellency the President of Sri Lanka.
2. Similarly, both Heads of Government agree that the elections to the Provincial Council mentioned in paragraph 2.8 of the Agreement will be observed by a representative of the Government of India to be invited by the President of Sri Lanka.
3. His Excellency the President of Sri Lanka agrees that the Home Guards would be disbanded and all paramilitary personnel will be withdrawn from the Eastern and Northern Provinces with a view to creating conditions conducive to fair elections to the Council.

The President, in his discretion, shall absorb such paramilitary forces, which came into being due to ethnic violence into the regular security forces of Sri Lanka.

4. The Prime Minister of India and the President of Sri Lanka agree that the Tamil militants shall surrender their arms to authorities agreed upon to be designated by the President of Sri Lanka. The surrender shall take place in the presence of one senior representative each of the Sri Lanka Red Cross and the Indian Red Cross.
5. The Prime Minister of India and the President of Sri Lanka agree that a joint Indo-Sri Lankan observer group consisting of qualified representatives of the Government of India and the Government of Sri Lanka would monitor the cessation of hostilities from 31 July 1987.
6. The Prime Minister of India and the President of Sri Lanka also agree that in terms of paragraph 2.14 and paragraph 2.16(C) of the Agreement, an Indian Peace Keeping contingent may be invited by the Present of sri Lanka to guarantee and enforce the cessation of hostilities, if so required.

Prime Minister of India  
New Delhi  
29 July 1987

Excellency,

Conscious of the friendship between our two countries stretching over two millennia and more, and recognising the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudicial to each other's unity, territorial integrity and security.

In this spirit, you had, during the course of our discussions, agreed to meet some of India's concerns as follows:

- (i) Your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and



intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lankan relations.

- (ii) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.
- (iii) The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka.
- (iv) Sri Lanka's agreement with foreign broadcasting organisations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.

In the same spirit, India will:

- (i) Deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.
- (ii) Provide training facilities and military supplies for Sri Lankan security forces.

India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para 1 and specifically to monitor the implementation of other matters contained in this letter.

Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us. Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,  
(Rajiv Gandhi)

*His Excellency*  
*Mr.J.R.Jayewardene*

President of Sri Lanka  
29 July 1987

Excellency,

Please refer to your letter dated the 29th of July 1987, which reads as follows:

Excellency,

1. Conscious of the friendship between our two countries stretching over two millennia and more, and recognizing the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudicial to each other's unity, territorial integrity and security.
2. In this spirit, you had, during the course of our discussions, agreed to meet some of India's concerns as follows:
  - (i) Your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lankan relations.
  - (ii) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.
  - (iii) The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka.
  - (iv) Sri Lanka's agreements with foreign broadcasting organisations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.
3. In the same spirit, India will:
  - (i) Deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.
  - (ii) Provide training facilities and military supplies for Sri Lankan security forces.

4. India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para I and specifically to monitor the implementation of other matters contained in this letter.
5. Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us.

Please accept, Excellency, the assurance of my highest consideration.

Yours sincerely,  
(Rajiv Gandhi)

*His Excellency*  
*Mr. J.R. Jayewardene*  
*President of the Democratic Socialist Republic of Sri Lanka, Colombo*

This is to confirm that the above correctly sets out the understanding reached between us. Please accept, Excellency, the assurance of my highest consideration.

(J.R. Jayewardene)

*President*  
*Foreign Affairs Record, July 1987, pp.252-57.*

## I

### **The Interim Report of the Mangala Moonesinghe Parliamentary Select Committee, 1992**

Your Committee was constituted following the unanimous adoption by Parliament on 9th August, 1991 of the following motion moved by Mr Mangala Moonesinghe and seconded by Mr Stanley Tillekeratne:

“That this Parliament is of opinion that a Select Committee of Parliament be appointed

- (a) to arrive at a political solution to the question involving the devolution of power to the Northern and Eastern Provinces;
- (b) to prevent -
  - (i) the disintegration of the nation;
  - (ii) the killings of innocent civilians, members of the Armed Forces and the Youths fighting for a cause;
  - (iii) the increased militarization of the culture of violence in our country; and
- (c) to achieve peace and political stability and utilize the reduced defence expenditure for rapid economic growth and national development.

That the Committee shall -

- (a) have the power to fix its quorum;

- (b) have the power to summon any person to appear before it, to require any person to produce any document or record, to procure and receive all such evidence, written or oral, as the Committee may think it necessary for the fullest consideration of the matters referred to above, and
- (c) have the power to report from time to time and to sit notwithstanding any adjournment of Parliament”.

While moving the Motion Mr Moonesinghe proposed an amendment to delete the word “national” which appeared in the notice between the words “the” and “question” in paragraph (a). The House agreed to the amendment.

Hon. Speaker thereafter appointed a Committee of 45 Members representing all parties in Parliament under the Chairmanship of Mr Mangala Moonesinghe. This is the largest Select Committee in the history of the Parliament of Sri Lanka.

At its first meeting held on 20th November 1991 the Committee fixed its quorum at fourteen.

The Committee has held 43 meetings to date.

Your Committee at its meeting on 20th November 1991, decided to call for written representations from the public on matters relating to its Order of Reference. This decision was advertised in the Press and given publicity through radio and television in Sinhala, Tamil and English. The closing date for such representations was fixed for 16th December 1991. Your Committee subsequently decided that representations received up to 10th January 1992 would be considered. Your Committee received 253 memoranda.

Memoranda were received from Members of Parliament, political parties, other organizations and individuals. Where clarification of the submissions was found to be necessary, the Committee examined the Members of Parliament, representatives of political and other organizations and individuals, (vide Appendix I).

The Head of the International Committee of the Red Cross Delegation in Sri Lanka, Mr Piarre Wettach, in March 1992, confirmed in writing to the Chairman that he had met two members of the LTTE viz. Mr G. Mahendrarajah (Mahattaya) and Mr Balasingham who had informed him that a delegation from the Select Committee would be welcome in Jaffna. Your Committee informed Mr Wettach that any representation from the LTTE would be welcome and that they wished this to be conveyed to the LTTE. However, the Committee notes with regret that there has been no response whatsoever from the LTTE in this regard up to date proposals and evidence, the following issues emerged for consideration:

- (a) whether the temporarily merged Northern and Eastern Provinces should continue to be one unit with special arrangements made to safeguard the interests of the Muslims;
- (b) whether the Northern and Eastern Provinces should be separated and that each should be an independent unit of devolution;
- (c) whether the temporary North-East merger should continue except for the Sinhala populated areas to be excised and annexed to the neighbouring Provinces; and
- (d) whether the unit of devolution should be the District.

As your Committee continued its deliberations, it became clear that misunderstanding and mistrust prevailed on issues pertaining to colonization of lands, law and order and delays in implementation of legislation relating to devolution. The Committee decided that public servants who had access to information and specialized knowledge of the subject should be summoned to give evidence.

Public Officers were examined on the following subjects:

### Colonization

The Land Commissioner, the Secretary, Ministry of Lands, Irrigation and Mahaweli Development and the Director, Planning in

the Mahaweli Development Authority were summoned to give evidence and produce documents pertaining to relevant data on land settlement in the Northern and Eastern Provinces. Their evidence related to land settlement in those Provinces since independence in 1948 together with an ethnic classification of those settled in the colonization schemes (vide Appendix II).

### Land and Order

The Inspector-General of Police gave evidence on the relevant aspects of law and order. He explained that there were provisions in the Constitution under the 13th Amendment to establish a National Police Service and Provincial Police Services. (Vide Appendix III).

### Finance

Members of the Finance Commission outlined the principles upon which financial disbursements are made to Provincial Councils for capital outlays and recurrent expenditure. The Secretary, Ministry of Finance indicated to the Committee that the objective of the Commission was to encourage the Provincial Councils to expand their revenue base and take an initiative in revenue collection in order to be financially viable.

Your Committee also summoned the Director, External Resources who held the view that it would be useful to allow the Chief Ministers to take preliminary steps to procure foreign loans and aid to develop their respective Provinces provided that the Central Government also participated in the negotiations. (vide Appendix IV).

It was apparent from the evidence of these public servants that the devolution contemplated in the legislation relating to Provincial Councils had not been fully implemented.

Your Committee is unanimous that there should be a greater devolution of power and that such devolution should be put into effect within a specified time. Your Committee was also of the view that not

only should more power be devolved in conventional subjects such as health and transport, but also in matters such as foreign aid and foreign concessionary loans and that the Chief Executive of a Province must be encouraged to take the initiative in negotiating external financial assistance to develop the Province provided that the Central Government also participated in the negotiations.

In the course of the deliberations on the conflicting issues raised a Concept Paper was tabled embodying a compromise which provided for two separate Councils and an Apex Assembly consisting of Members of the two Councils to plan common policies and co-ordinate programmes. The Paper presented a flexible framework for discussion.

The Paper was rejected by Members of the Committee belonging to the Ceylon workers' Congress and the Tamil United Liberation Front.

Subsequently an Option paper was tabled incorporating the salient features contained in

- (a) The Bandaranaike-Chelvanayagam Pact
- (b) The Dudley Senanayake-Chelvanayagam Pact
- (c) The Manifesto of the Democratic Peoples' Alliance
- (d) The Memorandum of the Mahajana Eksath Peramuna
- (e) The Memorandum of Mr S.L. Gunaseskera, M.P.
- (f) The Memorandum of the Sri Lanka Muslim Congress
- (g) The Concept Paper, and
- (h) The "Four Point Formula" of the Tamil United Liberation Front

Your Committee in order to expand the area of devolved subjects, examined closely, the papers presented by the Ceylon

Workers' Congress and the Four Point Formula of the Tamil United Liberation Front.

Your Committee agreed that the subjects in List III (Concurrent List) of the Ninth Schedule to the Thirteenth Amendment to the Constitution should be minimised or even that the list should be dispensed with.

Mr K.Srinivasan, M.P. for the Jaffna District subsequently presented a proposal on 11th November 1992, entitled "A Realistic Solution to the National Crisis". A majority of members of Your Committee on 11th December 1992, agreed to adopt Item 2 in that proposal namely that "the Northern and the Eastern Provinces shall each be treated as a distinct unit of devolution". The Members representing the Ceylon workers' Congress and the Tamil United Liberation Front did not agree.

Item 1 of the proposal states -

"The Unitary nature of the Sri Lankan Constitution be converted into a federal one"

"Provided however that subject to the undertaking by the Parties to the Select Committee that they shall not canvass and/or participate, the question whether Sri Lanka should have a Federal Constitution or not may be put to the determination of the people of Sri Lanka through the democratic mechanism of a referendum".

While not accepting this item in its entirety, the majority of Your Committee agreed that the devolution of functions may be on lines similar to those found in the Indian Constitution.

The member of Your Committee representing the Mahajana Eksath Peramuna did not agree to Item 1 of the Srinivasam Proposal.

## **MATTERS AGREED UPON BY A MAJORITY OF THE MEMBERS**

On 11th December 1992, Members of Your Committee representing the United National Party, Sri Lanka Freedom Party, Sri Lanka Muslim Congress, the Communist Party, Lanka Sama Samaja Party as well as the independent members, Mr K.Srinivasan, Member for Jaffna District and Mr Basheer Segudawood, Member for Batticaloa District, reached agreement;

- (a) on the establishment of two separate units of administration for the Northern and the Eastern Provinces;
- (b) to adopt a scheme of devolution on lines similar to those obtaining in the Indian Constitution; and
- (c) to devolve more subjects that are in List III (Concurrent List) or to dispense with the List.

J

## Excerpts from Gamini Dissanayake's "Vision for the 21st Century"

I have always believed that every ethnic and religious group living in Sri Lanka should have its identity respected and secured. It is also my firm conviction that the sharing of power between diverse political, ethnic and religious groups is the true mark of a democratic society. Such beliefs and convictions prompted me to give my fullest support to the Indo-Sri Lanka Accord and also to the 13th Amendment to the Constitution which was the first serious attempt to share political power with minorities. Unfortunately, lack of political will and an inadequacy of the powers under the 13th Amendment have frustrated the people of the North-East - Tamils, Muslims and Sinhalese - who are now dissatisfied with the Provincial Councils system.

Some countries are now realising that one of the best ways of reducing and preventing internal conflict is to get their people to participate more in government and to give them more input into the important decisions that affect their lives. These can be achieved by decentralising or devolving more power to local government and by giving more freedom to people's organisations. In some undesirable instances, however, devolution may unwittingly empower the elite and not the local people whom it is intended to benefit. If devolution is to reduce conflict and promote human development, it must therefore be accompanied by *genuine democracy at local level*.

The devolution of power from government capitals to villages and provinces is one of the most effective ways of empowering local people, promoting local harmony and public participation, and increasing efficiency.

It is in this context that I am proposing that a devolution of power to the Provincial Councils in Sri Lanka will give this country the best chance of ending the long and costly ethnic conflict that has torn it apart and also its best chance of establishing national unity. To increase efficiency in those Provincial Councils, we must ensure that there is genuine democracy operating at the local level and we must also allocate more financial resources to them. It is interesting to note that industrialised countries allocate 25% of local government spending to the local level, while developing countries delegate a meagre 10%.

I do not believe that mere gestures of goodwill to the minorities or general discussions by the PA about peace making, particularly by representatives who do not possess the expertise or the experience in negotiating and resolving conflicts will significantly change the current situation in Sri Lanka. That is why, if I am elected President, I shall include detailed provisions for the devolution of power to the Provincial Councils in the constitutional proposals I will place before Parliament. Until the precise form of the new units is agreed upon with representative political forces of the North-East, I will conduct elections to the Provincial Councils in the North-East and ensure that an elected Provincial Government runs the affairs of that troubled province.

The Tamils of Sri Lanka understandably feel that they have been deceived by some political leaders who unfortunately never placed any details of their proposals for devolution of power before the Tamils. At the same time the majority of Sri Lankans are equally justified in feeling upset about any proposed devolution of power to the Tamils if negotiations are conducted secretly and the details of devolution are not publicly discussed. Accordingly, I have set out as an appendix to my programme, the scheme for devolution which I intend to implement as President. I will welcome discussion on these issues with political representatives of both the minority and majority interests.

## **B**

### **Text of Government's Devolution Proposals of August 3, 1995**

These proposals seek to redefine the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka based on the following principles.

- a) promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- b) ensuring that all communities be given the space to express their distinct identity and promote that identity including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language including the right to transact business with the state in the national language of their choice;
- c) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law;
- d) giving recognition to Sinhala and Tamil as official languages and recognising English as a link language;
- e) providing an effective constitutional framework for the sharing of power with the regions based on an internally consistent

and coherent value system. There would be clarity and consistency in the distribution of power between the centre and the regions and the scheme would be one which is capable of effective implementation and include structures for the just and equitable resolution of centre region disputes;

- f) ensuring that all communities participate fully in the life of the nation whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

#### **I. Structure of Devolution**

##### **1.1 Unit of Devolution**

A regional council will be established for every province identified by a new schedule to the Constitution. One of the regions would be constituted by redemarcating the existing boundaries of the present North-East Province in full consultation with a view to reconciling Sinhala, Tamil and Muslim interests.

##### **1.2 Regional Councils**

A Regional Council will consist of such number of members as may be determined by law. A Regional Council will, unless sooner dissolved, continue for a period of five years. There will be a Speaker and a Deputy Speaker for each Council.

- 1.2.1 Legislative power in the region will be vested in the Regional Council. Every region may make laws applicable to the region with respect to any subject set out in the regional list. The Regional Council will have no jurisdiction over the Reserved List.

##### **1.3 Governor**

There will be a Governor for each region for which a Regional Council has been established, appointed by the President with the concurrence of the Chief Minister of the Region.

1.3.1 The Governor will vacate his office upon; (a) resignation; (b) a two-thirds majority of the Regional Council passing a vote of no confidence; (c) removal by the President.

1.3.2 The Governor may summon, dissolve and prorogue the Regional Council on the advice of the Chief Minister.

#### **1.4 Chief Minister and the Board of Ministers**

The Governor will call upon the person who commands the confidence of the majority in the Regional Council to form the Regional administration.

1.4.1 The Chief Minister cannot be removed from office so long as he enjoys the confidence of the regional council.

1.4.2 Executive power in the Region will be vested in the Board of Ministers who will be appointed by the Governor on the advice of the Chief Minister. The Board of Ministers and the Chief Minister will be collectively responsible to the Regional Council.

#### **1.5 Capital territory**

The territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte will be excluded from the jurisdiction of the Regional Council constituted for the Western Region and will be administered directly by the Centre in such manner as the Centre may think fit.

### **II. Finance**

2.1 There will be a National Finance Commission entrusted with allocating grants to the region, keeping in mind the objectives of balanced regional development.

2.2 Regional Councils will have the powers of taxation in certain specified areas, and the Constitution will require other revenue sharing arrangements.

2.3 Regional Councils will have the power to borrow as well as to set up their own financial institutions. International borrowings above a prescribed limit will require the concurrence of the Centre.

2.4 Regional Councils may regulate and promote foreign direct investment, international grants and development assistance, subject to such conditions as may be specified by the Centre.

### **III. Law and order**

3.1 There will be a regional police service headed by a Regional Police Commissioner appointed by the Chief Minister, in consultation with the Governor of the Region. The Regional Police Commissioner will be responsible to, and function under the control of, the relevant Chief Minister. The Regional police service will investigate all offences against persons and property.

3.2 There will be a national police service responsible for investigating offences against the state, threats to national security, offences related to elections, inter province crimes and international crimes. The national police service will be headed by the National Police Commissioner and will be responsible to the Central Government.

3.3 The recruitment, transfers within the region, dismissal and disciplinary control of members of the regional police service will be the responsibility of the Regional Police Commission.

3.4 There will be a National Police Commission, the functions of which will include the transfer of police officers from one region to another in consultation with the Regional Police Commission.



- 3.5 The National Police Commission and the Regional Police Commission will both be appointed by the Constitutional Council. In the case of appointment of the Regional Police Commission, the Constitutional Council will act in consultation with the Chief Minister of the region in question.

#### **IV. Land and Land Settlement**

- 4.1 Land will be a devolved subject and State land within a region will be vested in the Regional Councils. State land within a Region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation with the relevant Regional Council in accordance with such procedures as may be established by law.
- 4.2 Priority in future land settlement schemes will be given to persons first of the district and then of the Region.

#### **V. Education**

- 5.1 Education and Higher Education will be devolved subjects included in the regional list.
- 5.2 Certain specified schools and universities may be declared "National" institutions administered by the Centre.
- 5.3 The recruitment, transfer and disciplinary control of teachers other than those in National Schools will be the responsibility of the Regional Council.
- 5.4 Training of teachers will be the responsibility of both the Centre and Regional Councils, depending on whether such teachers are to be recruited to the national or regional councils.
- 5.5 Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the Centre.

- 5.6 There will be a National Education Commission composed of representatives of the Centre and the regions entrusted with the following functions:-

- (a) identifying "National" schools and Universities in consultation with regional chief ministers and stipulating criteria for admission into these national schools and universities;
- (b) setting minimum standards with regard to training examination, curriculum and employment of teachers.

#### **VI. Administration of justice**

- 6.1 There will be a High Court in every region. The High Court will exercise criminal, appellate and writ jurisdiction within the region.
- 6.2 The Regional Judicial Service Commission, which will be appointed by the Constitutional Council in consultation with the Chief minister of the region, will consist of the Chief Judge of the High Court and the two High Court judges next in seniority.
- 6.3 Regional Judicial Service Commission will be responsible for the appointment of Regional High Court Judges and minor judiciary within the Region. The Regional Judicial Service Commission will consult with the National Judicial Service Commission with regard to the transfer of judges.
- 6.4 The Governor will appoint a Regional Attorney-General who will advise the Governor on the constitutionality of laws passed by the Regional Council. If a law is seen to be unconstitutional, the Regional Attorney-General, after consultation with the Governor, will institute action before the Supreme Court or any other tribunal specially set up to resolve disputes between the Centre and the Region.

**VII. Public Service**

- 7.1 There will be a Regional Public Service Commission (appointed by the Constitutional Council in consultation with the relevant Chief Minister) responsible for the recruitment, disciplinary control and dismissal of all persons employed by, or seconded to, the Regional Councils.
- 7.2 The Regional Public Service Commission will consult with the National Public Service Commission (also appointed by the Constitutional Council) in effecting the transfer of all such persons outside the Region.

**VIII. Commission on devolution**

- 8.1 There will be a Permanent Commission on Devolution appointed by the Constitutional Council to resolve disputes between the Centre and a region or disputes among the regions. The Commission will have powers of mediation as well as adjudication.

**IX. Framework relating to devolution**

- 9.1 The Constitution will provide:
- (a) that the Republic of Sri Lanka shall be united and sovereign. It shall be a Union of Regions;
  - (b) that the territory of the Republic will consist of regions, the names of which are set out in the first schedule, and its territorial waters;
  - (c) that the legislative power of the people will be exercised by Parliament, Regional Councils and the People at a Referendum to the extent hereinafter provided; and
  - (d) that the executive power of the People will be exercised by the President of the Republic acting on

the advice of the Prime Minister and the Cabinet of Ministers, and the Governors acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided.

- 9.2 Article 76 of the existing constitution will be deleted.

**X. Substance of devolution**

- 10.1 Regional Councils will exercise exclusive legislative and executive competence within the devolved sphere. The subjects and functions will be distributed between the Centre and the Regions as set out in the appendix.

**Appendix - Lists****(A) The Regional List**

1. Health and indigenous medicine;
2. Education and Educational Services, excluding national school and national universities and the setting of minimum standards for training, examination, curriculum, and teacher qualifications;
3. Agriculture and agrarian services;
4. Irrigation within a region;
5. Animal husbandry;
6. Fisheries;
7. Forestry and Protection of the Environment within a Region;
8. Industries and Industrial Development;
9. Energy;
10. Transport;
11. Minor Ports and Harbours;
12. Roads and Waterways;
13. Housing and construction;
14. Urban Planning;
15. Rural Development;
16. Local Government;

17. Co-operatives;
18. Supply and distribution of food within the region;
19. Promotion of tourism;
20. The regulation of cultural activity within a region, including public performances;
21. Broadcasting and media, including television;
22. Relief, Rehabilitation and Reconstruction;
23. Social Security;
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of reserved subject may be utilized by the Centre in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law);
25. Regional Police and law and order.
26. Administration of Borstal and reformatory institutions;
27. Regional Public Service;
28. Sports;
29. Regulation of unincorporated associations and societies within the region;
30. Regional debt;
31. Domestic and International borrowing (international borrowings above a specified limit would require the concurrence of the Centre);
32. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the region;
33. Regional financial and credit institutions;
34. Excise duties to be specified;
35. Turnover taxes on wholesale or retail sales to the extent to be specified;
36. Betting taxes, taxes on prize competitions and lotteries other than National Lotteries;
37. Motor vehicle licence fees;
38. Stamp duties on transfer of properties, such as land and motor cars;
39. Fines imposed by courts;
40. Court fees, including stamp fees on documents produced in courts;

41. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes;
42. Taxes on mineral rights;
43. Offences against laws with respect to any of the matters specified in the List;
44. Fines in respect of the matters in the Regional List;
45. Planning at the regional level.

**(B) Reserved List (Central Government List)**

1. Defence, national security, national police, and the security forces;
2. Immigration, Emigration and Citizenship;
3. Foreign Affairs;
4. National Census and Statistics;
5. National Planning;
6. Currency and Foreign Exchange, international economic relations and monetary policy;
7. Public Debt of the Government of Sri Lanka;
8. Foreign loans of the Government of Sri Lanka;
9. Regulation of banking and other financial institutions;
10. Insurance,
11. Stock exchange and futures markets;
12. Audit of the Government of Sri Lanka;
13. Taxes on income, capital and wealth of individuals, companies and corporations;
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions);
15. Turnover taxes and stamp duties, goods and services taxes (including those taxes and duties devolved on the regions);
16. Pensions payable by the Government of Sri Lanka or out of the consolidated fund;
17. Atomic Energy;
18. Maintenance and management of the National Grid;
19. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products);

20. National rivers;
21. Airports, harbours and ports with international transportation;
22. Inter-regional transport and railways;
23. Civil Aviation;
24. Inter-regional highways;
25. Shipping and navigation; Maritime Zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf);
26. Elections (excluding elections to Local Authorities);
27. Post and telecommunications;
28. National Public Service and the National Public Service Commission;
29. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national universities; Training, education and research relating to Health; Development of National Health Standards; Administration of all special programmes);
30. Drugs, poisons and narcotics;
31. Administration of justice;
32. National universities;
33. National standards with regard to professions, occupations and training;
34. National standards relating to research development and training in the area of agriculture;
35. Inter-regional irrigation schemes;
36. Fishing beyond the territorial waters;
37. Management of central policy and research institutions in the field of education eg. National Institute of Education; Management and supervision of national schools; conduct of national public certification examinations, imposition of minimum standards for training, curriculum and teacher qualifications;
38. Adoption of children;
39. National Industrial Research and Training;
40. Regulations of activities for the enhancement of quality standards;
41. Foreign trade inter-regional trade and commerce;

42. Patents, inventions, designs, copyright, trademarks and merchandise marks;
43. Monopolies and merges;
44. Inter-regional food distribution;
45. National media including Central Government Broadcasting and Television Institutions;
46. National Archives and Museums, and archaeological sites declared by law to be of national importance;
47. National Environment and National Policy on Tourism;
48. Specialised National Housing Programmes;
49. Specialised National Poverty Alleviation Programmes;
50. Youth and Women's Affairs;
51. Buddhism;
52. Development of National sports administration and infrastructure;
53. Intervention in instances of National (natural and environmental) disasters and epidemics;
54. Labour regulation and standards;
55. Surveys for the purpose of any matters enumerated in the Reserved List;
56. Offences against Laws with respect to any of the matters in the List;
57. Fees in respect of any of the matters in the List, but not including fees taken in any Court;
58. Public utility infrastructure development.

## C

### **Text of Government's Devolution Proposals of January 16, 1996**

#### **Preamble**

Whereas it is the will of the people of Sri Lanka to establish an order

Wherein the sovereignty of the people is assured and the exercise of authority by their freely chosen representatives is in the nature of a sacred trust;

Wherein the principles of democracy, freedom, humanity, tolerance and justice shall be fully observed;

Wherein the dignity of the individual shall be upheld through the guaranteeing of human rights and fundamental freedoms without distinction and in full equality before the law;

Wherein the territories constituting the nation shall form one indissoluble union, the units whereof will be characterized by such boundaries and limitations on their powers and authority as may be prescribed;

Wherein the territorial integrity, independence and unity of the nation including its sovereign rights over land, sea and air shall be safeguarded;

Wherein peace and fraternity between all communities shall be secured and provision made enabling all communities to enjoy and

nurture their distinct culture, practise and profess their own religion and promote their own language, thus preserving the rich cultural and ethnic diversity typifying a plural society:

Now, therefore, we the people of Sri Lanka having solemnly resolved to constitute Sri Lanka into a free, sovereign, united and independent Republic.

Cognizant of the sacrifices made by the people in the cause of sustaining the unity and sovereignty of the Republic;

Mindful of our obligation to succeeding generations of Sri Lankans and the World;

Inspired by the vision of a nation where all communities can co-exist in safety, security and contentment;

Conscious of the desire to achieve rapid, sustainable and equitable development so that the people of Sri Lanka may prosper and attain their rightful place among the community of nations:

do, on this (DAY) acting through our freely chosen representatives constituting the 10th Parliament of Sri Lanka established by us hereby adopt, enact and give to ourselves.

This constitution as the Supreme Law of the Republic of Sri Lanka.

## I

### **The People, the State and Sovereignty**

1. Sri Lanka is a united and sovereign Republic and shall be known as the Republic of Sri Lanka. The Republic of Sri Lanka shall be an indissoluble Union of Regions.
2. (1) The territory of the Republic shall consist of Regions, the names, boundaries and area of which are set out in the First Schedule, the Capital Territory and its territorial waters.

- (2) No Regional Administration or Regional Administrations shall attempt, by direct or indirect means, to promote or otherwise advocate an initiative towards:
- (a) the separation or secession of such Region or Regions from the Union of Regions constituting the Republic of Sri Lanka;
  - (b) alteration of the area of such Region or Regions;
  - (c) alteration of the boundaries of such Region or Regions;
  - (d) alteration of the name or names of such Region or Regions;
  - (e) formation of a new Region by separation of territory from any Regions or by uniting two or more Regions or parts of Regions or by uniting any territory with a part of any Region.

Provided that nothing in this paragraph shall be read and construed as prohibiting a Regional Administration from making representations to the Central Government regarding the matters referred to in sub-paragraph (c) of this paragraph.

3. In the Republic of Sri Lanka, sovereignty is in the people and is inalienable. Sovereignty includes the powers of Government, fundamental rights and the franchise and shall be exercised and enjoyed in the following manner.
- (a) the legislative power of the People shall be exercised by Parliament, Regional Councils and the People at a Referendum;
  - (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 the Governors

- acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided;
  - (c) the judicial power of the People shall be exercised through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law;
  - (d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided; and
  - (e) the franchise shall be exercisable at the election of Members of Parliament, and of the Members of Regional Councils, and at every Referendum by every citizen who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.
4. The National Flag of the Republic of Sri Lanka shall be the Lion Flag depicted in the Third Schedule.
5. The National Anthem of the Republic of Sri Lanka shall be *Sri Lanka Matha*, the words and music of which are set out in the Fourth Schedule.
6. The National Day of the Republic of Sri Lanka shall be the fourth day of February.

## II

### Buddhism

- 7\* (1) 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 assuring to all religions the rights granted by Articles 15 (1) and 15(2)\*\*
- (2) The State shall consult the Supreme Council in all matters pertaining to the protection and fostering of the Buddha Sasana.
- (3) For the purpose of this Article Supreme Council means a Council established by law in consultation with the Maha Sangha.

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\* Article 7 (formerly Article 6 in the Working Drafts of the New Constitution), shall be an entrenched provision requiring a 2/3 majority in Parliament and the approval of the People at a referendum for amendment.

\*\* Article 15 (1) and 15 (2) refer to the rights declared in the Chapter on Fundamental Rights in the revised working draft of the Constitution which was published in the media on 21/05/95 (these rights were contained in Articles 10 and 14 (1) (e) of the First Working Draft of the Constitution presented to the Parliamentary Select Committee on the Constitution). Articles in question will be renumbered.

## III

### THE DEVOLUTION OF POWER TO REGIONS

#### Establishment of Regional Councils

8. (1) A Regional Council shall be established for every Region specified in the First Schedule with effect from such date or dates as the President may appoint by Order published in the Gazette. Different dates may be specified in respect of different Regions.
- (2) The Capital Territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte will be excluded from the jurisdiction of the Regional Council established for the Western Region under paragraph (1) and will be administered by the Centre.

#### Election of Members

9. Every Regional Council established under Article 8 (1) shall be constituted upon the members of such Council being elected in accordance with the law relating to Regional Council elections.

#### Governor

10. (1) There shall be a Governor for each Region for which a Regional Council has been established in accordance with article 8.
- (2) The Governor shall be appointed by the President on the advice of the Chief Minister of the region.
- (3) The Governor may, by writing addressed to the President, resign his office.

- (4) (a) A Regional Council may, subject to paragraph (b), present an address to the President advising the removal of the Governor on the ground that the Governor-
- (i) has intentionally violated the provisions of the Constitution;
  - (ii) is guilty of misconduct or corruption involving the abuse of power of his office; or
  - (iii) is guilty of bribery or an offence involving moral turpitude, if a resolution for the presentation of such address is passed by not less than two-thirds of the whole number of members of the Council (including those not present).
- (b) No resolution for the presentation of an address to the President advising the removal of the Governor on the grounds referred to in sub-paragraph (a) shall be entertained by the Speaker of the Regional Council or discussed at the Council, unless notice of such resolution is signed by not less than one half of the whole number of members present.
- (5) Subject to the provisions of this Article, the Governor shall hold office for a period of five years from the date he assumes office.
- (6) Every person appointed as Governor shall assume office upon taking or subscribing the oath or making or subscribing the affirmation, set out in the Schedule, before the President.
- (7) Upon such assumption of office, a Governor shall cease to hold any other office created or recognized by the Constitution and if he is a Member of Parliament or a Member of a Regional Council shall vacate his seat in Parliament or in the Regional Council. The Governor shall not hold any other office or place of profit.
- (8) (a) The Governor may from time to time summon a Regional Council to meet at such time and place as it thinks fit, but two

months shall not intervene between the last sitting in one session and the date appointed for the first sitting of the next session.

- (b) The Governor may, from time to time, prorogue the Regional Council
- (c) The Governor may dissolve the Regional Council
- (d) The Governor shall exercise his power under this paragraph in accordance with the advice of the Chief Minister, as long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Regional Council.
- (9) The Governor of a region shall have the power to grant pardon to every person convicted of an offence against a statute made by the Regional Council of that region or a law made by Parliament on a matter in respect of which the Regional Council has power to make statutes, and to grant a respite or remission of punishment imposed by Court on any such person.
- (10) The Governor may address the Regional Council and may for that purpose require the attendance of members.
- (11) Parliament shall by law or resolution make provision for the salary, allowances, age of retirement and pension entitlement of holders of the office of Governor.

#### **Executive Powers of the Region**

11. The executive power of the Region which shall extend to the matters with respect to which a Regional Council has power to make statutes, shall be vested in the Governor acting on the advice of the Chief Minister and the Board of Ministers and shall



be exercised by the Board of Ministers either directly or through the Chief Minister and the Ministers of the Board of Ministers or through subordinate officers, in accordance with this Chapter.

### Membership of the Regional Council

12. A Regional Council shall consist of such number of members as may be determined by or under law, having regard to the area and the population of the Region for which that Regional Council is established.

### Term of Office

13. A Regional Council shall, unless sooner dissolved, continue for a period of five years from the date appointed for its first meeting, and the expiry of the said period of five years shall operate as the dissolution of the Council.

### Board of Ministers

14. (1) There shall be a Board of Ministers with the Chief Minister as the Head and not more than six other Ministers to aid and advise the Governor of a Region in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.
- (2) The question of whether any and, if so, what advice was tendered by a Minister to the Governor shall not be inquired into in any Court.
- (3) The Governor shall appoint as Chief Minister the member of the Regional Council established for that Region who, in

his own judgement and opinion, is best able to command the support of a majority of the members of that Council.

Provided that where more than one half of the members elected to the Regional Council are members of one political party, the Governor shall appoint the leader of that political party in the Council as Chief Minister. (A Transitional Provision will provide for the appointment of the First Chief Minister by the President).

- (4) The Governor shall, on the advice of the Chief Minister appoint, from among the members of the Regional Council constituted for that Region, the other Ministers.
- (5) The Board of Ministers shall be collectively responsible, and answerable, to the Regional Council.
- (6) A person appointed to the office of Chief Minister or member of the Board of Ministers shall not enter upon the duties of his office until he takes and subscribes the oath or makes and subscribes the affirmation set out in the Fifth Schedule.
- (7) (a) Upon the death or resignation of the Chief Minister or where the Chief Minister is deemed to have resigned, the Board of Ministers shall stand dissolved, and the Governor shall appoint a Chief Minister, and a Board of Ministers in accordance with this article.
- (b) If the Regional Council rejects the statement of policy of the Region or the Appropriation Bill or passes a vote of no-confidence in the Regional administration, the Chief Minister shall be deemed to have resigned.

## Legislative Power

15. (1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in list I of the Second Schedule (referred to as the Reserved List) and with respect to the matters in list II in the Second Schedule (referred to as the Regional List) in relation to the Capital Territory referred to in Article 8 (2).
- (2) The Regional Council of a Region has exclusive power to make statutes for such Region or any part thereof with respect to any of the matters enumerated in list II of the Second Schedule (referred to as the Regional List).
- (3) When there is a law with respect to any matter in the Regional List in force on the date on which this Chapter comes into force, and a Regional Council established for a Region subsequently makes a statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of that law shall, with effect from the date on which that Regional Council statute receives assent, remain suspended and be inoperative within that Region, to the extent of such inconsistency.

## When a Draft Statute becomes Law

16. (1) Every Draft Statute passed by a Regional Council shall come into force upon the certificate of the Speaker being endorsed thereon.
- (2) The Speaker shall endorse on every Draft Statute passed by the Regional Council a certificate in the following form:  
  

“This Draft Statute (state the short title of the Draft Statute) has been duly passed by the Regional Council”.

## Regional Judiciary

17. (1) There shall be a High Court for every Region with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Region.
- (2) Every such Regional High Court shall exercise, according to law:
  - a) the original criminal jurisdiction of the High Court of Sri Lanka on the day preceding the commencement of the Constitution, in respect of offences committed within the Region;
  - b) appellate and revisionary jurisdiction in respect of convictions, sentences and orders imposed by Magistrate's Courts and Primary Courts within the Region; and
  - c) such other jurisdiction and powers as Parliament may, by law, provide.
- (3) Every such High Court shall have jurisdiction to issue according to law -
  - a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Region; and
  - b) orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Region, any power under -
    - (i) any law, or
    - (ii) any statute made by the Regional Council established for that Region in respect of any matter set out in the Regional List.

- (4) Subject to the provisions of this Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs 17. (2) and 17. (3), may appeal therefrom to the Court of Appeal.
18. (1) There shall be a Regional Judicial Service Commission for every Region which shall consist of three retired judges or sitting judges of the Supreme Court, the Court of Appeal or the High Court, appointed by the Constitutional Council in consultation with the Chief Minister of the relevant region:
- Provided that where a sitting judge is appointed, he shall relinquish his judicial office.
- (2) The appointment, transfer, dismissal and disciplinary control of judicial officers within the Region is vested in the Regional Judicial Service Commission of that Region:
- Provided that the National Judicial Service Commission shall provide for and determine all matters relating to judicial officers and the principles and procedure to be followed by Regional Judicial Service Commissions for the exercise of the powers of appointment, transfer, dismissal and disciplinary control of judicial officers including formulation of schemes of recruitment and principles to be followed in making promotions and transfers.
- (3) The Chairman of the Regional Judicial Service Commission or any Judge of the Regional High Court authorized by the Chairman of the Commission shall have full power and authority to inspect any court of first instances in the Region or the records, registers or other documents maintained in such court and hold such inquiry as may be necessary.

### The Regional Attorney-General

19. (1) The Governor of each region shall appoint a person who is qualified to be appointed as a judge of a Regional high Court, to be the Regional Attorney-General.
- (2) It shall be the duty of the Regional Attorney-General to give advice to the Governor, the Chief Minister and the Board of Ministers upon such legal matters and perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Chapter or such other law as may be enacted by Parliament.
- (3) The Regional Attorney-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.
- (4) (a) It shall be the duty of the Regional Attorney-General to examine every Draft Statute proposed to be passed by the Regional Council for any contravention of the Constitution, and the Regional Attorney-General or any officer assisting the Regional Attorney-General in the performance of his duties under this Article shall be afforded all facilities necessary for the performance of such duties.
- (b) If the Regional Attorney-General is of the opinion that a Draft Statute contravenes the Constitution, he shall communicate such opinion to the Governor, the Chief Minister and the Board of ministers:

Provided that, in the case of an amendment proposed to a Draft Statute in the Regional Council, the Regional Attorney-General shall communicate his opinion to the Speaker at the stage when the Draft Statute is ready to be put to the Regional Council for its acceptance.

(c) Where a Draft Statute is passed, despite the opinion of the Regional Attorney-General that it contravenes the Constitution, it shall be the duty of the Regional Attorney-General to invoke the jurisdiction of the Supreme Court to determine the constitutionality of such statute or any part thereof.

#### Finance Commission

20. (1) There shall be a Finance Commission consisting of \_ three members representing the three major communities each of whom shall be a person who has distinguished himself or held high office, in the field of finance, law, administration, business or learning who shall be appointed by the President on the recommendation of the Constitutional Council
- (2) Every member of the Commission, unless he earlier dies, resigns or is removed from office, shall hold office for a period of three years.
- (3) The 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 Regions.
- (4) 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 government for the use of Regions, should be apportioned between the various Regions;
  - b) the principles on which the sharing and/or assignment of revenue between the Centre and the Regions 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 Regional finance.
- (5) 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 population of each Region;
  - b) the per capita income of each Region;
  - c) the need, progressively, to reduce social and economic disparities; and
  - d) the need, progressively, to reduce the difference between the per capita income of each Region and the highest per capita income among the Regions.
- (6) The Commission shall determine its own procedure and shall have such powers in the performance of its duties as Parliament may, by law, confer on it.
- (7) The President shall cause every recommendation made by the Finance Commission under this Article to be laid before Parliament, and shall notify Parliament as to the action taken thereon.
- (8) No court or tribunal shall 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.

#### Regional Public Service Commission

21. (1) There shall be a Regional Public Service Commission which shall consist of not less than five persons appointed by the Constitutional Council in consultation with the Governor. The Constitutional Council shall nominate one of the members of the Commission to be the Chairman.

- (2) No person shall be so appointed or continue as a member of the Regional Public Service Commission if he is a Member of Parliament, a Member of a Regional Council, a public officer, a judicial officer or an officer of a Regional Public Service.
- (3) Every member of a Regional Public Service Commission shall hold office for a period of five years from the date of his appointment unless he earlier resigns his office by writing under his hand addressed to the Governor of the Region or is removed from office by the Constitutional Council, in consultation with the Governor for cause assigned, but shall be eligible for reappointment.
- (4) A member of a Regional Public Service Commission shall be paid such salary as may be determined by the Regional Council for that Region. The salary payable to any such member shall be charged on the regional consolidated fund and shall not be diminished during his term of office.
- (5) A Regional Public Service Commission shall have the power to act notwithstanding any vacancy in its membership, and no act or proceedings of such Commission shall be deemed to be invalid by reason only if any such vacancy or any defect in the appointment of a member.

#### Regional Public Service

22. (1) The appointment, transfer, dismissal and disciplinary control of officers of the Regional Public Service in each Region is hereby vested in the Regional Public Service Commission.
- (2) The Regional Public Service Commission shall provide for and determine all matters relating to officers of the Regional Public Service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principles to be followed in making promotions and transfers

and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers.

- (3) Every person who otherwise than in the course of duty directly or indirectly, by himself or by any other person, in any manner whatsoever, influences or attempts to influence any decisions of a Regional Public Service Commission or any member thereof shall be guilty of an offence and shall on conviction by a High Court after trial without a jury be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment:

Provided that nothing in this Article shall prohibit any person from giving a testimonial or certificate to any applicant for any office in the Regional Public Service Commission.

#### Property, Contracts, Rights, Liabilities, Obligations and Suits

23. (1) (a) All lands, mineral and other things of value underlying the ocean within the territorial waters, or the continental shelf or the exclusive economic zone of Sri Lanka, shall continue to vest in the Centre and be held for the purposes of the Republic.
- (b) All other resources of the exclusive economic zone of Sri Lanka shall also continue to vest in the Centre and be held for the purposes of the Republic.
- (c) The limits of territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of Sri Lanka shall be such as specified, from time to time, by any laws made by Parliament.
- (2) (a) All contracts made in the exercise of the executive powers of a Region shall be expressly made by the Governor

Public Service Commission, the Secretary General of Parliament, a member of the President' Staff or a Member of the Staff of Parliament,

Any offence prejudicial to national security or the maintenance of essential services,

Offences relating to coins, currency and Government stamps,

Any Offence relating to property belonging to the Republic or a State Corporation, Company or Establishment, the whole or part of the capital whereof has been provided by the Republic,

Any offence under any law relating to any matter in the Reserved List,

Any offence in respect of which courts in more than one Region have jurisdiction, and  
International crimes.

- (5) The Regional Police Service shall consist of the Regional Police Commissioner, Regional Deputy Police Commissioners, Regional Senior Superintendents of Police, Superintendents of Police, Assistant Superintendents of Police, Chief Inspectors, Inspectors of Police, Sergeants and Constables and other ranks recruited to the Region and/or seconded to the Region.
- (6) All police officers serving in the Region shall function under the Regional Police Commissioner of that Region.
- (7) The Regional Police Commissioner shall be responsible to, and be under the control of, the Chief Minister in respect of the maintenance of public order in the Region.
- (8) The Regional Police Service shall be responsible for the prevention, detection and investigation of all offences (except the offences specified in paragraph (4) and the institution of prosecutions in the relevant courts in respect of such offences. In the discharge of these functions, the Regional Police Service shall be under the direction, control and the superintendence of the Regional Police Commission.

- (9) There shall be a National Police Service headed by the National Police Commissioner, and including the National DPCs, SSPs, ASPs, and other ranks recruited at the national level.
- (10) There shall be a National Police Commission consisting of the National Police Commissioner and two others appointed by the Constitutional Council.
- (11) The National Police Commission shall be responsible for recruitment, transfer, promotion and disciplinary control over officers in the National Police Service and the transfer of officers of the Regional Police Service from one Region to another.

#### State of Emergency within a Region

26. (1) Where the President is of opinion that the security or public order in a Regions threatened by armed insurrection, or grave internal disturbances, or by any action or omission of the Regional administration which presents a clear and present danger to the unity and sovereignty of the Republic, he may make a proclamation bringing the provisions of the law relating to Public Security into force in the Region.
- (2) Upon such proclamation, the President may by order deploy in aid of the civil power, the armed forces or any unit of the national police service for the purpose of restoring public order:

Provided that every such proclamation shall be revoked, as soon as the President is satisfied that public order has been restored.

- (3) Where the Chief minister seeks the assistance of the National Police Service to preserve public order within a region, the

National Police Commissioner shall deploy such personnel as are necessary for the purpose.

- (4) (a) If the President is satisfied that a situation has arisen in which the Regional administration is promoting armed rebellion or insurrection or engaging in an intentional violation of the Constitution which constitutes a clear and present danger to the unity and sovereignty of the Republic, the President may by Proclamation assume to himself all or any of the functions of the administration of the region and all or any of the powers vested in, or exercisable by, the Governor, the Chief Minister, the Board of Ministers or any body or authority in the region. The President shall also have the power to dissolve the Regional Council in these circumstances.
- (b) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (c) Every Proclamation under this Article shall be laid before Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of 14 days unless, before the expiration of that period, it has been approved by a resolution of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when Parliament is dissolved or the dissolution of Parliament takes place during a period of fourteen days referred to in this subparagraph but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution, unless before the expiration of such period of fourteen days a resolution approving the Proclamation has been passed by Parliament.

- (d) Notwithstanding anything in this Article, the President may within fourteen days of his making a Proclamation under sub-paragraph (a) and for the purposes of satisfying himself with regard to any other matter referred to in that paragraph, direct a tribunal constituted in the manner provided for in subparagraph (e) of this paragraph, to inquire into and report upon such matters within a period of sixty days. Upon receipt of the report of such tribunal, the President may revoke the Proclamation made under sub-paragraph (a)
- (e) The tribunal referred to in sub-paragraph (d) of this paragraph shall be constituted by the Centre and the relevant Regional Council acting in consultation with the Chief Ministers' Conference. The tribunal shall consist of a member appointed by the Centre, a member appointed by the Chief Ministers' Conference on the recommendation of the relevant Regional Council and a Chairman nominated by the members so appointed.

Where there is no agreement on the nomination of a Chairman, the Chairman shall be nominated by the Constitutional Council.

- (f) A Proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court, and no Court shall inquire into, or pronounce on, or in any manner call in question, such Proclamation or the grounds for making thereof.

## Finance

27. (1) No tax shall be levied or collected except by or under law.
- (2) (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 Region, all funds of the Republic 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 Republic. All revenues received by a Regional Council and all loans raised by that Regional Council by the issue of Treasury bills, loans and ways and means advances, and all money received by that Council in repayment of loans shall form one consolidated fund to be called the "Consolidated Fund of the Region."

- (b) All other public money received by or on behalf of the Government of Sri Lanka or a Regional Council shall be credited to the public account of Sri Lanka or the public account of the Region as the case may be.
- (c) No money out of the Consolidated Fund of Sri Lanka or the Consolidated Fund of the Region shall be appropriated except in accordance with law statute and for the purposes and in the manner provided in this Constitution.
- (3) (a) Notwithstanding any of the provisions of this chapter, Parliament may by law create a contingency fund for the purpose of providing for urgent and unforeseen expenditure.
- (b) The Minister in charge of the subject of Finance, if satisfied, (i) that there is need for any such expenditure, and (ii) that no provision for such expenditure exists, may with the consent of the President authorize provision to be made therefore by an advance from the contingency 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) The Regional Council may by statute establish a contingency fund in the nature of an imprest to be entitled the Contingency

Fund of the Region into which shall be paid from time to time such sums as may be determined by such statute and the said fund shall be placed at the disposal of the Regional Minister in charge of the subject of Finance to enable advances to be made by him out of such fund with the consent of the Chief Minister for the purpose of meeting unforeseen expenditure pending authorization of such expenditure by the Regional Council.

- (4) (a) Such excise duties as may be prescribed by the Finance Commission shall be levied by the Government of Sri Lanka but shall be collected (i) in the case where such duties are leviable within the Capital Territory, by the Government of Sri Lanka, and (ii) in other cases by the Regions within which such duties are respectively leviable.
- (b) The proceeds of any financial year of any such duty leviable within any region shall not form part of the Consolidated Fund of Sri Lanka and shall be assigned to that region.
- (5) (a) Taxes on wholesale and retail sales (other than sales by manufacturers) shall be levied and collected by the Government of Sri Lanka but shall be assigned to the Regions in the manner provided in sub-paragraph (b).
- (b) The net proceeds in any financial year of any such tax except in so far as those proceeds represent proceeds attributable to the Capital Territory shall not form part of the Consolidated Fund of Sri Lanka but shall be assigned to the Region within which such tax is leviable in that year in accordance with such principles of apportionment as may be formulated by the Finance Commission.
- (c) The Finance Commission shall also formulate principles for determining when a sale or purchase or consignment of goods takes place in the course of inter-regional trade or commerce.



- (6) (a) Such other taxes on sales or income shall be levied and collected by the Government of Sri Lanka and be distributed between the Republic and the Region in the manner provided in subparagraph (b).
  - (b) Such percentage as may be prescribed by the Finance Commission of the net proceeds in any financial year of any such tax not attributable to the Capital Territory shall not form part of the consolidated fund of Sri Lanka but shall be assigned to the Region within which tax is leviable in that year and shall be distributed amongst those Regions in such manner, and from such time, as may be prescribed by the Finance Commission.
  - (7) 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 Region as Parliament may determine to be in need of assistance, and different sums may be fixed for different Regions.
28. (1) The property of the Government of Sri Lanka shall, save as so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a Region.
- (2) The property and income of a Region shall be exempt from taxation by the Centre.
  - (3) The executive power of the Region extends to domestic and international borrowing upon the security of the Consolidated Fund of the Region. International borrowing shall be subject to such criteria and limitations specified by, and would require the concurrence of, the Centre.
  - (4) The limits as regards domestic borrowing and the limitations and criteria as regards international borrowing by each Regional administration for each financial year will be laid down by the Minister in charge of the subject of Finance of

the Republic of Sri Lanka before the thirtieth day of September of the preceding financial year. In laying down these limits and criteria, the Minister in charge of the subject of Finance shall take into consideration the requirements of prudent fiscal policy and the demands of monetary stability as well as the repayment capacity of each Regional administration.

- (5) Any agreements negotiated and entered into by Regional 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 the Parliament of the Republic.

#### Chief Minister's Conference

29. (1) There shall be established a Chief Ministers' Conference which will consist of the Chief Ministers of all the regions.
- (2) The Chairman of the Chief Ministers' Conference shall be elected by the Chief Ministers in rotation, so however, that each Chief Minister shall hold office as Chairman for a period of 3 months. The Chairman so elected will represent the Chief Ministers' Conference on the Constitutional Council.
  - (3) The Conference shall have the power:
    - (a) to take all such actions and measures as are necessary to ensure full compliance with the provisions of this Chapter in accordance with the spirit and intention of the Constitution;
    - (b) to inquire into and to settle any dispute which may have arisen between regions;

- (c) to investigate and discuss subjects in which some or all of the Regions have a common interest, and to make recommendations for the better co-ordination of policy and action in respect of that subject.
- (4) The Conference shall endeavour to settle any dispute referred to it, in terms of sub-paragraph 3 (b) of this Article, by mediation and conciliation.
- (5) Where such efforts at mediation and conciliation fail, such dispute shall be referred for adjudication to a tribunal established, in accordance with this Article, by the relevant Regional Councils.
- (6) The tribunal shall consist of member each appointed by the disputant Regional Councils and a Chairman nominated by the members so appointed.

Where there is no agreement on the nomination of a Chairman, the Chairman shall be nominated by the Constitutional Council.

- (7) The practices and procedures of the tribunal shall be regulated by rules framed by the Conference. Any award or determination made by such tribunal shall be binding on the parties to the dispute.
- (8) The Conference shall regulate its own procedures and shall meet once every month, unless otherwise determined by the Conference.

## Lists

### SECOND SCHEDULE

#### List I

##### (Reserved List)

1. Defence, national security, national police, and the security forces
2. Immigration, Emigration and Citizenship
3. Foreign Affairs
4. National Census and Statistics
5. National Planning
6. Currency and Foreign Exchange, international economic relations, monetary policy
7. Public Debt of the Government of Sri Lanka
8. Foreign loans of the Government of Sri Lanka
9. Regulation of banking and other financial institutions
10. Insurance
11. Stock Exchange and futures markets
12. Audit of the Government of Sri Lanka
13. Taxes on income, capital and wealth of individuals, companies and corporations
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions)
15. Turnover taxes and stamp duties, goods and services taxes
16. Any other taxes, duties or levies not mentioned in the Regional List
17. Pensions payable by the Government of Sri Lanka or out of the consolidated fund
18. Atomic Energy
19. Maintenance and management of the National Grid
20. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products)

21. National rivers
22. Airports, harbours, ports with international transportation
23. Inter-regional transport and railways
24. Civil Aviation
25. Inter-regional highways linking district capitals
26. Shipping and navigation; Maritime Zones including historical waters and territorial waters, Exclusive Economic Zone and Continental Shelf
27. Elections (excluding elections to Local Authorities elections to be administered by Local Authority Election Commissions in each region)
28. Posts and telecommunications
29. National Public Service, National Public Service Commission
30. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national Universities; Training, coordination of education and research relating to Health; Development of National Health Standards; Administration of all special programmes)
31. Drugs, poisons and narcotics
32. Administration of Justice
33. National universities
34. National standards with regard to professions, occupations and training
35. National standards relating to research, development and training in the area of agriculture
36. Inter-regional irrigation schemes
37. Fishing beyond the territorial waters and rights relating to traditional migratory fishing
38. Management of central policy and research institutions in the field of education e.g. National Institute of Education, Management and supervision of national schools, conduct of national public certification examinations, educational training, imposition of minimum standards for such examinations, curriculum and teacher qualifications
39. Adoption of children
40. National Scientific and Industrial Research and Training
41. Regulation of activities for the enhancement of quality standards

42. Foreign trade, inter-regional trade and commerce
43. Patents, inventions, designs, copyright, trademarks and merchandise marks
44. Monopolies and mergers
45. Inter-regional food distribution
46. National media including Central Government Broadcasting and Television Institutions
47. National Archives and Museums, ancient and historical monuments, archaeological sites and records declared by law to be of national importance
48. National Environment and National Policy on Tourism
49. Specialized National Housing Programmes
50. Coordination of Specialized National Poverty Alleviation Programmes
51. Youth and Women's Affairs
52. Buddhism
53. Development of National sports administration and infrastructure
54. Intervention in instances of National (natural and environmental) disasters and epidemics
55. Labour regulation and standards
56. Surveys for the purpose of any matters enumerated in the Reserved List
57. Offences against Laws with respect to any of the matters in the List
58. Fees in respect of any of the matters in the List, but not including fees taken in any Court.
59. Public utility infrastructure development
60. National Libraries and the National Library Services Board
61. Educational publications
62. Industrial Development
63. National Lotteries

## List II

## The Regional List

1. Health and indigenous medicine
2. Higher Education, Education and Educational Services, excluding national schools and national universities and the setting of minimum standards for examination, curriculum and teacher qualifications and teacher training
3. Agriculture and agrarian services
4. Irrigation
5. Animal husbandry
6. Fisheries and Aquatic Resources excluding rights relating to traditional migratory fishing
7. Forestry and Protection of the Environment within a Region
8. Industries and Regional Industrial Development
9. Energy
10. Transport
11. Minor Ports and Harbours
12. Roads and Waterways
13. Housing and construction
14. Urban Planning and Public Utilities
15. Rural Development
16. Local Government
17. Co-operatives
18. Supply and distribution of food
19. Promotion of tourism
20. Regional libraries and museums, archaeological sites, ancient and historical monuments and records (excluding those sites declared by law to be of national importance) and the regulation of cultural activity, including public performances
21. Broadcasting and media, including television
22. Relief, Rehabilitation and Reconstruction
23. Social Security
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation

- with the relevant Regional Council and in accordance with such procedures as may be established by law)
25. Regional Police and law and order
26. Administration of Borstal and reformatory institutions
27. Regional Public Service
28. Sports
29. Regulation of unincorporated associations and societies within the region
30. Public debt of a Region
31. Domestic and international borrowing (international borrowings shall be subject to such criteria and limitations specified by, and would require the concurrence of, the Centre)
32. The regulation and promotion of foreign direct investment, international grants and development assistance to the region
33. Regional financial and credit institutions
34. Excise duties to be specified
35. Betting taxes, and taxes on prize competitions and such other lotteries to be specified
36. Motor vehicle licence fees
37. Stamp duties on transfer of immovable properties and motor vehicles
38. Fines imposed by courts
39. Court fees, including stamp fees on documents produced in courts
40. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes
41. Taxes on mineral rights
42. Offences against laws with respect to any of the matters specified in the List
43. Fines in respect of the matters in the Regional List
44. Planning and Plan implementation at the regional level
45. Law and order to the extent provided in Chapter III.
46. Administration of Justice within a region

## D

### **A Commentary on the Devolution Proposals of the Government January 16, 1996**

*G.L.Peiris*

All Sri Lankans, irrespective of distinctions of race, religion or social status have, for the past several years, suffered the debilitating effects of one fundamental problem. It is the ethnic crisis which has evolved into the war which currently engulfs the North East. It has adversely affected every facet of Sri Lankan public life, seriously impairing every progressive move that we, as a nation, have striven to make.

It is with a view to liberating our people from this menace that, at many critical periods in our history, attempts have been made to devise a solution to this seemingly intractable problem. These attempts have failed for a variety of reasons. The result of such failures was that an increasing number of invaluable lives was lost. Property was destroyed. A vast volume of resources that might have been invested in development, in our future, was sacrificed to the war effort instead. If we do not escape the clutches of this crisis, if we do not resolve this dilemma, our future will continue to be shrouded by the shadow of conflict. This is why the Government of Mrs. Chandrika Bandaranaike Kumaratunga, buoyed by the resounding mandate for peace it received, has accorded the highest priority to the search for an acceptable peaceful resolution to this problem. The Government today has accepted that this crisis can only be finally resolved by a

political solution, a view shared by the majority of Sri Lankans, whatever their ethnicity or religion may be. All ethnic groups - Sinhalese, Tamils, Moors, Malays and Burghers - and adherents of all religions - Buddhists, Christians, Hindus or Muslims have, by and large, endorsed this view. It is with the intention of providing such a political solution that the Government has presented its proposals for a scheme of devolution of power.

The President, outlining the Government's policy at the inauguration of a new session of Parliament on January 6, 1995, elucidated the nature of the proposed solution in the following terms:

*Our Government is committed to a peaceful resolution of the ethnic conflict. We have a vision of Sri Lanka where all communities can live in safety and security, where human dignity is valued, and equality of treatment is an accepted norm of public life. We believe that all communities must be given the space to express their identity and to participate fully in the life of the nation, whether it be at the national, provincial or local level.*

#### **Distribution of power**

The proposed political solution referred to has, as its objective, the widespread distribution of power among the people, and was prepared in accordance with the following principles:

- (1) promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- (2) ensuring that all communities be given the space to express their distinct identity and promote that identity, including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language, including the right to transact business with the State in the national language of their choice;

- (3) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law;
- (4) giving recognition to Sinhala and Tamil as official languages and recognizing English as a link language;
- (5) providing an effective constitutional framework for the sharing of power with the regions, based on an internally consistent and coherent value system. There would be clarity and consistency in the distribution of power between the centre and the regions, and the scheme would be one which is capable of effective implementation and includes structures for the just and equitable resolution of centre-region disputes;
- (6) ensuring that all communities participate fully in the life of the nation, whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

A study of the proposals which are based on the above ideals, must necessarily be undertaken within the wider context of the overall process of constitutional reform initiated by the Government. This process was begun in response to the widespread demand, arising from all segments of society, for reformation of the constitutional structure. The larger objectives of the constitutional reform process such as the vesting of executive power in a democratic institution free from the taint of autocracy and the strengthening of the human rights protection regime are central to the whole effort. A proper understanding can only be achieved if the proposals are viewed in conjunction with these related concepts.

### **Seeds of disharmony**

The recognition of the need for a political solution based on the devolution of power is not unknown in Sri Lanka's political

history. From the inception of the ethnic conflict, when the seeds of disharmony were sprouting, through to the present day when the ethnic issue has assumed catastrophic proportions, our recent history is replete with instances of the political leadership proposing solutions to this national question. Some of the more significant proposals are:

- (a) The Bandaranaike - Chelvanayakam pact of 1957;
- (b) The agreement concluded between Dudley Senanayake and S. J. V. Chelvanayakam in 1965;
- (c) The Indo-lanka Accord and the subsequent 13th Amendment to the Constitution in 1987;
- (d) The Democratic People's Alliance (D.P.A.) proposals of 1988;
- (e) The interim report of the Mangala Moonesinghe Parliamentary Select Committee in 1992; and
- (f) The Gamini Disanayake proposals contained in the United National Party manifesto for the Presidential Elections of November 1994.

This clearly demonstrates that during the past 40 years, the idea of a political solution based on devolution of power has been a recurrent part of the political discourse aimed at the resolution of this national issue. However, it must be noted that all these attempts have proved unsuccessful.

There are two principal reasons that have contributed to their failure, namely;

- (1) the inherent weakness of the proposals themselves; and
- (2) the resolve of the political leadership being undermined in the face of opposition from various forces holding extreme points of view.

The result has been an exacerbation of the crisis leaving us heirs to a legacy of war and strife. The entire nation has been forced to endure the continuing loss of life brought about by the conflict. The People's Alliance Government is determined to make an attempt to find a lasting solution to the crisis. These proposals are consistent with, and would significantly assist in, the realisation of the aspirations of all Sri Lankans. They are not a novel or alien conception but represent continuity with the previous proposed solutions, containing many measures that were contained in preceding proposals. They have drawn inspiration from the more practical suggestions that have emerged over the past 40 years, and the distinguishing feature of the Government's proposals is that they are a coherent and logical conclusion of a historical process of similar attempts which, upon implementation, would enable a substantial degree of devolution of power within the framework of a united Sri Lanka. The shortcomings of the earlier solutions have been circumvented, and the weaknesses which made those proposals unworkable have been excluded.

### **Democratic ideals**

The Government's strong belief is that the implementation of the proposals must be in accordance with democratic ideals and traditions. The concurrence of all sections of society must be assured for successful implementation. A healthy public debate on all aspects of the proposals must be encouraged. It was with the intention of initiating such a discourse that the President placed before the people the outlines of the Government's proposals on August 3, 1995.

The Government is taking serious note of all constructive criticism and suggestions that the presentation of the proposals has elicited.

The process to be followed in order to implement the proposals has been initiated. The procedure to be followed may be briefly indicated as follows:

Presentation of the proposals to the public and generating public awareness;

- Submission of the proposals in legislative form - as a draft Chapter of the Constitution - to the Parliamentary Select Committee on the Constitution;
- Obtaining Parliamentary assent with a 2/3 majority; and
- Seeking the public's approval at a referendum.

The second stage of this process has now been reached. This analysis is based on the draft Chapter of the Constitution which is structured in the following manner:

1. The People, the State and Sovereignty,
2. Buddhism,
3. Devolution of Power to Regions,
4. State Land,
5. Law and Order,
6. State of Emergency within a Region,
7. Finance,
8. Chief Ministers' Conference, and
9. Lists.

### **The people, the State and sovereignty**

According to the proposals, Sri Lanka will be a united and sovereign Republic and shall be known as the Republic of Sri Lanka. The Republic of Sri Lanka shall be a union of Regions.

For the realistic devolution of power to take place it is necessary to bypass certain constitutional, legal and practical constraints which may otherwise hamper effective implementation. For this reason it is necessary to redefine the concept of the unitary state which hitherto underpinned the Constitution. This is sought to be achieved by the definition of Sri Lanka as a Union of Regions. This change is proposed with the sole intention of providing the constitutional means whereby the devolution of power could be made a practical reality. It will not in any way impact adversely on the ability of the

central government of the Republic to administer its affairs, nor will there be any impairment of the power to legislate on all matters of national importance including the preservation of the Island as a sovereign Republic bounded by its territorial waters.

The proposals have given rise to the apprehension that the departure from the unitary concept would lead to division of the country which would inevitably result in the disintegration of Sri Lanka. This fear is totally without foundation. The new Constitution declares, in no uncertain terms, that the phrase describing the nature of the State as a Union of Regions is qualified as being indissoluble. This feature, in conjunction with the postulates of sovereignty and unity which epitomize the entire Constitution, provides a compelling safeguard for the continued existence of the nation as one entity.

Furthermore, express provisions are incorporated in Article 2 of the new Constitution that prohibit a Regional Council from espousing any cause promoting separation from the rest of the nation. These provisions, therefore, preclude an attempt by a Region to make any unilateral variation in the *status quo* established by the Constitution. The only initiative that a regional administration can make in this field is with regard to the alteration of boundaries. This is in the interest of administrative expediency and can only be effected by Parliament acting upon the request of the regional administration. Parliament may, however, if it so desires, amend these provisions in keeping with the procedures laid down in the Constitution.

At the heart of a democratic state lies the sovereignty of the people. This connotes that the supreme power in the country is vested in its citizens. The people's supreme power is threefold:

- i. The Legislative power of the people;
- ii. The Executive power of the people; and
- iii. The Judicial power of the people.

### Maximising opportunities

The objective of the proposals is the distribution of this power to such an extent that power is devolved to the smallest constitutive

unit of society, thus maximizing the opportunities available to the people to exercise their power. The Constitution, therefore, envisages that the legislative power of the people - the power to make laws - would be exercised in 3 ways.

1. By Parliament which consist of elected representatives who will legislate on all matters of national importance;
2. By Regional Councils which will legislate on socio-cultural matters and development issues at a regional/local level; and
3. By the People themselves at a referendum when a matter having exceptional national significance has to be decided upon.

The exercise of the legislative power of the people in the above manner is in accordance with the concept of a democracy where the people elect their Government.

The proposals envisage that the Executive power of the people is vested in an institution which would be a democratic structure far removed from the potential constitutional autocracy that exists at present. This power takes 2 forms:

1. According to the proposals, the country will continue to have a President. However, the Presidency that is conceived of will not be the Executive Presidency that prevails under the present Constitution, but rather a Presidency of a ceremonial or titular nature. The President wields the executive power of the people in accordance with the advice of the Prime Minister and Cabinet, and is thus accountable to Parliament.
2. Regionally, the executive power of the people will be exercised by the Governor who is appointed to that particular region. The Governor will act upon the advice of the Regional Board of Ministers headed by the Chief Minister of the Region.



## Power of the people

The judicial power of the people will be exercised by constitutionally recognized Courts such as the Supreme Court of Appeal, Regional High Courts and other courts and tribunals established by law and by Parliament in relation to Parliamentary Privileges.

The supreme power of the people is exercised through these institutions within an environment where significant emphasis is placed on the securing of fundamental human rights. The rights that find expression in the draft Constitution have drawn greatly on international human rights instruments and may be said to offer a more clear, concise and complete expression of human rights than was achieved by previous constitutional provisions in this regard. The civil and political rights of all sections of the community are secured by this chapter, and a positive duty with regard to the fostering, advancement and securing of such rights is cast on all organs of government. This would greatly facilitate a more realistic devolution of power.

The current provisions in the Constitution that proclaim Sri Lanka's identity, both nationally and internationally, are retained unchanged.

**National Flag:** The National Flag of the Republic will be the Lion Flag (depicted in the 3rd Schedule)

**National Anthem:** The National Anthem of the Republic of Sri Lanka will be "Sri Lanka Matha" (words and music contained in the 4th Schedule)

**National Day:** Sri Lanka's National Day will remain the 4th of February.

## Buddhism

The second Chapter of the draft Constitution is devoted to provisions relating to Buddhism. The protection and fostering of

Buddhism has long prevailed as a traditional practice of Sri Lanka's rulers. This received constitutional expression consequent to the promulgation of the 1978 Constitution. These provisions, according to Buddhism the foremost place, are also included in the present draft. There is also the additional proviso whereby the Chapter on Buddhism is "**entrenched**", i.e. it cannot be changed merely by obtaining a 2/3 majority but would also require approval at a referendum for amendment. The draft Chapter does not confine itself to a mere constitutional declaration of protection of Buddhism but also envisages the additional practical measure of a Supreme Council being constituted in consultation with the Buddhist clergy. This Council will be entrusted with the task of advising the Government in the performance of its constitutionally appointed task - the protection and fostering of Buddhism.

## The devolution of power to regions

### I. Establishment of Regional Councils

The Government's devolution proposals envisage a division of powers between the Central Government and regional units. These units are necessary to exercise the devolved powers in order to achieve regional development in keeping with the needs of the particular locality. The proposals envisage the establishment of units referred to as "**Regional Councils**". Devolution proposals advanced in the past have also suggested similar units.

A few examples are:

1. **The Bandaranaike-Chelvanayakam pact (1957)** - Regional Councils (Rata Sabha) which would exercise power in relation to:- Agriculture, Cooperatives, Land and Land Development, Colonization, Education, Health, Industries and Fisheries, Housing and Social Services, Energy, Irrigation Schemes and Highways;

2. **The Dudley Senanayake-Chelvanayakam agreement (1965)** considered the prospect of devolution on a wide scale to units known as "District Councils";
3. **The Mangala Moonesinghe Parliamentary Select Committee** in its interim report (1992), suggested units constituted along the lines of "States", similar to those which exist in India.
4. The system of "Provincial Councils" that functions today fulfills the proposals contained in the **Indo-Lanka Accord of 1987**, made operative by the 13th Amendment to the Constitution.

While the Government's current proposals envisage the devolution of power to newly established units to be referred to as "Regional Councils", they also seek to avoid the pitfalls that have beset all previous proposals. The first schedule to the new Constitution will enumerate the Regions which would constitute the Republic of Sri Lanka. The current demarcation of Provinces will, to a large extent, prevail but changes will be necessitated with regard to the present North-Eastern Province which has given rise to much controversy.

#### **Temporary merger**

A long expressed demand of minority groups has been that the Northern and Eastern Provinces be regarded as one administrative unit. The 13th Amendment to the Constitution, currently in force, stipulates that this question should be put to a referendum if the temporary merger is to be made permanent. Groups representing the nation's majority have consistently asserted that the Northern and Eastern Provinces should not be joined. The Government's proposals **do not** in any way, suggest that the present Northern Province be linked up with the present Eastern Province. Instead, it is proposed that the boundaries of both areas be redemarcated. The proposals

further state that the demarcation should be done after all communities' interests - Sinhala, Tamil and Muslim - are given the fullest consideration with a view to achieving a formula acceptable to all.

## **II. Regional Councils**

Each Region identified in the above manner will have its own Regional council. The members of the respective Councils will be voted into office by the inhabitants of each Region. The electoral system to be adopted will be enshrined in constitutional provisions relating to elections. The number of members for each Regional Council will be determined according to area and the population of that Region. The term of office of the Regional Council will be 5 years. Upon the expiration of that period, the Council will be deemed to have been dissolved.

## **III. The Governor**

The executive power of the people of a Region will be exercised by the Regional Governor. A governor will be appointed, upon nomination, to each Region. The Governor will be appointed by the President acting upon the advice of the relevant Chief Minister. The Governor's term of office will be 5 years. Among the Governor's powers will be the power to summon, prorogue and dissolve the Regional Council.

## **IV. The Regional Board of Ministers**

Each Region will have a Board of Ministers, headed by the Chief Minister, which will aid and advise the Governor in the exercise of executive power in the Region. The maximum number of members (excluding the Chief Minister) will be 6. The Chief Minister will be the person who commands the confidence of the majority of the Council's members.

## V. The Legislative Power of the Region

Regional Councils may exercise legislative power. This law-making power may be exercised in respect of subjects devolved to the Regions. If devolution of power is to be meaningful, the power to enact laws on devolved subjects should be vested in the Regional Councils. A pragmatic measure such as the devolution of power cannot be realized if the supreme legislative power in the country is exclusively vested in one institution or individual. This concentration of power also makes the achievement of the goals of equity and justice increasingly difficult. Thus, the exclusive power to legislate upon subjects that are devolved should necessarily vest in the Regional Councils. The subjects so devolved have been identified in the two lists, with clarity and certainty being the governing consideration.

All proposals put forward consequent to the 13th Amendment have recognized this necessity in no uncertain terms. The government's proposals, therefore, emphasize the necessity for this idea of regional legislative power, within specifically defined limits.

Accordingly, the Regional List embodied in the proposals contains 46 subjects, and legislative power in respect of these subjects vests in the Regional Councils.

## VI. Regional Judiciary

Judicial power relating to affairs at a regional level being exercised by regional institutions, is the hallmark of a workable scheme of devolution. The Government's proposals envisage the existence of High Courts, District and Magistrate's Courts at the regional level. However, the Supreme Court and the Appeal Court at the national level, will continue to be one organ at the national level. The highest court that can be established in a region will, therefore, be the High Court. This Court may function as a court of original jurisdiction in respect of offences committed within the Region. The High Court may exercise powers of appeal and revision in relation to sentences and orders of primary courts in the Region. In addition, orders in the nature of the writ of *Habeas Corpus*, may be issued in

respect of persons unlawfully detained in the Region and may, in the case of a person exercising power in respect of subjects in the Regional List, issue orders in the nature of the writ of certiorari, prohibition, procedendo, mandamus and quo warranto against such person.

## VII. Regional Attorney-General

There shall be a Regional Attorney-General for every Region who will be appointed by the Governor. His primary function will be to advise the Governor, the Chief Minister and the Board of Ministers on legal matters pertaining to the administration of the region. The Regional Attorney-General will hold office at the pleasure of the Governor.

## VIII. Regional Public Service

### The Regional Public Service Commission

An important feature of a realistic scheme of devolution is the practical extent of the powers to be exercised by the decentralized administration. This is, to a large extent, facilitated by the independence guaranteed to the Regional Public Service. The Government's proposals contain measures whereby a Regional Public Service Commission will be established which would oversee the functioning of the Regional Public Service. This element of an efficient regional administration is thereby well provided for. This Commission will be appointed by the Constitutional Council consequent to consultation with the Governor. The maximum number of Commissioners will be five, one of whom is to be its Chairman. The principal tasks entrusted to the Commission will be the appointment, transfer, dismissal and disciplinary control of members of the Regional Public Service in the various Regions.

## IX. Matters pertaining to Sri Lanka's coastline

The extent of Sri Lanka's territory is defined by its coastal waters. The new constitutional provisions do not envisage any change in its ownership. Accordingly, rights in anything of value, be it the sea-bed, minerals or any such property accrue to the Central Government. Thus, the Central Government may exploit such resources as it sees fit for the purposes of the Republic.

## X. State land

The pivotal question at the centre of the political discourse on the proposed devolution of power in Sri Lanka is that of land. The Government's monopolistic control over State land, which has been a feature of our contemporary history, is a legacy of Sri Lanka's experience as a colony, functioning under the dictates of an imperial system of government. Powers relating to land being devolved to regional units does not connote the loss of State authority over land but rather involves a sharing of such powers. The relaxing of legal and administrative barriers regarding land utilization is essential for the achievement of balanced and equitable development. This is the reason why the proposal relating to powers over land being devolved to regional units received the approval of many proponents of previous political solutions.

Many of those proposals are very similar to the Government's current proposals. **The Bandaranaike - Chelvanayakam Pact** proposed, with regard to land colonization, that the power to decide on who was to be settled on land within a particular region be devolved to Regional Councils with no preconditions attached. Similar provisions were contained in the **Dudley Senanayake - Chelvanayakam agreement**. **The Mangala Moonesinghe Select Committee** proposed powers over land predicated on the Indian model based on "States." The 13th Amendment to the Constitution provides for the subject of land to vest in the Provincial Councils (but land per se was not vested in them).

The Government's proposals envisage practical measures

that will ensure a realistic degree of devolution of power. Thus, authority over land situated in a Region is vested in the Council in fact as well as being a devolved subject. However, if the Central Government requires land for a purpose in the reserved list, the Regional Council is bound to make such land available to it after consultations with the Government. Furthermore, inter-regional schemes that involved two or more Regions also fall exclusively within the purview of the Central Government.

## XI. Law and Order

The preservation of law and order would ordinarily be devolved to regional Councils as envisaged by the Government's proposals. Regional Councils would thereby wield police powers in the interest of maintenance of civic order.

All ramifications of the devolved subject should be carefully considered in the implementation of a scheme, if the primary objective of practicability is to be realized. On the one hand, limitless powers devolved to the regional unit would result in a repressive regional administration. At the other extreme, no police powers being devolved would result in a serious threat to tranquillity and peace. Therefore, the current proposals envisage a sharing of power arising from sensitivity of perception and a close appraisal of existing realities. More important is the expectation that the Police is not an instrument of repression but rather an invaluable public service. It is this expectation that is uppermost in the mind of the Government in designing the structures for devolution in this context.

Thus, each Region will have its own Regional Police Service headed by the Regional Police Commissioner. The Police Commissioners will be appointed by the Chief Ministers subsequent to consultation with the respective Governors.

A Regional Police Commission will be appointed comprising the Commissioner and two others to be nominated by the Constitutional Council. The responsibility of this Commission will include appointment of members to the Regional Police Service, transfers and disciplinary control.

## REGIONAL POLICE SERVICE

All officers in the Region will serve under the control of the Regional Police Commission. The Regional Police Service will consist of the following ranks:

1. Regional Police Commissioner,
2. Regional Deputy Police Commissioners,
3. Senior Superintendents of Police,
4. Superintendents of Police,
5. Assistant Superintendents of Police,
6. Chief Inspectors,
7. Inspectors of Police,
8. Sub-Inspectors of Police,
9. Police Sergeants,
10. Police Constables, and
11. Other ranks deemed necessary.

The Regional Police Commissioner is accountable to the Chief Minister. The Regional Police Service so established will conduct investigations and initiate legal proceedings in respect of offences relating to matters contained in the Regional List.

The Regional Police Service has no powers of investigation in respect of the following offences:

- \* Offences against the Republic;
- \* Offences relating to the army, navy and air force;
- \* Offences relating to elections except local authority elections;
- \* Any offence committed against the President;
- \* Any offence committed against the Prime Minister, the Speaker, a Minister, a Deputy Minister or a Member of Parliament;
- \* Any offence committed against a Member of the National

Judicial Service Commission, a Member of the National Public Service Commission, the Secretary General of Parliament, a member of the President's Staff or a Member of the Staff of Parliament;

- \* Any offence prejudicial to national security or the maintenance of essential services;
- \* Offences relating to coins, currency and Government stamps;
- \* Any offence relating to property belonging to the Republic or a State Corporation; Company or Establishment, the whole or part of the capital whereof has been provided by the Republic;
- \* Any offence under any law relating to any matter in the Reserved List;
- \* Any offence in respect of which courts in more than one Region have jurisdiction, and International crimes.

Investigations in respect of the above can only be conducted by the National Police Service which functions under the control of the Central Government.

The preservation of national security and safety is a responsibility of the Central Government and, as such, will be entrusted to the National Police Service. This Service will be headed by the National Police Commissioner. The National Police Commissioner together with two others appointed by the Constitutional Council will constitute the National Police Commission. The responsibilities of the National Police Commission include the appointment, transfer and disciplinary control of persons in the National Police Service as well as inter-regional transfers of members of the Regional Police Services.

## **XII. States of emergency within a Region**

A misapprehension entertained by persons who have viewed devolution of power in an unfavourable light is that this political measure will lead to a fragmentation of the country. Their mistaken belief is that the devolution of power, as described above, could lead to a situation where a Region could proclaim itself a separate nation. This is a totally erroneous conception.

Subjects and functions are conferred on Regions within the strict limitations prescribed in the Lists. No additional powers may be exercised by them. They cannot in any way act contrary to, or in derogation of, the fundamental features of the Republic of Sri Lanka — namely, its unity and sovereignty. If any Regional Council purports to act in an unlawful manner, thereby endangering the two sacrosanct principles mentioned above, the proposals contain sufficient means whereby such moves could be effectively forestalled.

## **XIII. The President's power of dissolution of a Regional Council**

If some regional administrative authority attempts to act in a manner which endangers the unity and sovereignty of the nation, the proposals contain sufficient measures whereby the Central Government may assume such authority or cause that administration to be dissolved. These powers of the Central Government will be exercised through the President. The proposals entitled "State of emergency within a Region" provide for the President's powers of dissolution and of acquisition of authority. Consequently, if the President is convinced that the: (a) security or public order in a Region is threatened by armed insurrection or (b) grave internal disturbances are occurring, or (c) any action or omission of the regional administration presents a clear and present danger to the unity and sovereignty of the Republic, he may declare an emergency in the Region bringing the laws relating to public security into force.

The President also may deploy the armed forces or the Police in that Region for the purpose of restoring public order.

If the President is satisfied that a situation has arisen in which the regional administration is: (a) promoting armed rebellion or insurrection or (b) intentionally violating the Constitution in a manner which constitutes a clear and present danger to the unity and sovereignty of the Republic, he may acquire all powers exercised by any authority in the region or dissolve the Council.

A proclamation made in this manner or the reasons for such proclamation may not be questioned in any court of law.

## **ARMED AGGRESSION**

The above clearly demonstrates that there is no probability of a Regional Council or administration exceeding the powers devolved to it as set out in the Constitution. Armed aggression against the Republic of Sri Lanka is therefore not possible in practice.

The new Constitution prohibits a regional administration, in terms of Article 2, from promoting, by direct or indirect means, any of the following:

- (a) the separation or secession of such Region or Regions from the Union of Regions constituting the Republic of Sri Lanka;
- (b) alteration of the area of such Region or Regions;
- (c) alteration of the boundaries of such Region or Regions;
- (d) alteration of the name or names of such Regions or Regions;
- (e) formation of a new Region by separation of territory from any Region or by uniting two or more Regions or parts of Regions or by uniting any territory with a part of any Region.

While the regional administration may make representations to the Centre regarding (c) only so far as administrative needs require it, it cannot take any positive action by itself to put its proposals into practice. All the above can only be dealt with by Parliament in whom power to amend the Constitution is exclusively vested.

If a regional administration purports to effect these changes, then it clearly is acting in violation of the Constitution and, as such, the President may take action as described above.

#### **XIV. Finance**

Throughout the history of attempts at devolution of power in Sri Lanka, one element that was repeatedly stressed was that, if power was to be devolved with the goal of promoting balanced national development, the regional units should be vested with a degree of fiscal competence. For instance, the Mangala Moonesinghe Select Committee placed special emphasis on the fact that the powers so devolved should exceed general powers such as Health and Transport and should extend to monetary powers as well. It is with the object of devolution of power that would provide for balanced national development on a practical and effective basis that measures relating to finance are included in the proposals.

#### **XV. Finance Commission**

The task of assignment of finances to Regional Councils is entrusted to an independent Commission. This Commission will be known as the Finance Commission. Its members will be appointed by the President upon the recommendation of the Constitutional Council. The Finance Commission will consist of 3 members. They will represent the three major communities of the nation. The term of office of the Commission will be 3 years. The central administration will allocate funds to the Regions in accordance with the recommendations of the Commission.

Regions will have the power to levy taxes in respect of certain specified areas and also the ability to establish financial institutions.

While Regions have the ability to obtain domestic and international loans, they will have to do so within the limitations and in accordance with the criteria prescribed by the Centre. Furthermore, the ability to obtain foreign direct aid, be it grants or development

assistance, is conditional upon conformity with national policy with regard to such matters, as determined by the Cabinet and approved by Parliament.

#### **XVI. Chief Ministers' Conference**

Finally, in order that the devolution of power is successfully implemented and continued with, a novel concept of a Chief Ministers' Conference is proposed. The members will be the Chief Ministers of all Regions. This Conference, therefore, will comprise all popularly elected heads of the regional executive in the Republic. Its principal function will be that of ensuring that devolution would be a continual process.

The Conference will meet once a month. The Chairman will be elected from among the Chief Ministers on a rotational basis which would enable each Chief Minister to hold office as Chairman of the Conference. The Conference will continue to operate regardless of changes in its membership brought about by regional elections, and Chief Ministers will become members on their election to office.

The responsibilities of the Conference are threefold. The Conference will:

1. continuously monitor measures taken to ensure that devolution is an ongoing process and that the constitutional provisions relating to devolution in every sphere are adhered to;
2. upon examination of controversies that may arise among Regions, attempt to conciliate such dispute or disputes, and
3. inquire into subjects which contain a commonality of interest among the Regions and prescribe measures to make administration relating to these subjects more efficient.

#### **CONTENTIOUS ISSUES**

While the principal instruments of dispute resolution will be conciliation and mediation, in instances where such measures prove unsuccessful

the proposals provide for the establishment of a tribunal whereby disputes may be settled. Such a mechanism whereby consensus can be achieved on contentious issues is of primary importance in the context of a scheme of devolution. Regional autonomy will be meaningless if the Centre has to intervene and settle disputes between Regions.

This measure, therefore, provides a forum where such issues may be resolved. However, where questions of legality arise, involving interpretation of the Constitution the jurisdiction of the Supreme Court - the principal arbiter on matters relating to the Constitution - will necessarily supersede that of the tribunal set up under these provisions. Similarly disputes between the Centre and the Regions will require invocation of the jurisdiction of a competent judicial body. The assignment of arbitral powers to a non-judicial body that would seek to resolve disputes between a relatively small regional administration and a monolithic Central Government may provoke allegations of bias. If the interests of even handed treatment are to be fully served, the referral of such disputes to a judicial entity, whose independence is assured by the Constitution is preferable.

## XVII. Lists

The proposals demarcate consistently, clearly and with certainty, the powers to be exercised by the Regions and the Centre. The subjects and functions of the Regions and the Centre are, therefore, contained in two lists known as the Reserved List and the Regional List. There will be no Concurrent List.

### List I (*Reserved List*)

This list contains those subjects and functions to be exercised by the Centre

1. Defence, national security, national police, and the security forces,
2. Immigration, Emigration and Citizenship,

3. Foreign Affairs,
4. National Census and Statistics,
5. National Planning,
6. Currency and Foreign Exchange, international economic relations, monetary policy,
7. Public Debt of the Government of Sri Lanka,
8. Foreign loans of the Government of Sri Lanka,
9. Regulation of banking and other financial institutions,
10. Insurance,
11. Stock Exchange and futures markets,
12. Audit of the Government of Sri Lanka,
13. Taxes on income, capital and wealth of individuals, companies and corporations,
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions),
15. Turnover taxes and stamp duties, goods and services taxes,
16. Any other taxes, duties or levies not mentioned in the Regional List,
17. Pensions payable by the Government of Sri Lanka or out of the consolidated fund,
18. Atomic Energy,
19. Maintenance and management of the National Grid,
20. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products),
21. National rivers,
22. Airports, harbours, ports with international transportation,
23. Inter-regional transport and railways,
24. Civil Aviation,
25. Inter-regional highways linking district capitals,
26. Shipping and navigation, Maritime Zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf),
27. Elections (excluding elections to Local Authorities elections to be administered by Local Authority Election Commissions in each region),
28. Posts and telecommunications,



29. National Public Service, National Public Service Commission,
30. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national Universities, Training, coordination of education and research relating to Health, Development of National Health Standards, Administration of all special programs),
31. Drugs poisons and narcotics,
32. Administration of Justice,
33. National universities,
34. National standards with regard to professions, occupations and training,
35. National standards relating to research, development and training in the area of agriculture,
36. Inter-regional irrigation schemes,
37. Fishing beyond the territorial waters and rights relating to traditional migratory fishing,
38. Management of central policy and research institutions in the field of education eg. National Institute of Education, Management and supervision of national schools, conduct of national public certification examinations, educational training, imposition of minimum standards for such examinations, curriculum and teacher qualifications,
39. Adoption of children,
40. National Scientific and Industrial Research and Training,
41. Regulation of activities for the enhancement of quality standards,
42. Foreign trade, inter-regional trade and commerce,
43. Patents, inventions, designs, copyright, trademarks and merchandise marks,
44. Monopolies and mergers,
45. Inter-regional food distribution,
46. National media including Central Government Broadcasting and Television Institutions,
47. National Archives and Museums, ancient and historical monuments, archaeological sites and records declared by law to be of national importance,
48. National Environment and National Policy on Tourism,
49. Specialised National Housing Programs,

50. Coordination of Specialized National Poverty Alleviation Programs,
51. Youth and Women's Affairs,
52. Buddhism,
53. Development of National sports administration and infrastructure,
54. Intervention in instances of National (natural and environmental) disasters and epidemics,
55. Labour regulation and standards,
56. Surveys for the purpose of any matters enumerated in the Reserved List,
57. Offences against Laws with respect to any of the matters in the List,
58. Fees in respect of any of the matters in the List, but not including fees taken in any Court,
59. Public utility infrastructure development,
60. National Libraries and the National Library Services Board,
61. Educational publications,
62. Industrial Development and
63. National Lotteries.

## **List II (The Regional List)**

This list contains those subject and functions to the Regional Councils

1. Health and indigenous medicine,
2. Higher Education, Education and Educational Services, excluding national schools, and national universities and the setting of minimum standards for examination, curriculum and teacher qualifications and teacher training,
3. Agriculture and agrarian services,
4. Irrigation,
5. Animal husbandry,
6. Fisheries and Aquatic Resources excluding rights relating to traditional migratory fishing,

7. Forestry and Protection of the Environment within a Region,
8. Industries and Regional Industrial Development,
9. Energy,
10. Transport,
11. Minor Ports and Harbours,
12. Roads and Waterways,
13. Housing and construction,
14. Urban Planning and Public Utilities,
15. Rural Development,
16. Local Government,
17. Co-operatives,
18. Supply and distribution of food,
19. Promotion of tourism,
20. Regional libraries and museums, archaeological sites, ancient and historical monuments and records (excluding those sites declared by law to be of national importance) and the regulation of cultural activity, including public performances,
21. Broadcasting and media, including television,
22. Relief, Rehabilitation and Reconstruction,
23. Social Security,
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law),
25. Regional Police and law and order, 26. Administration of Borstal and reformatory institutions,
27. Regional Public Service,
28. Sports,
29. Regulation of unincorporated associations and societies within the region,
30. Public debt of a Region,
31. Domestic and international borrowing (international borrowings shall be subject to such criteria and limitations specified by, and would require the concurrence of the Centre),
32. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the region,

33. Regional financial and credit institutions,
34. Excise duties to be specified,
35. Betting taxes, and taxes on prize competitions and such other lotteries to be specified,
36. Motor vehicle licence fees,
37. Stamp duties on transfer of immovable properties and motor vehicles,
38. Fines imposed by courts,
39. Court fees, including stamp fees on documents produced in courts,
40. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes,
41. Taxes on mineral rights,
42. Offences against laws with respect to any of the matters specified in the List,
43. Fines in respect of the matters in the Regional List,
44. Planning and Plan implementation at the regional level,
45. Law and order to the extent provided in Chapter III and
46. Administration of Justice within a region.

## E

### **Bandaranaike- Chelvanayakam Pact of 1957**

#### *Part A*

Representatives of the Federal Party had a series of discussions with the Prime Minister in an effort to resolve the differences of opinion that had been growing and creating tension.

At an early stage of these conversations it became evident that it was not possible for the Prime Minister to accede to some of the demands of the Federal Party.

The Prime Minister stated that, from the point of view of the Government, he was not in a position to discuss the setting up of a Federal Constitution, or regional autonomy or take any step that would abrogate the Official Language Act.

The question then arose whether it was possible to explore the possibility of an adjustment without the Federal Party abandoning or surrendering any of its fundamental principles or objectives.

At this stage the Prime Minister suggested an examination of the government's Dratt Regional Council Bill to see whether provision could be made under it to meet, reasonably, some of the matters in this regard which the Federal Party had in view.

The agreements so reached are embodied in a separate document.

Regarding the language issue, the Federal Party reiterated its stand for parity but in view of the position of the Prime Minister in this matter they came to an agreement by way of adjustment. They pointed out that it was important for them there should be a recognition of Tamil as a national language and that the administration of the Northern and the Eastern Provinces should be done in Tamil.

The Prime Minister stated that as mentioned by him earlier it was not possible for him to take any steps that would abrogate the Official Language Act.

After discussion it was agreed that the proposed legislation should contain recognition of Tamil as the language of the national minority of Ceylon and that the four points mentioned by the Prime Minister should include provision that, without infringing on the position of the Official Language as such, the language of administration of the Northern and Eastern Provinces be Tamil, and that any necessary provision be made for the non-Tamil speaking minorities in the Northern and Eastern Provinces.

Regarding the question of Ceylon citizenship for the people of Indian descent and the revision of the Citizenship Act, the representatives of the Federal Party put forward their views to the Prime Minister and pressed for an early settlement.

The Prime Minister indicated that the problem could receive early consideration.

In view of these conclusions the Federal Party stated that they were withdrawing their proposed satyagraha.

#### *Part B*

1. Regional areas to be defined in the bill itself by embodying them in a Schedule thereto.
2. That the northern Province is to form a regional area whilst the Eastern Province is to be divided into two or more regional areas.
3. Provision is to be made in the Bill to enable two or more regions to amalgamate even beyond provincial limit ; and for one region to divide itself subject to ratification by Parliament. Further provision is to be made in the Bill for two or more regions to collaborate for specific purposes of common interests.

4. Provision is to be made for direct election of regional councillors. Provision is to be made for a delimitation commission or commissions for carving out electorates. The question of MPs representing districts falling within regional areas to be eligible to function as chairman is to be considered. The question of Government Agents being regional commissioners is to be considered. The question of supervisory functions over larger towns, strategic towns and municipalities is to be looked into.
5. Parliament is to delegate powers and to specify them in the Act. It was agreed that regional councils should have powers over specified subjects including agriculture, cooperatives, lands and land developments, colonization, education, health, industries, fisheries, housing, social services, electricity, water schemes and roads.

Requisite definition of powers will be made in the Bill.

6. It was agreed that in the matter of colonisation schemes the powers of the regional councils shall include the power to select allottees to whom lands within their area of authority shall be alienated and also power to select personnel to be employed for work on such schemes. The position regarding the area at present administered by the Gal Oya Board in this matter requires consideration.
7. The powers in regard to the regional council vested in the Minister of Local Government in the draft bill to be revised with a view to vesting control in Parliament wherever necessary.
8. The Central Government will provide block grants to the regional councils. The principles on which the grants will be computed will be gone into. The regional councils shall have powers of taxation and borrowing.

## F

### **Dudley Senanayake- Chelvanayakam Pact of 1965**

Mr. Dudley Senanayake and Mr. S.J.V. Chelvanayakam met on the 24-3-1965 and discussed matters relating to some problems over which the Tamil-speaking people were concerned, and Mr. Senanayake agreed that action on the following lines would be taken by him to ensure a stable government:

- (1) Action will be taken early under the Tamil Language Special Provisions Act to make provision of the Tamil Language of Administration and of Record in the Northern and Eastern Provinces.

Mr. Senanayake explained that it was the policy of his party that a Tamil-speaking person should be entitled to transact business in Tamil throughout the island.

- (2) Mr. Senanayake stated that it was the policy of his party to amend the Language of Courts Act to provide for legal proceedings in the Northern and Eastern Provinces to be conducted and recorded in Tamil.
- (3) Action will be taken to establish District Councils in Ceylon vested with powers over subjects to be mutually agreed upon between the two leaders. It was agreed, however, that the government should have power under the law to give directions to such councils under the national interest.

- (4) The Land Development Ordinance will be amended to provide that citizens of Ceylon be entitled to the allotment of land under the Ordinance.

Mr. Senanayake further agreed that in the granting of land under colonization schemes the following priorities be observed in the Northern and Eastern provinces.

- (a) Land in the Northern and Eastern provinces should in the first instance be granted to landless persons in the district.
- (b) Secondly, to Tamil-speaking persons resident in the northern and eastern provinces.
- (c) Thirdly, to other citizens in Ceylon, preference being given to Tamil citizens in the rest of the Island.

Sgd. Dudley Senanayake  
24. 3. 65

Sgd. S.J.V.Chelvanayakam  
24. 3. 65

## G

### Annexure C

In terms of paragraph six of President's statement of December 1st, 1983, the following proposals which have emerged as a result of discussions in Colombo and New Delhi are appended for consideration by the All-Party Conference. These proposals are in the context of united and integrity of Sri Lanka and will form the basis for formulating the Agenda of the All-Party Conference.

- (1) The District Development Councils in a Province be permitted to combine into one or more Regional Councils if they agree by decisions of the Councils and approved by Referendum in that district.
- (2) In the case of District Councils of Northern and Eastern Provinces, respectively, as they are functioning due to the resignation of the majority of members, their union within each province to be accepted.
- (3) Each Region will have a Regional Council if so desired. The convention will be established that the leader of party which commands a majority in the Regional Council would be formally appointed by the President as the chief minister of the Region. The Chief Minister will constitute a Committee of ministers of the Region.
- (4) The President and the Parliament will continue to have overall responsibility for all subjects not transferred to the Region and generally for all other matters relating to maintenance of sovereignty, integrity, unity, and security and progress and development of the Republic as a whole.

- 5) The legislative power of the region would be vested in the Regional Councils which would be empowered to enact laws and exercise executive powers in relation thereto on certain specified listed subjects including the maintenance of Internal Law and Order in the Region, the administration of justice, social and economic development, cultural matters and land policy. The list of subjects to be allocated to the Regions will be worked out in detail.
- (6) The Regional Councils will have powers to levy taxes, cess of fees and to mobilize resources through loans, the proceeds of which will be credited to a Consolidated Fund set up for that particular Region to which also will be credited grants, allocations or subventions made by the Republic. Financial resources will be apportioned to the Region on the recommendations of the representative Finance Commission appointed from time to time.
- (7) Provisions will be made to constitute High Courts in each region. The Supreme Court to Sri Lanka will exercise appellate and constitutional jurisdiction.
- (8) Each Region will have a Regional Service constituting (a) officers and public servants of the Region and (b) such other officers and public servants who may be seconded to the Region. Each Region will have a Regional Public Service Commission for recruitment and for exercising disciplinary powers relating to the members of the Regional Service.
- (9) The armed forces of Sri Lanka will reflect the national ethnic composition. In the Northern and Eastern Provinces the police force for internal security will also reflect the ethnic composition of these Regions.
- (10) A Port Authority under the Central Government will be set up for administering the Trincomalee Port and Harbor. The area that will come under the Port Authority as well as the powers to be assigned to it will be further discussed.

- (11) A national policy on land settlement and the basis on which the government will undertake land colonization will have to be worked out. All settlement schemes will be based on ethnic proportion so as not alter the demographic balance subject to agreements being reached on major projects.
- (12) The constitution and other laws dealing with the official language Sinhala and the national language Tamil be accepted and implemented as well as similar laws dealing with National Flag and Anthem.
- (13) The Conference should appoint a committee to work out constitutional and legal changes that may be necessary to implement these decisions. The Government will provide its secretariat and necessary legal offices.
- (14) The consensus of opinion of the All-Party Conference will itself be considered by the United National Party Executive Committee and presumably by the executive body of the other parties as well before being placed before Parliament for legislative action.

## H

### Text of the Indo-Sri Lanka Agreement of July 29, 1987

The Prime Minister of the Republic of India, His Excellency Mr. Rajiv Gandhi and the President of the Democratic Socialist Republic of Sri Lanka, His Excellency Mr. J. R. Jayewardene having met at Colombo on 29 July 1987.

Attaching utmost importance to nurturing, intensifying and strengthening the traditional friendship of India and Sri Lanka and acknowledging the imperative need of resolving the ethnic problem of Sri Lanka, and the consequent violence, and for the safety, well-being and prosperity of people belonging to all communities in Sri Lanka.

1. Having this day entered into the following Agreement to fulfil this objective.
  - 1.1 desiring to preserve the unity, sovereignty and territorial integrity of Sri Lanka;
  - 1.2 acknowledging that Sri Lanka is a multi-ethnic and a multi-lingual plural society consisting, inter alia, of Sinhalese, Tamils, Muslims (Moors), and Burghers;
  - 1.3 recognising that each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured;
  - 1.4 also recognising that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups;
  - 1.4 conscious of the necessity of strengthening the forces contributing to the unity, sovereignty and territorial integrity of Sri Lanka, and preserving its character as a multi-ethnic, multi-

lingual and multi-religious plural society, in which all citizens can live in equality, safety and harmony, and prosper and fulfil their aspirations;

2. **Resolve that:**
  - 2.1 Since the Government of Sri Lanka proposes to permit adjoining Provinces to join to form one administrative unit and also by a Referendum to separate as may be permitted to the Northern and Eastern Provinces as outlined below:
  - 2.2 During the period, which shall be considered an interim period (i.e.) from the date of the elections to the Provincial Council, as specified in para 2.8 to the date of the Referendum as specified in para 2.3, the Northern and Eastern Provinces as now constituted, will form one administrative unit, having one elected Provincial Council. Such a unit will have one Governor, one Chief Minister and one Board of Ministers.
  - 2.3 There will be a Referendum on or before 31 December 1988 to enable the people of the Eastern Province to decide whether:
    - (A) The Eastern Province should remain linked with the Northern Province as one administrative unit, and continue to be governed together with the Northern Province as specified in para 2.2, or
    - (B) The Eastern Province should constitute a separate administrative unit having its own distinct Provincial Council with a separate Governor, Chief Minister and Board of Ministers.The President may, at his discretion, decide to postpone such a Referendum.
  - 2.4 All persons who have been displaced due to ethnic violence, or other reasons, will have right to vote in such a Referendum. Necessary conditions to enable them to return to areas from where they were displaced will be created.
  - 2.5 The Referendum, when held, will be monitored by a committee headed by the Chief Justice, a member appointed by the President, nominated by the Government of Sri Lanka, and a member appointed by the President, nominated by the representatives of the Tamil speaking people of the Eastern Province.

- 2.6 A simple majority will be sufficient to determine the result of the Referendum.
- 2.7 Meeting and other forms of propaganda, permissible within the laws of the country, will be allowed before the Referendum.
- 2.8 Elections to Provincial Councils will be held within the next three months, in any event before 31 December 1987. Indian observers will be invited for elections to the Provincial Council of the North and East.
- 2.9 The emergency will be lifted in the Eastern and Northern Provinces by 15 August 1987. A cessation of hostilities will come into effect all over the Island within 48 hours of the signing of this Agreement. All arms presently held by militant groups will be surrendered in accordance with an agreed procedure to authorities to be designated by the Government of Sri Lanka. Consequent to the cessation of hostilities and the surrender of arms by militant groups, the army and other security personnel will be confined to barracks in camps as on 25 May 1987. The process of surrendering of arms and confining the security personnel moving back to barracks shall be completed within 72 hours of cessation of hostilities coming into-effect.
- 2.10 The Government of Sri Lanka will utilise for the purpose of law enforcement and maintenance of security in the Northern and Eastern Provinces the same organisations and mechanisms of Government as are used in the rest of the country.
- 2.11 The President of Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism Act and other emergency laws, and to combatants, as well as to those persons accused, charged and/or convicted under these laws. The Government of Sri Lanka will make special efforts to rehabilitate militant youth with a view to bringing them back to the mainstream of national life. India will cooperate in the process.
- 2.12 The Government of Sri Lanka will accept and abide by the above provisions and expect all others to do likewise.
- 2.13 If the framework for the resolutions is accepted, the Government of Sri Lanka will implement the relevant proposals forthwith.

- 2.14 The Government of India will underwrite and guarantee the resolutions, and cooperate in the implementation of these proposals.
- 2.15 These proposals are conditional to an acceptance of proposals negotiated from 4.5.1986 to 19.12.1986. Residual matters not finalised during the above negotiations shall be resolved between India and Sri Lanka within a period of six weeks of signing this Agreement. These proposals are also conditional to the Government of India cooperating directly with the Government of Sri Lanka in their implementation.
- 2.16 These proposals are also conditional to the Government of India taking the following actions if any militant group operating in Sri Lanka does not accept this framework of proposals for a settlement, namely:
  - (A) India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.
  - (B) The Indian Navy/Coast Guard will cooperate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.
  - (C) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals the Government of India will cooperate by giving to the Government of Sri Lanka such military assistance as and when requested.
  - (D) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.
  - (E) The Governments of India and Sri Lanka will cooperate in ensuring the physical security and safety of all communities inhabiting the Northern and Eastern Provinces.
- 2.17 The Government of Sri Lanka shall ensure free, full and fair participation of voters from all communities in the Northern and Eastern Provinces in electoral processes envisaged in this Agreement. The Government of India will extend full cooperation to the Government of Sri Lanka in this regard.



2.18 The official language of Sri Lanka shall be Sinhala, Tamil and English will also be official languages.

3. This Agreement and the annexure thereto shall come into force upon signature.

In witness whereof we have set our hands and seals hereunto.  
Done in Colombo, Sri Lanka, on this the twenty-ninth day of July of the year one thousand nine hundred and eighty-seven, in duplicate, both texts being equally authentic.

Rajiv Gandhi  
Prime Minister of the Republic of India

Junius Richard Jayewardene  
President of the Democratic Socialist Republic of Sri Lanka

#### ANNEXURE TO THE AGREEMENT

1. His Excellency the Prime Minister of India and His Excellency the President of Sri Lanka agree that the Referendum mentioned in paragraph 2 and its sub-paragraphs of the Agreement will be observed by a representative of the Election Commission of India to be invited by His Excellency the President of Sri Lanka.
2. Similarly, both Heads of Government agree that the elections to the Provincial Council mentioned in paragraph 2.8 of the Agreement will be observed by a representative of the Government of India to be invited by the President of Sri Lanka.
3. His Excellency the President of Sri Lanka agrees that the Home Guards would be disbanded and all paramilitary personnel will be withdrawn from the Eastern and Northern Provinces with a view to creating conditions conducive to fair elections to the Council.

The President, in his discretion, shall absorb such paramilitary forces, which came into being due to ethnic violence into the regular security forces of Sri Lanka.

4. The Prime Minister of India and the President of Sri Lanka agree that the Tamil militants shall surrender their arms to authorities agreed upon to be designated by the President of Sri Lanka. The surrender shall take place in the presence of one senior representative each of the Sri Lanka Red Cross and the Indian Red Cross.
5. The Prime Minister of India and the President of Sri Lanka agree that a joint Indo-Sri Lankan observer group consisting of qualified representatives of the Government of India and the Government of Sri Lanka would monitor the cessation of hostilities from 31 July 1987.
6. The Prime Minister of India and the President of Sri Lanka also agree that in terms of paragraph 2.14 and paragraph 2.16(C) of the Agreement, an Indian Peace Keeping contingent may be invited by the President of Sri Lanka to guarantee and enforce the cessation of hostilities, if so required.

Prime Minister of India  
New Delhi  
29 July 1987

Excellency,

Conscious of the friendship between our two countries stretching over two millennia and more, and recognising the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudicial to each other's unity, territorial integrity and security.

In this spirit, you had, during the course of our discussions, agreed to meet some of India's concerns as follows:

- (i) Your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and

intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lankan relations.

- (ii) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.
- (iii) The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka.
- (iv) Sri Lanka's agreement with foreign broadcasting organisations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.

In the same spirit, India will:

- (i) Deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.
- (ii) Provide training facilities and military supplies for Sri Lankan security forces.

India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para 1 and specifically to monitor the implementation of other matters contained in this letter.

Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us. Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,  
(Rajiv Gandhi)

*His Excellency*  
*Mr.J.R.Jayewardene*

President of Sri Lanka  
29 July 1987

Excellency,

Please refer to your letter dated the 29th of July 1987, which reads as follows:

Excellency,

1. Conscious of the friendship between our two countries stretching over two millennia and more, and recognizing the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudicial to each other's unity, territorial integrity and security.
2. In this spirit, you had, during the course of our discussions, agreed to meet some of India's concerns as follows:
  - (i) Your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lankan relations.
  - (ii) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.
  - (iii) The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka.
  - (iv) Sri Lanka's agreements with foreign broadcasting organisations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.
3. In the same spirit, India will:
  - (i) Deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.
  - (ii) Provide training facilities and military supplies for Sri Lankan security forces.

4. India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para I and specifically to monitor the implementation of other matters contained in this letter.
5. Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us.

Please accept, Excellency, the assurance of my highest consideration.

Yours sincerely,  
(Rajiv Gandhi)

*His Excellency  
Mr. J.R. Jayewardene  
President of the Democratic Socialist Republic of Sri Lanka, Colombo*

This is to confirm that the above correctly sets out the understanding reached between us. Please accept, Excellency, the assurance of my highest consideration.

(J.R. Jayewardene)

*President  
Foreign Affairs Record, July 1987, pp.252-57.*

## I

### **The Interim Report of the Mangala Moonesinghe Parliamentary Select Committee, 1992**

Your Committee was constituted following the unanimous adoption by Parliament on 9th August, 1991 of the following motion moved by Mr Mangala Moonesinghe and seconded by Mr Stanley Tillekeratne:

“That this Parliament is of opinion that a Select Committee of Parliament be appointed

- (a) to arrive at a political solution to the question involving the devolution of power to the Northern and Eastern Provinces;
- (b) to prevent -
  - (i) the disintegration of the nation;
  - (ii) the killings of innocent civilians, members of the Armed Forces and the Youths fighting for a cause;
  - (iii) the increased militarization of the culture of violence in our country; and
- (c) to achieve peace and political stability and utilize the reduced defence expenditure for rapid economic growth and national development.

That the Committee shall -

- (a) have the power to fix its quorum;

- (b) have the power to summon any person to appear before it, to require any person to produce any document or record, to procure and receive all such evidence, written or oral, as the Committee may think it necessary for the fullest consideration of the matters referred to above, and
- (c) have the power to report from time to time and to sit notwithstanding any adjournment of Parliament".

While moving the Motion Mr Moonesinghe proposed an amendment to delete the word "national" which appeared in the notice between the words "the" and "question" in paragraph (a). The House agreed to the amendment.

Hon. Speaker thereafter appointed a Committee of 45 Members representing all parties in Parliament under the Chairmanship of Mr Mangala Moonesinghe. This is the largest Select Committee in the history of the Parliament of Sri Lanka.

At its first meeting held on 20th November 1991 the Committee fixed its quorum at fourteen.

The Committee has held 43 meetings to date.

Your Committee at its meeting on 20th November 1991, decided to call for written representations from the public on matters relating to its Order of Reference. This decision was advertised in the Press and given publicity through radio and television in Sinhala, Tamil and English. The closing date for such representations was fixed for 16th December 1991. Your Committee subsequently decided that representations received up to 10th January 1992 would be considered. Your Committee received 253 memoranda.

Memoranda were received from Members of Parliament, political parties, other organizations and individuals. Where clarification of the submissions was found to be necessary, the Committee examined the Members of Parliament, representatives of political and other organizations and individuals, (vide Appendix I).

The Head of the International Committee of the Red Cross Delegation in Sri Lanka, Mr Piarre Wettach, in March 1992, confirmed in writing to the Chairman that he had met two members of the LTTE viz. Mr G. Mahendrarajah (Mahattaya) and Mr Balasingham who had informed him that a delegation from the Select Committee would be welcome in Jaffna. Your Committee informed Mr Wettach that any representation from the LTTE would be welcome and that they wished this to be conveyed to the LTTE. However, the Committee notes with regret that there has been no response whatsoever from the LTTE in this regard up to date proposals and evidence, the following issues emerged for consideration:

- (a) whether the temporarily merged Northern and Eastern Provinces should continue to be one unit with special arrangements made to safeguard the interests of the Muslims;
- (b) whether the Northern and Eastern Provinces should be separated and that each should be an independent unit of devolution;
- (c) whether the temporary North-East merger should continue except for the Sinhala populated areas to be excised and annexed to the neighbouring Provinces; and
- (d) whether the unit of devolution should be the District.

As your Committee continued its deliberations, it became clear that misunderstanding and mistrust prevailed on issues pertaining to colonization of lands, law and order and delays in implementation of legislation relating to devolution. The Committee decided that public servants who had access to information and specialized knowledge of the subject should be summoned to give evidence.

Public Officers were examined on the following subjects:

### Colonization

The Land Commissioner, the Secretary, Ministry of Lands, Irrigation and Mahaweli Development and the Director, Planning in

the Mahaweli Development Authority were summoned to give evidence and produce documents pertaining to relevant data on land settlement in the Northern and Eastern Provinces. Their evidence related to land settlement in those Provinces since independence in 1948 together with an ethnic classification of those settled in the colonization schemes (vide Appendix II).

### Land and Order

The Inspector-General of Police gave evidence on the relevant aspects of law and order. He explained that there were provisions in the Constitution under the 13th Amendment to establish a National Police Service and Provincial Police Services. (Vide Appendix III).

### Finance

Members of the Finance Commission outlined the principles upon which financial disbursements are made to Provincial Councils for capital outlays and recurrent expenditure. The Secretary, Ministry of Finance indicated to the Committee that the objective of the Commission was to encourage the Provincial Councils to expand their revenue base and take an initiative in revenue collection in order to be financially viable.

Your Committee also summoned the Director, External Resources who held the view that it would be useful to allow the Chief Ministers to take preliminary steps to procure foreign loans and aid to develop their respective Provinces provided that the Central Government also participated in the negotiations. (vide Appendix IV).

It was apparent from the evidence of these public servants that the devolution contemplated in the legislation relating to Provincial Councils had not been fully implemented.

Your Committee is unanimous that there should be a greater devolution of power and that such devolution should be put into effect within a specified time. Your Committee was also of the view that not

only should more power be devolved in conventional subjects such as health and transport, but also in matters such as foreign aid and foreign concessionary loans and that the Chief Executive of a Province must be encouraged to take the initiative in negotiating external financial assistance to develop the Province provided that the Central Government also participated in the negotiations.

In the course of the deliberations on the conflicting issues raised a Concept Paper was tabled embodying a compromise which provided for two separate Councils and an Apex Assembly consisting of Members of the two Councils to plan common policies and co-ordinate programmes. The Paper presented a flexible framework for discussion.

The Paper was rejected by Members of the Committee belonging to the Ceylon workers' Congress and the Tamil United Liberation Front.

Subsequently an Option paper was tabled incorporating the salient features contained in

- (a) The Bandaranaike-Chelvanayagam Pact
- (b) The Dudley Senanayake-Chelvanayagam Pact
- (c) The Manifesto of the Democratic Peoples' Alliance
- (d) The Memorandum of the Mahajana Eksath Peramuna
- (e) The Memorandum of Mr S.L. Gunaseskera, M.P.
- (f) The Memorandum of the Sri Lanka Muslim Congress
- (g) The Concept Paper, and
- (h) The "Four Point Formula" of the Tamil United Liberation Front

Your Committee in order to expand the area of devolved subjects, examined closely, the papers presented by the Ceylon

Workers' Congress and the Four Point Formula of the Tamil United Liberation Front.

Your Committee agreed that the subjects in List III (Concurrent List) of the Ninth Schedule to the Thirteenth Amendment to the Constitution should be minimised or even that the list should be dispensed with.

Mr K.Srinivasan, M.P. for the Jaffna District subsequently presented a proposal on 11th November 1992, entitled "A Realistic Solution to the National Crisis". A majority of members of Your Committee on 11th December 1992, agreed to adopt Item 2 in that proposal namely that "the Northern and the Eastern Provinces shall each be treated as a distinct unit of devolution". The Members representing the Ceylon workers' Congress and the Tamil United Liberation Front did not agree.

Item 1 of the proposal states -

"The Unitary nature of the Sri Lankan Constitution be converted into a federal one"

"Provided however that subject to the undertaking by the Parties to the Select Committee that they shall not canvass and/or participate, the question whether Sri Lanka should have a Federal Constitution or not may be put to the determination of the people of Sri Lanka through the democratic mechanism of a referendum".

While not accepting this item in its entirety, the majority of Your Committee agreed that the devolution of functions may be on lines similar to those found in the Indian Constitution.

The member of Your Committee representing the Mahajana Eksath Peramuna did not agree to Item 1 of the Srinivasam Proposal.

## **MATTERS AGREED UPON BY A MAJORITY OF THE MEMBERS**

On 11th December 1992, Members of Your Committee representing the United National Party, Sri Lanka Freedom Party, Sri Lanka Muslim Congress, the Communist Party, Lanka Sama Samaja Party as well as the independent members, Mr K.Srinivasan, Member for Jaffna District and Mr Basheer Segudawood, Member for Batticaloa District, reached agreement;

- (a) on the establishment of two separate units of administration for the Northern and the Eastern Provinces;
- (b) to adopt a scheme of devolution on lines similar to those obtaining in the Indian Constitution; and
- (c) to devolve more subjects that are in List III (Concurrent List) or to dispense with the List.

J

## Excerpts from Gamini Dissanayake's "Vision for the 21st Century"

I have always believed that every ethnic and religious group living in Sri Lanka should have its identity respected and secured. It is also my firm conviction that the sharing of power between diverse political, ethnic and religious groups is the true mark of a democratic society. Such beliefs and convictions prompted me to give my fullest support to the Indo-Sri Lanka Accord and also to the 13th Amendment to the Constitution which was the first serious attempt to share political power with minorities. Unfortunately, lack of political will and an inadequacy of the powers under the 13th Amendment have frustrated the people of the North-East - Tamils, Muslims and Sinhalese - who are now dissatisfied with the Provincial Councils system.

Some countries are now realising that one of the best ways of reducing and preventing internal conflict is to get their people to participate more in government and to give them more input into the important decisions that affect their lives. These can be achieved by decentralising or devolving more power to local government and by giving more freedom to people's organisations. In some undesirable instances, however, devolution may unwittingly empower the elite and not the local people whom it is intended to benefit. If devolution is to reduce conflict and promote human development, it must therefore be accompanied by *genuine democracy at local level*.

The devolution of power from government capitals to villages and provinces is one of the most effective ways of empowering local people, promoting local harmony and public participation, and increasing efficiency.

It is in this context that I am proposing that a devolution of power to the Provincial Councils in Sri Lanka will give this country the best chance of ending the long and costly ethnic conflict that has torn it apart and also its best chance of establishing national unity. To increase efficiency in those Provincial Councils, we must ensure that there is genuine democracy operating at the local level and we must also allocate more financial resources to them. It is interesting to note that industrialised countries allocate 25% of local government spending to the local level, while developing countries delegate a meagre 10%.

I do not believe that mere gestures of goodwill to the minorities or general discussions by the PA about peace making, particularly by representatives who do not possess the expertise or the experience in negotiating and resolving conflicts will significantly change the current situation in Sri Lanka. That is why, if I am elected President, I shall include detailed provisions for the devolution of power to the Provincial Councils in the constitutional proposals I will place before Parliament. Until the precise form of the new units is agreed upon with representative political forces of the North-East, I will conduct elections to the Provincial Councils in the North-East and ensure that an elected Provincial Government runs the affairs of that troubled province.

The Tamils of Sri Lanka understandably feel that they have been deceived by some political leaders who unfortunately never placed any details of their proposals for devolution of power before the Tamils. At the same time the majority of Sri Lankans are equally justified in feeling upset about any proposed devolution of power to the Tamils if negotiations are conducted secretly and the details of devolution are not publicly discussed. Accordingly, I have set out as an appendix to my programme, the scheme for devolution which I intend to implement as President. I will welcome discussion on these issues with political representatives of both the minority and majority interests.

## APPENDIX

### Scheme of Devolution

- (1) The legislature [sic] power of the people shall be executed by a Parliament consisting of members of the Senate and the House of Representatives, by Provincial Councils and by the people at a Referendum.
- (2) The Executive power of the people shall be exercised by the President, the Cabinet of Ministers and by the Governors of the Provinces acting on the advice of their respective Chief Ministers.
- (3) There shall be an independent Central Public Service and Provincial Public Services which shall be responsible to the Central Government and Provincial Governments respectively.
- (4) Judges of the Provincial High Courts shall be appointed by the Governor in consultation with the President of the High Court. The new constitutional proposals will strengthen devolution and liberal democracy in the following ways:
  - (a) There will be a clear-cut division of powers between the centre and the provinces. Under the Thirteenth Amendment to the Constitution, the division of powers is not clear. Several subjects have been placed in the Concurrent List, but the method by which the concurrence of the Central Government and the Provinces is ascertained has not been clearly spelled out. In effect this has resulted in the Central Government wielding power over concurrent subjects.
  - (b) There will exist co-ordinate powers of the centre and provinces where powers devolved to provinces cannot be exercised by the Central Government. Under the

Thirteenth Amendment to the Constitution, Provincial Councils do not exercise complete authority over subjects assigned to them.

- (c) Powers conferred will not be able to be reduced or withdrawn without the consent of the provinces. Under the Thirteenth Amendment, Provincial Councils can be abolished, or their powers curtailed by Parliament acting unilaterally.
- (d) The excessive powers presently vested in the Executive Presidency will be curtailed. Under the Thirteenth Amendment to the Constitution, the powers of the Executive President have been enhanced by virtue of the powers he exercises through the Governor of the Province.
- (e) Since this proposed package of devolution entails a division of powers and the introduction of checks and balances, other institutional reforms will have to be introduced in a new constitution. These include a comprehensive package of checks and balances which include a bi-cameral national legislature, judicial review of legislation and the recognition of the supremacy of the constitution.

## THE CENTRAL GOVERNMENT

### (1) The Governor

- (1) There shall be a Governor appointed by the President of the Republic for each province. The President of the Republic shall appoint a Governor with the concurrence of the Chief Minister. The term of office of the Governor shall be five years.



- (2) The Governor of the provinces may vacate his office by,
  - (a) resigning or
  - (b) by a two thirds majority of the Provincial Council passing a vote of no-confidence.
- (3) The Governor shall not hold any other office or place of profit.
- (4) The Governor shall appoint the Member of the Provincial Council who commands the majority in the Council as the Chief Minister, who in turn will form a Provincial Government.
- (5) The Governor will appoint a person eligible to be a Judge of the High Court to be the Provincial Attorney General.
- (6) The Governor may summon, dissolve and prorogue the Provincial Council in consultation with the Chief Minister.
- (7) In the absence of the Governor, the President of the High Court of the Province shall assume his duties.

## (II) The Provincial Council

- (1) The Provincial Council will consist of as many members as may be determined by the delimitation laws.
- (2) The term of office of the Provincial Council shall be five years.
- (3) The Provincial Council shall elect a Chairperson, and a Deputy Chairperson to oversee the affairs of the Council.

## (III) The Chief Minister and the Board of Ministers

- (1) Executive power in the province shall be vested in the Board of Ministers.
- (2) The Board of Ministers shall be appointed by the Governor from among the Members of the Provincial Council on the recommendation of the Chief Minister.
- (3) The Board of Ministers and the Chief Minister will be collectively answerable to the Provincial Council.

## (IV) The Separation of Powers

- (1) Every province may make statutes applicable to the province with respect to any subject set out in the 'Provincial List'. From the commencement of the new Constitutional arrangements Parliament shall not enact legislation on subjects on the Provincial List.
- (2) The Provincial Council cannot exercise authority over the subjects set out in the 'Reserved List'.
- (3) If conflicts arise with respect to the division of power between the Central Government and the Provinces, the matter shall be referred to the Devolution Commission which shall resolve such conflict. If the Devolution Commission is unable to do so, the matter shall be referred to the Supreme Court for adjudication.
- (4) The Devolution Commission shall be responsible for all matters which require consultation and co-ordination between the Central Government and the Province.

- (5) The Devolution Commission shall consist of ten (10) Senators, five (5) of whom shall be Senators elected from the Provinces.

**(V) Finance**

- (1) A constitutionally guaranteed amount of financial resources including a sum of foreign exchange will be transferred by the Central Government from the Consolidated Fund to the funds of the Provincial Governments. This amount may be calculated as a percentage of the GNP of the Annual Budget. In addition, financial resources will accrue to Provincial Governments from grants, taxes, financial institutions and foreign aid.
- (2) A Finance Commission shall allocate the funds referred to in (1) above as a block grant to each Province taking account of the needs of and disparities between the provinces.

The Finance Commission shall consist of:

- a) The Finance Minister
- b) The Finance Ministers of the Province
- c) The Minister of Trade
- d) The Minister of Agriculture
- e) Two (2) other Cabinet Ministers nominated by the President
- f) The Governor, Central Bank

- g) The Chairperson - Foreign Investment Advisory Committee
- h) Two (2) persons nominated by the President from among the academic community and the private sector distinguished in the areas of banking and/or finance
- i) A Member of Parliament nominated by the Prime Minister
- j) A Member of Parliament nominated by the Leader of the Opposition
- k) A Senator nominated by the Leader of the Senate
- l) A Senator nominated by the Leader of the Opposition in the Senate

- (3) The detailed expenditure of the block grant to each province shall be determined by its Provincial Government and Parliament.
- (4) Provincial Governments shall have the authority to establish financial institutions and to negotiate foreign assistance in consultation with the Central Government.

**(VI) Law and Order**

- (1) A Provincial Police Force shall be constituted in each province. The Provincial Police Force shall be headed by an officer of the rank of DIG and appointed by the Governor on the recommendation of the IGP. The DIG shall be responsible to and under the control

of the Chief Minister. Training of the Provincial Police Force shall be the responsibility of the Central Force.

- (2) The appointed transfer, dismissal and disciplinary control of police officers shall be the responsibility of the Provincial Government acting in consultation with the IGP.
- (3) All police officers serving in the provinces, unless otherwise specified, shall function under the direction and control of the DIG of the province.
- (4) Unless approved by the Provincial Police Force, the Central Police may only investigate offences against the State and offences relating to elections, in the territory of the Provincial Police Force. In all instances, officers of the Central Police Force shall function under the ultimate direction and control of the Central Police Force.
- (5) A State of Emergency in a province must be declared by the Governor of the province and approved by two thirds majority of the Provincial Council of the province. Individual liberty may not be circumscribed by a Provincial State of Emergency so as to violate international norms of human rights.

#### **(VII) The Judiciary**

- 1) There shall be a High Court for each province. The Governor of the province in consultation with the President of the High Court of each province shall nominate the Judges of the High Court.

- (2) The High Court shall exercise appellate, revisionary and writ jurisdiction within the province.
- (3) Appeals from decisions of the High Court shall be taken up in the Court of Appeal. The Supreme Court shall be the highest court of Sri Lanka and shall exercise constitutional jurisdiction.

#### **(VIII) Language**

- (1) Sinhala, Tamil and English shall be the official languages and shall have equal status for all purposes.

#### **(IX) Land**

- (1) Land shall be vested in the State.
- (2) There shall be a Land Commission which shall allocate land to the Central Government for Central Government purposes. All remaining land may be allocated by the Provincial Councils.
- (3) The Land Commission shall consist of an equal number of persons nominated by the Minister in charge of the subject of Lands and the Provincial Councils respectively. Each Provincial Council shall have at least one nominee on the Land Commission.

#### **GENERAL PROVISIONS**

- (1) The Armed Forces of the country including the police forces, Central as well as Provincial shall be enlisted to reflect the multi-cultural and plural nature of Sri Lanka and its provinces.
- (2) Priority in colonisation schemes shall be given to persons first of the district and then of the province.

**LISTS****(I) RESERVED LIST**

1. Defence, The Army, Navy and the Air Force
2. Foreign Affairs
3. National Police Force and its Functions
4. Diplomatic and Consular Affairs
5. United Nations
6. Immigration and Emigration
7. Atomic Energy
8. Posts and Telecommunication
9. Economic and Financial Affairs -
10. Stock Exchange
11. Elections
12. Central Government Broadcasting and
13. National Census and Statistics
14. Trade Marks and Patents
15. Anti-Monopoly Regulations
16. Drugs and Narcotics
17. Central Income Tax
18. National Archives
19. National Universities
20. Inter-Provincial Irrigation
21. National Rivers
22. Territorial Waters
23. Airports, Ports and Harbours which deal with international transportation
24. Higher Judiciary
25. National Transport, Railway  
Central Bank, Currency, Foreign Exchange
26. Archaeological Sites
27. Mines and Minerals
28. Regulation and development of Oil  
Television  
Fields and Mineral Resources with the concurrence of the relevant Provincial Council

29. National Public Service
30. Natural Disaster Relief and Rehabilitation
31. Protection of the Environment
32. Ownership of private property

**(II) PROVINCIAL LIST**

1. Provincial Planning and Finance
2. Provincial Highways
3. Broadcasting and Television
4. Tourism
5. Surveying
6. Provincial Police Force
7. Provincial Public Service Commission
8. Provincial Judicial Service Commission
9. State land, with reservations for the Central Government
10. Education and Higher Education
11. Relief and Rehabilitation
12. Transport, Roads and Waterways
13. Minor Ports and Harbours
14. Industries, Industrial Research and Development
15. Animal Husbandry
16. Forestry and Agriculture
17. Protection of the Environment
18. Irrigation
19. Energy
20. Urban Planning
21. Labour Regulation
22. Social Security

Territorial units of devolution pertaining to the North-East shall be determined by negotiation with representative political forces of the North-East.

## K

### Thirteenth Amendment to the Constitution (1987)

#### *An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

1. This Act may be cited as the Thirteenth Amendment to the Constitution and shall come into operation on such date as the President may, appoint, by Order published in the *Gazette*.
2. Article 18 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "Constitution") is hereby amended as follows:-
  - (a) by the renumbering of that Article as paragraph (1) of that Article;
  - (b) by the addition immediately after paragraph (1) of that Article of the following paragraphs:
    - (2) Tamil shall also be an official language.
    - (3) English shall be the link language.
    - (4) Parliament shall by law provide for the implementation of the provisions of this Chapter."

3. Article 138 of the Constitution is hereby amended in paragraph (1) of that Article as follows:-
  - (a) by the substitution, for the words "committed by any Court of First Instance", of the words "committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance"; and
  - (b) by the substitution, for the words "*of which such Court of First Instance*" of the words "*of which such High Court, Court of First Instance*".
4. The following Chapter and Articles are hereby inserted immediately after Article 154, and shall have effect as Chapter XVIIIA and Articles 154A to 154T, of the Constitution:-

#### CHAPTER XVIIIA

- 154 A. (1) Subject to the provisions of the Constitution, a Provincial Council shall be established for every Province specified in the Eighth Schedule with effect from such date or dates as the President may appoint by Order published in the *Gazette*. Different dates may be appointed in respect of different Provinces.
- (2) Every Provincial Council established under paragraph (1) shall be constituted upon the election of the members of such Council in accordance with the law relating to Provincial Council elections.
- (3) Notwithstanding anything in the preceding provisions of this Article, Parliament may by, or under, any law provide for two or three adjoining Provinces to form one administrative unit with one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers and for the manner of determining whether

such Provinces should continue to be administered as one administrative unit or whether each such Province should constitute a separate administrative unit with its own Provincial Council, and a separate Governor, Chief Minister and Board of Ministers.

- 154 B. (1) There shall be a Governor for each Province for which a Provincial Council has been established in accordance with Article 154A.
- (2) the Governor shall be appointed by the President by warrant under his hand, and shall hold office, in accordance with Article 4(b), during the pleasure of the President.
- (3) The Governor may, by writing addressed to the President, resign his office.
- (4) (a) The Provincial Council may, subject to sub-paragraph (b) present an address to the President advising the removal of the Governor on the ground that the Governor-
- (i) has intentionally violated the provisions of the Constitution;
  - (ii) is guilty of misconduct or corruption involving the abuse of the powers of his office; or
  - (iii) is guilty of bribery or an offence involving moral turpitude,
- if a resolution for the presentation of such address is passed by not less than two-thirds of the whole number of members of the Council (including those not present).
- (b) No resolution for the presentation of an address to the President advising the removal of the Governor on

the grounds referred to in sub-paragraph (a) shall be entertained by the Chairman of the Provincial Council or discussed at the Council, unless notice of such resolution is signed by not less than one-half of the whole number of members present.

- (5) Subject to the preceding provisions of this Article, the Governor shall hold office for a period of five years from the date he assumes office.
- (6) Every person appointed as Governor shall assume office upon taking or subscribing, the oath or making or subscribing the affirmation, set out in the Fourth Schedule, before the President.
- (7) Upon such assumption of office a Governor shall cease to hold any other office created or recognized by the Constitution, and if he is a Member of Parliament, shall vacate his seat in Parliament. The Governor shall not hold any other office or place of profit.
- (8) (a) The Governor may, from time to time, summon the Provincial Council to meet at such time and place as he thinks fit, but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.
- (b) The Governor may, from time to time, prorogue the Provincial Council.
- (c) The Governor may dissolve the Provincial Council.
- (d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.

- (9) Without prejudice to the powers of the President under Article 34 and subject to his directions the Governor of a Province shall have the power to grant a pardon to every person convicted of an offence against a statute made by the Provincial Council of that Province or a law made by Parliament on a matter in respect of which the Provincial Council has power to make statutes and to grant a respite or remission of punishment imposed by Court on any such person:

Provided that where the Governor does not agree with the advice of the Board of Ministers in any case and he considers it necessary to do so in the public interest, he may refer that case to the President for orders.

- (10) (a) The Governor may address the Provincial Council and may for that purpose require the attendance of members.
- (b) The Governor may also send messages to the Council either with respect to a statute then pending with the Council or otherwise, and when a message is so sent the Council shall with all convenient despatch consider any matter required by the message to be taken into consideration.
- (11) It shall be the duty of the Chief Minister of every Province-
- (a) to communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the Province and the proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for; and

- (c) if the Governor so requires, to submit for consideration of the Board of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Board.
- (12) Parliament shall by law or resolution make provision for the salary, allowances, age of retirement and pension entitlement of holders of the office of Governor.
- 154 C. Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established, either directly or through Ministers of the Board of Ministers, or through officers subordinate to him, in accordance with Article 154F.
- 154 D. (1) A Provincial Council shall consist of such number of members as may be determined by or under law, having regard to the area and population of the Province for which that Provincial Council is established.
- (2) (a) A Provincial Council may at the commencement of the term of office of its members, decide, by resolution, to grant Members of Parliament elected for electoral districts, the limits of which fall within the Province for which that Provincial Council is established, the right to participate in proceedings of that Council.
- (b) So long as a resolution passed under sub-paragraph (a) is in force, a Member of Parliament elected for an electoral district, the limits of which fall within the Province for which that Provincial Council is established, shall have the right, during the term of office of that Council, to speak in and otherwise take part in the proceedings of that Provincial

Council and to speak in and otherwise take part in, any committee of the Provincial Council of which he may be named a member but shall be entitled to vote thereat only if the resolution passed under sub-paragraph (a) so provides.

- (c) The provisions of this paragraph shall cease to operate on the date of dissolution of the first Parliament.

154 E. A Provincial Council 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 Council.

154 F. (1) There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. The Governor shall in the exercise of his functions act in accordance with such advice except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

- (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question in any Court on the ground that he ought or ought not have acted on his discretion. The exercise of the Governor's discretion shall be on the President's directions.
- (3) The question whether any, and if so what, advice was tendered by the Ministers to the Governor shall not be inquired into in any Court.

- (4) The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for the Province, who, in his opinion, is best able to command the support of a majority of the members of that Council:

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

- (5) The Governor shall, on the advice of the Chief Minister, appoint from among the members of the Provincial Council constituted for that Province, the other Ministers.
- (6) The Board of Ministers shall be collectively responsible and answerable to the Provincial Council.
- (7) A person appointed to the office of Chief Minister or member of the Board of Ministers shall not enter upon the duties of his office until he takes and subscribes the oath, or makes and subscribes the affirmation, set out in the Fourth Schedule.

154 G (1) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule (hereinafter referred to as "the Provincial Council List")

- (2) No Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President after its publication in the *Gazette* and before it is placed on the Order paper of Parliament to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -



- (a) where every such Council agrees to the amendment or repeal, such Bill is passed by a majority of the Members of Parliament present and voting; or
  - (b) where one or more Councils do not agree to the amendment or repeal such Bill is passed by the special majority required by Article 82.
- (3) No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the *Gazette* and before it is placed in the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference and -
- (a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or
  - (b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:
- Provided that where on such references, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting.
- (4) Where one or more Provincial Councils request Parliament by resolution, to make law on any matter set out in the Provincial Council List, Parliament may make law on that matter, applicable only to the Provinces for which these Provincial Councils are established, by a majority of Members of Parliament present and voting.

- (5) (a) Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule (hereafter referred to as "the Concurrent List") after such consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.
  - (b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.
- (6) If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of the Article, the provisions of such law shall prevail and the provisions of such statute shall to the extent of such inconsistency, be void.
- (7) A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule (hereafter referred to as "the Reserved List").
- (8) Where there is a law with respect to any matter on the Provincial Council List in force on the date on which this Chapter comes into force, and a Provincial Council established for a Province subsequently makes a statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of the law shall, with effect from the date on which that statute receives assent and so long only as that statute is in force remain suspended and be inoperative within that Province.

- (9) Where there is a law with respect to a matter on the Concurrent List on the date on which this Chapter comes into force and a Provincial Council established for a Province subsequently makes a statute on the same matter inconsistent with that law, the provisions of that law shall, unless Parliament, by resolution, decides to the contrary, remain suspended and be inoperative within that Province, with effect from the date on which that statute receives assent and so long only as that statute is in force.
- (10) Nothing in this Article shall be read or construed as derogating from the powers conferred on Parliament by the Constitution to make laws, in accordance with the Provisions of the Constitution (inclusive of this Chapter), with respect for any matter, for the whole of Sri Lanka or any part thereof.
- (11) Notwithstanding anything in paragraph (3) of the Articles, Parliament may make laws, otherwise than in accordance with the procedure set out in that paragraph, in respect of any matter set out in the Provincial Council List for implementing any treaty, agreement or convention with any other country or countries or any decisions made at an international conference, association, or other body.
- 154 H. (1) Every statute made by a Provincial Council shall come into force upon such statute receiving assent as hereinafter provided.
- (2) Every statute made by a Provincial Council shall be presented to the Governor for his assent, forthwith upon the making thereof, and the Governor shall either assent to the statute or he may as soon as possible after the statute is presented to him for assent return it to the Provincial Council together with a message requesting the Council to reconsider the statute or any specified

- provision thereof and in particular, requesting it to consider the desirability of introducing such amendments as may be recommended in the message.
- (3) Where a statute is returned to a Provincial Council by the Governor under paragraph (2), the Provincial Council shall reconsider the statute having regard to the Governor's message and may pass such statute with or without amendment and present it to the Governor for his assent.
- (4) Upon presentation of a statute to the Governor under paragraph (3), the Governor may assent to the statute or reserve it for reference by the President to the Supreme Court, within one month of the passing of the statute for the second time, for a determination that it is not inconsistent with the provisions of the Constitution. Where upon such reference, the Supreme Court determines that the statute is consistent with the provisions of the Constitution, the Governor shall on receipt by him of the Court's determination, assent to the statute. Where upon such reference, the Supreme Court determines that the statute is inconsistent with the provisions of the Constitution, the Governor shall withhold assent to the statute.
- 154 J. (1) Upon the making of a Proclamation under the Public Security Ordinance or the law for the time being in force relating to public security, bringing the provisions of such Ordinance or law into operation on the ground that the maintenance of essential supplies and services is threatened or that the security of Sri Lanka is threatened by war or external aggression or armed rebellion, the President may give directions to any Governor as to the manner in which the executive power exercisable by the Governor is to be exercised. The directions so given shall be in relation to the grounds specified in such Proclamation for the making thereof.

*Explanation:* A Proclamation under the Public Security Ordinance declaring that the maintenance of essential supplies and services is threatened or that the security of Sri Lanka or any part of the territory thereof is threatened by war, or by external aggression, or by armed rebellion may be made before the actual breakdown of supplies and services, or the actual occurrence of war, of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof:

Provided that where such Proclamation is in operation only in any part of Sri Lanka, the power of the President to give directions under this Article, shall also extend to any Province other than the Province in which the Proclamation is in operation if, and in so far as it is expedient so to do for ensuring the maintenance of essential supplies and services or the security of Sri Lanka.

- (2) A Proclamation under the Public Security Ordinance or the law for the time being relating to public security, shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or Tribunal shall inquire into, or pronounce on, or in any manner call in question, such Proclamation, the grounds for the making thereof, or the existence of those grounds or any direction given under this Article.

154 K. Where the Governor or any Provincial Council has failed to comply with, or give effect to, any directions given to such Governor or such Council under this Chapter of the Constitution, it shall be lawful for the President to hold that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution.

154 L. (1) If the President, on receipt of a report from the Governor of the Province or otherwise is satisfied that a situation

has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation-

- (a) assume to himself all or any of the functions of the administration of the Province and all or any of the powers vested in, or exercisable by, the Governor or any body or authority in the Province other than the Provincial Council;
- (b) declare that the powers of the Provincial Council shall be exercisable by, or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation:

Provided that nothing in this paragraph shall authorize the President to assume to himself any of the powers vested in, or exercisable, by any Court.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) Every Proclamation under this Article shall be laid before Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of fourteen days unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when Parliament is dissolved or the dissolution

of Parliament takes place during the period of fourteen days referred to this paragraph but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution, unless before the expiration of the said period of fourteen days a resolution approving the Proclamation has been passed by Parliament.

- (4) A Proclamation so approved shall, unless earlier revoked, cease to operate on the expiration of a period of two months from the date of issue of the Proclamation:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by Parliament, the Proclamation shall, unless revoked, continue in force for a further period of two months from the date on which under this paragraph it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than one year:

Provided further that if the dissolution of Parliament takes place during any such period of two months but no resolution with respect to the continuance in force of such Proclamation has been passed by Parliament during the said period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution unless before the expiration of the said period of fourteen days a Proclamation approving the continuance in force of the Proclamation has been passed by Parliament.

- (5) Notwithstanding anything in this Article, the President may within fourteen days of his making a Proclamation under paragraph (1) and for the purpose of satisfying himself with regard to any of the matters referred to in

that paragraph, appoint a retired Judge of the Supreme Court to inquire into and report upon such matters within a period of sixty days. A Judge so appointed shall in relation to such inquiry have the powers of a Commissioner appointed under the Commission of Inquiry Act. Upon receipt of the report of such Judge, the President may revoke the Proclamation made under paragraph (1).

- (6) A Proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or Tribunal shall inquire into, or pronounce on, or in any manner call in question, such Proclamation or the grounds for making thereof.

154 M (1) where by a Proclamation issued under paragraph (1) of Article 154 L, it has been declared that the powers of the Provincial Council shall be exercised by, or under the authority, of Parliament, it shall be competent-

- (a) for Parliament to confer on the President the power of the Provincial Council to make statutes and to authorize the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred, on any other authority specified by him in that behalf;
- (b) for the President to authorize, when Parliament is not in session, expenditure from the Provincial Fund of the Province pending sanction of such expenditure by Parliament.

- (2) A statute made by Parliament or the President or other authority referred to in sub-paragraph (c) of paragraph (1), during the continuance in force of a Proclamation issued under paragraph (1) of Article 154L, shall continue in force until amended or repealed by the Provincial Council.

154 N. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of Sri Lanka or of any part of the territory thereof is threatened, he may by Proclamation make a declaration to that effect.

(2) A Proclamation issued under paragraph (1) -

- (a) may be revoked or varied by a subsequent Proclamation;
- (b) shall be laid before Parliament;
- (c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation is issued at a time when Parliament has been dissolved or the dissolution of Parliament takes place during the period of two months referred to in sub-paragraph (c), but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) During the period any such Proclamation as is mentioned in paragraph (1) is in operation, the President may give directions to any Governor of a Province to observe such canons of financial propriety as may be specified in the directions, and to give such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in the Constitution any such direction may include-

- (a) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Province;
- (b) a provision requiring all statutes providing for payments into or out of, a Provincial Fund to be reserved for the consideration of the President after they are passed by the Provincial Council.

154 P. (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.

(2) The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka, such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.

(3) Every such High Court shall -

- (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;
- (b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;
- (c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

(4) Every such High Court shall have jurisdiction to issue, according to law -

(a) orders in the nature of *habeas corpus*, in respect of persons illegally detained within the Province; and

(b) order in the nature of writs of *certiorari*, prohibition, *procedendo*, *mandamus* and *quo warranto* against any person exercising, within the Province, any power under-

(1) any law; or

(2) any statutes made by the Provincial Council established for that Province,

in respect of any matter set out in the Provincial Council List.

(5) The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.

(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.

154 Q. Parliament shall by law provide for -

(a) the election of members of Provincial Councils and the qualifications for membership of such Councils;

(b) the procedure for transaction of business by every such Council;

(c) the salaries and allowances of members of Provincial Councils; and

(d) any other matter necessary for the purpose of giving effect to the principles of provisions of this Chapter, and for any matters connected with or incidental to, the provisions of this Chapter.

154 R. (1) There shall be a Finance Commission consisting of -

(a) the Governor of the Central Bank of Sri Lanka;

(b) the Secretary to the Treasury; and

(c) three other members to represent the three major communities each of whom shall be a person who has distinguished himself, or held high office, in the field of finance, law, administration, business or learning.

(2) Every member of the Commission shall, unless he earlier dies, resigns or is removed from office, hold office for a period of three years.

(3) The 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 Provinces.

(4) 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 Government for the use of

- Provinces, should be apportioned between the various Provinces; and
- (b) any other matter referred to the Commission by the President relating to Provincial finance.
- (5) 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 population of each Province;
  - (b) the *per capita* income of each Province;
  - (c) the need progressively, to reduce social and economic disparities; and
  - (d) the need, progressively, to reduce the difference between the *per capita* income of each Province and the highest *per capita* income among the Provinces.
- (6) The Commission shall determine its own procedure and shall have such powers in the performance of its duties as Parliament may, by law, confer on it.
- (7) The President shall cause every recommendation made by the Finance Commission under this Article to be laid before Parliament, and shall notify Parliament as to the action taken thereon.
- (8) No Court or Tribunal shall 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.

- 154 S.(1) A Province Council may, by resolution, decide not to exercise its powers under Article 154 G with respect to any matter or part thereof set out in the Provincial Council List or the Concurrent List of the Ninth Schedule.
- (2) Where a resolution has been passed by a Provincial Council under paragraph (i) and the terms of such resolution have been accepted by Parliament, by resolution, the powers of such Provincial Council under Article 154G shall be deemed not to extend to the matter specified in such resolution and Parliament may make law, with respect to that matter, applicable to the Province for which that Provincial Council is established, otherwise than in accordance with the provisions of Article 154G.
- 154 T. The President may by Order published in the *Gazette*, take such action, or give such directions, not inconsistent with the provisions of the Constitution, as appears to him to be necessary or expedient, for the purpose of giving effect to the provisions of this Chapter, or for the administrative changes necessary therefore, or for the purpose of removing any difficulties”.
5. Article 155 of the Constitution is hereby amended by the insertion, immediately after paragraph (3) of that Article, of the following new paragraph:-
- “(3A) Nothing in the preceding provisions of this Constitution shall be deemed to prohibit the making of emergency regulations, under the Public Security Ordinance or the law for the time being in force relating to public security, with respect to any matter set out in the Ninth Schedule or having the effect of overriding, amending or suspending the operation of a statute made by a Provincial Council”.

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6. Article 170 of the Constitution is hereby amended by the substitution, in the definition of "written law", for the words "and includes Order" of the words "and includes statutes made by a Provincial Council, Orders."

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# **Thirteenth Amendment to the Constitution (1987)**

## ***An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka***

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

1. This Act may be cited as the Thirteenth Amendment to the Constitution and shall come into operation on such date as the President may, appoint, by Order published in the *Gazette*.
2. Article 18 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "Constitution") is hereby amended as follows:-
  - (a) by the renumbering of that Article as paragraph (1) of that Article;
  - (b) by the addition immediately after paragraph (1) of that Article of the following paragraphs:
    - (2) Tamil shall also be an official language.
    - (3) English shall be the link language.
    - (4) Parliament shall by law provide for the implementation of the provisions of this Chapter."
3. Article 138 of the Constitution is hereby amended in paragraph (1) of that Article as follows:-
  - (a) by the substitution, for the words "committed by any Court of First Instance", of the words "committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance"; and

- (b) by the substitution, for the words "*of which such Court of First Instance*" of the words "*of which such High Court, Court of First Instance*".

4. The following Chapter and Articles are hereby inserted immediately after Article 154, and shall have effect as Chapter XVIII and Articles 154A to 154T, of the Constitution:-

### CHAPTER XVIII

- 154 A. (1) Subject to the provisions of the Constitution, a Provincial Council shall be established for every Province specified in the Eighth Schedule with effect from such date or dates as the President may appoint by Order published in the *Gazette*. Different dates may be appointed in respect of different Provinces.
- (2) Every Provincial Council established under paragraph (1) shall be constituted upon the election of the members of such Council in accordance with the law relating to Provincial Council elections.
- (3) Notwithstanding anything in the preceding provisions of this Article, Parliament may by, or under, any law provide for two or three adjoining Provinces to form one administrative unit with one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers and for the manner of determining whether such Provinces should continue to be administered as one administrative unit or whether each such Province should constitute a separate administrative unit with its own Provincial Council, and a separate Governor, Chief Minister and Board of Ministers.
- 154 B. (1) There shall be a Governor for each Province for which a Provincial Council has been established in accordance with Article 154A.

- (2) the Governor shall be appointed by the President by warrant under his hand, and shall hold office, in accordance with Article 4(b), during the pleasure of the President.
- (3) The Governor may, by writing addressed to the President, resign his office.
- (4) (a) The Provincial Council may, subject to sub-paragraph (b) present an address to the President advising the removal of the Governor on the ground that the Governor-
- (i) has intentionally violated the provisions of the Constitution;
  - (ii) is guilty of misconduct or corruption involving the abuse of the powers of his office; or
  - (iii) is guilty of bribery or an offence involving moral turpitude,
- if a resolution for the presentation of such address is passed by not less than two-thirds of the whole number of members of the Council (including those not present).
- (b) No resolution for the presentation of an address to the President advising the removal of the Governor on the grounds referred to in sub-paragraph (a) shall be entertained by the Chairman of the Provincial Council or discussed at the Council, unless notice of such resolution is signed by not less than one-half of the whole number of members present.
- (5) Subject to the preceding provisions of this Article, the Governor shall hold office for a period of five years from the date he assumes office.

- (6) Every person appointed as Governor shall assume office upon taking or subscribing, the oath or making or subscribing the affirmation, set out in the Fourth Schedule, before the President.
- (7) Upon such assumption of office a Governor shall cease to hold any other office created or recognized by the Constitution, and if he is a Member of Parliament, shall vacate his seat in Parliament. The Governor shall not hold any other office or place of profit.
- (8) (a) The Governor may, from time to time, summon the Provincial Council to meet at such time and place as he thinks fit, but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.
- (b) The Governor may, from time to time, prorogue the Provincial Council.
- (c) The Governor may dissolve the Provincial Council.
- (d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.
- (9) Without prejudice to the powers of the President under Article 34 and subject to his directions the Governor of a Province shall have the power to grant a pardon to every person convicted of an offence against a statute made by the Provincial Council of that Province or a law made by Parliament on a matter in respect of which the Provincial Council has power to make statutes and to grant a respite or remission of punishment imposed by Court on any such person:

Provided that where the Governor does not agree with the advice of the Board of Ministers in any case and he considers it necessary to do so in the public interest, he may refer that case to the President for orders.

- (10) (a) The Governor may address the Provincial Council and may for that purpose require the attendance of members.
- (b) The Governor may also send messages to the Council either with respect to a statute then pending with the Council or otherwise, and when a message is so sent the Council shall with all convenient despatch consider any matter required by the message to be taken into consideration.
- (11) It shall be the duty of the Chief Minister of every Province-
  - (a) to communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the Province and the proposals for legislation;
  - (b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for; and
  - (c) if the Governor so requires, to submit for consideration of the Board of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Board.
- (12) Parliament shall by law or resolution make provision for the salary, allowances, age of retirement and pension entitlement of holders of the office of Governor.

154 C. Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established, either directly or through Ministers of the Board of Ministers, or through officers subordinate to him, in accordance with Article 154F.

154 D. (1) A Provincial Council shall consist of such number of members as may be determined by or under law, having regard to the area and population of the Province for which that Provincial Council is established.

(2) (a) A Provincial Council may at the commencement of the term of office of its members, decide, by resolution, to grant Members of Parliament elected for electoral districts, the limits of which fall within the Province for which that Provincial Council is established, the right to participate in proceedings of that Council.

(b) So long as a resolution passed under sub-paragraph (a) is in force, a Member of Parliament elected for an electoral district, the limits of which fall within the Province for which that Provincial Council is established, shall have the right, during the term of office of that Council, to speak in and otherwise take part in the proceedings of that Provincial Council and to speak in and otherwise take part in, any committee of the Provincial Council of which he may be named a member but shall be entitled to vote thereat only if the resolution passed under sub-paragraph (a) so provides.

(c) The provisions of this paragraph shall cease to operate on the date of dissolution of the first Parliament.

154 E. A Provincial Council 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 Council.

154 F. (1) There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advise the Governor of a Province in the exercise of his functions. The Governor shall in the exercise of his functions act in accordance with such advice except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question in any Court on the ground that he ought or ought not have acted on his discretion. The exercise of the Governor's discretion shall be on the President's directions.

(3) The question whether any, and if so what, advice was tendered by the Ministers to the Governor shall not be inquired into in any Court.

(4) The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for the Province, who, in his opinion, is best able to command the support of a majority of the members of that Council:

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



- (5) The Governor shall, on the advice of the Chief Minister, appoint from among the members of the Provincial Council constituted for that Province, the other Ministers.
- (6) The Board of Ministers shall be collectively responsible and answerable to the Provincial Council.
- (7) A person appointed to the office of Chief Minister or member of the Board of Ministers shall not enter upon the duties of his office until he takes and subscribes the oath, or makes and subscribes the affirmation, set out in the Fourth Schedule.

154 G (1) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule (hereinafter referred to as "the Provincial Council List")

- (2) No Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President after its publication in the *Gazette* and before it is placed on the Order paper of Parliament to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -

- (a) where every such Council agrees to the amendment or repeal, such Bill is passed by a majority of the Members of Parliament present and voting; or
- (b) where one or more Councils do not agree to the amendment or repeal such Bill is passed by the special majority required by Article 82.

- (3) No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been

referred by the President, after its publication in the *Gazette* and before it is placed in the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference and -

- (a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or
- (b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:

Provided that where on such references, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting.

- (4) Where one or more Provincial Councils request Parliament by resolution, to make law on any matter set out in the Provincial Council List, Parliament may make law on that matter, applicable only to the Provinces for which these Provincial Councils are established, by a majority of Members of Parliament present and voting.

- (5) (a) Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule (hereafter referred to as "the Concurrent List") after such consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.

- (b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes

applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.

- (6) If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of the Article, the provisions of such law shall prevail and the provisions of such statute shall to the extent of such inconsistency, be void.
- (7) A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule (hereafter referred to as "the Reserved List").
- (8) Where there is a law with respect to any matter on the Provincial Council List in force on the date on which this Chapter comes into force, and a Provincial Council established for a Province subsequently makes a statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of the law shall, with effect from the date on which that statute receives assent and so long only as that statute is in force remain suspended and be inoperative within that Province.
- (9) Where there is a law with respect to a matter on the Concurrent List on the date on which this Chapter comes into force and a Provincial Council established for a Province subsequently makes a statute on the same matter inconsistent with that law, the provisions of that law shall, unless Parliament, by resolution, decides to the contrary, remain suspended and be inoperative within that Province, with effect from the date on which that statute receives assent and so long only as that statute is in force.

- (10) Nothing in this Article shall be read or construed as derogating from the powers conferred on Parliament by the Constitution to make laws, in accordance with the Provisions of the Constitution (inclusive of this Chapter), with respect for any matter, for the whole of Sri Lanka or any part thereof.

- (11) Notwithstanding anything in paragraph (3) of the Articles, Parliament may make laws, otherwise than in accordance with the procedure set out in that paragraph, in respect of any matter set out in the Provincial Council List for implementing any treaty, agreement or convention with any other country or countries or any decisions made at an international conference, association, or other body.

- 154 H. (1) Every statute made by a Provincial Council shall come into force upon such statute receiving assent as hereinafter provided.
- (2) Every statute made by a Provincial Council shall be presented to the Governor for his assent, forthwith upon the making thereof, and the Governor shall either assent to the statute or he may as soon as possible after the statute is presented to him for assent return it to the Provincial Council together with a message requesting the Council to reconsider the statute or any specified provision thereof and in particular, requesting it to consider the desirability of introducing such amendments as may be recommended in the message.
  - (3) Where a statute is returned to a Provincial Council by the Governor under paragraph (2), the Provincial Council shall reconsider the statute having regard to the Governor's message and may pass such statute with or without amendment and present it to the Governor for his assent.

- (4) Upon presentation of a statute to the Governor under paragraph (3), the Governor may assent to the statute or reserve it for reference by the President to the Supreme Court, within one month of the passing of the statute for the second time, for a determination that it is not inconsistent with the provisions of the Constitution. Where upon such reference, the Supreme Court determines that the statute is consistent with the provisions of the Constitution, the Governor shall on receipt by him of the Court's determination, assent to the statute. Where upon such reference, the Supreme Court determines that the statute is inconsistent with the provisions of the Constitution, the Governor shall withhold assent to the statute.

- 154 J. (1) Upon the making of a Proclamation under the Public Security Ordinance or the law for the time being in force relating to public security, bringing the provisions of such Ordinance or law into operation on the ground that the maintenance of essential supplies and services is threatened or that the security of Sri Lanka is threatened by war or external aggression or armed rebellion, the President may give directions to any Governor as to the manner in which the executive power exercisable by the Governor is to be exercised. The directions so given shall be in relation to the grounds specified in such Proclamation for the making thereof.

*Explanation:* A Proclamation under the Public Security Ordinance declaring that the maintenance of essential supplies and services is threatened or that the security of Sri Lanka or any part of the territory thereof is threatened by war, or by external aggression, or by armed rebellion may be made before the actual breakdown of supplies and services, or the actual occurrence of war, of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof:

Provided that where such Proclamation is in operation only in any part of Sri Lanka, the power of the President to give directions under this Article, shall also extend to any Province other than the Province in which the Proclamation is in operation if, and in so far as it is expedient so to do for ensuring the maintenance of essential supplies and services or the security of Sri Lanka.

- (2) A Proclamation under the Public Security Ordinance or the law for the time being relating to public security, shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or Tribunal shall inquire into, or pronounce on, or in any manner call in question, such Proclamation, the grounds for the making thereof, or the existence of those grounds or any direction given under this Article.
- 154 K. Where the Governor or any Provincial Council has failed to comply with, or give effect to, any directions given to such Governor or such Council under this Chapter of the Constitution, it shall be lawful for the President to hold that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution.
- 154 L. (1) If the President, on receipt of a report from the Governor of the Province or otherwise is satisfied that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation-
- (a) assume to himself all or any of the functions of the administration of the Province and all or any of the powers vested in, or exercisable by, the Governor or any body or authority in the Province other than the Provincial Council;

- (b) declare that the powers of the Provincial Council shall be exercisable by, or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation:

Provided that nothing in this paragraph shall authorize the President to assume to himself any of the powers vested in, or exercisable, by any Court.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) Every Proclamation under this Article shall be laid before Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of fourteen days unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when Parliament is dissolved or the dissolution of Parliament takes place during the period of fourteen days referred to this paragraph but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution, unless before the expiration of the said period of fourteen days a resolution approving the Proclamation has been passed by Parliament.

- (4) A Proclamation so approved shall, unless earlier revoked, cease to operate on the expiration of a period of two months from the date of issue of the Proclamation:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by Parliament, the Proclamation shall, unless revoked, continue in force for a further period of two months from the date on which under this paragraph it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than one year:

Provided further that if the dissolution of Parliament takes place during any such period of two months but no resolution with respect to the continuance in force of such Proclamation has been passed by Parliament during the said period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution unless before the expiration of the said period of fourteen days a Proclamation approving the continuance in force of the Proclamation has been passed by Parliament.

- (5) Notwithstanding anything in this Article, the President may within fourteen days of his making a Proclamation under paragraph (1) and for the purpose of satisfying himself with regard to any of the matters referred to in that paragraph, appoint a retired Judge of the Supreme Court to inquire into and report upon such matters within a period of sixty days. A Judge so appointed shall in relation to such inquiry have the powers of a Commissioner appointed under the Commission of Inquiry Act. Upon receipt of the report of such Judge, the President may revoke the Proclamation made under paragraph (1).
- (6) A Proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court, and

no Court or Tribunal shall inquire into, or pronounce on, or in any manner call in question, such Proclamation or the grounds for making thereof.

154 M (1) where by a Proclamation issued under paragraph (1) of Article 154 L, it has been declared that the powers of the Provincial Council shall be exercised by, or under the authority, of Parliament, it shall be competent-

- (a) for Parliament to confer on the President the power of the Provincial Council to make statutes and to authorize the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred, on any other authority specified by him in that behalf;
- (b) for the President to authorize, when Parliament is not in session, expenditure from the Provincial Fund of the Province pending sanction of such expenditure by Parliament.

(2) A statute made by Parliament or the President or other authority referred to in sub-paragraph (c) of paragraph (1), during the continuance in force of a Proclamation issued under paragraph (1) of Article 154 L, shall continue in force until amended or repealed by the Provincial Council.

154 N. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of Sri Lanka or of any part of the territory thereof is threatened, he may by Proclamation make a declaration to that effect.

(2) A Proclamation issued under paragraph (1) -

- (a) may be revoked or varied by a subsequent Proclamation;
- (b) shall be laid before Parliament;

- (c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by a resolution of Parliament:

Provided that if any such Proclamation is issued at a time when Parliament has been dissolved or the dissolution of Parliament takes place during the period of two months referred to in sub-paragraph (c), but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) During the period any such Proclamation as is mentioned in paragraph (1) is in operation, the President may give directions to any Governor of a Province to observe such canons of financial propriety as may be specified in the directions, and to give such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in the Constitution any such direction may include-

- (a) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Province;
- (b) a provision requiring all statutes providing for payments into or out of, a Provincial Fund to be reserved for the consideration of the President after they are passed by the Provincial Council.

- 154 P. (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.
- (2) The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka, such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.
- (3) Every such High Court shall -
- (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;
  - (b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;
  - (c) exercise such other jurisdiction and powers as Parliament may, by law, provide.
- (4) Every such High Court shall have jurisdiction to issue, according to law -
- (a) orders in the nature of *habeas corpus*, in respect of persons illegally detained within the Province; and
  - (b) order in the nature of writs of *certiorari*, prohibition, *procedendo*, *mandamus* and *quo warranto* against any person exercising, within the Province, any power under-

- (1) any law; or
  - (2) any statutes made by the Provincial Council established for that Province,
- in respect of any matter set out in the Provincial Council List.
- (5) The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.
- (6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.

154 Q. Parliament shall by law provide for -

- (a) the election of members of Provincial Councils and the qualifications for membership of such Councils;
- (b) the procedure for transaction of business by every such Council;
- (c) the salaries and allowances of members of Provincial Councils; and
- (d) any other matter necessary for the purpose of giving effect to the principles of provisions of this Chapter, and for any matters connected with or incidental to, the provisions of this Chapter.

154 R. (1) There shall be a Finance Commission consisting of -

- (a) the Governor of the Central Bank of Sri Lanka;
  - (b) the Secretary to the Treasury; and
  - (c) three other members to represent the three major communities each of whom shall be a person who has distinguished himself, or held high office, in the field of finance, law, administration, business or learning.
- (2) Every member of the Commission shall, unless he earlier dies, resigns or is removed from office, hold office for a period of three years.
- (3) The 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 Provinces.
- (4) 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 Government for the use of Provinces, should be apportioned between the various Provinces; and
  - (b) any other matter referred to the Commission by the President relating to Provincial finance.
- (5) 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 population of each Province;
  - (b) the *per capita* income of each Province;

- (c) the need progressively, to reduce social and economic disparities; and
  - (d) the need, progressively, to reduce the difference between the *per capita* income of each Province and the highest *per capita* income among the Provinces.
- (6) The Commission shall determine its own procedure and shall have such powers in the performance of its duties as Parliament may, by law, confer on it.
- (7) The President shall cause every recommendation made by the Finance Commission under this Article to be laid before Parliament, and shall notify Parliament as to the action taken thereon.
- (8) No Court or Tribunal shall 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.
- 154 S.(1) A Province Council may, by resolution, decide not to exercise its powers under Article 154 G with respect to any matter or part thereof set out in the Provincial Council List or the Concurrent List of the Ninth Schedule.
- (2) Where a resolution has been passed by a Provincial Council under paragraph (i) and the terms of such resolution have been accepted by Parliament, by resolution, the powers of such Provincial Council under Article 154G shall be deemed not to extend to the matter specified in such resolution and Parliament may make law, with respect to that matter, applicable to the Province for which that Provincial Council is established, otherwise than in accordance with the provisions of Article 154G.

154 T. The President may by Order published in the *Gazette*, take such action, or give such directions, not inconsistent with the provisions of the Constitution, as appears to him to be necessary or expedient, for the purpose of giving effect to the provisions of this Chapter, or for the administrative changes necessary therefore, or for the purpose of removing any difficulties.

5. Article 155 of the Constitution is hereby amended by the insertion, immediately after paragraph (3) of that Article, of the following new paragraph:-

“(3A) Nothing in the preceding provisions of this Constitution shall be deemed to prohibit the making of emergency regulations, under the Public Security Ordinance or the law for the time being in force relating to public security, with respect to any matter set out in the Ninth Schedule or having the effect of overriding, amending or suspending the operation of a statute made by a Provincial Council”.

6. Article 170 of the Constitution is hereby amended by the substitution, in the definition of “written law”, for the words “and includes Order” of the words “and includes statutes made by a Provincial Council, Orders.”.
7. The following Schedules are hereby added immediately after the Seventh Schedule, and shall have effect as the Eighth and Ninth Schedules respectively of the Constitution:-

(Article 154A)

## **EIGHTH SCHEDULE**

### **Provinces**

Western  
North Western  
Uva  
Sabaragamuwa  
Central  
Eastern  
Southern  
North Central  
Northern.

## **NINTH SCHEDULE**

### **List I (Provincial Council List)**

1. *Police and Public order* - Public order and the exercise of police powers to the extent set out in Appendix I, within the Province, but not including National Defence, National Security and the use of any armed forces or any other forces under the control of the Government of Sri Lanka in aid of the civil power, and not including the city of Colombo, Sri Jayewardenepura Kotte, and their environs the limits of which shall be specified by the President by Order published in the *Gazette*.
2. *Planning* - Implementation of provincial economic plans.
3. *Education and Educational Services* - Education to the extent set out in Appendix III.
4. *Local Government* -



- 4.1 Local authorities for the purpose of local government and village administration, such as Municipal Councils, Urban Councils and Pradeshiya Sabhas, except that the constitution, form and structure of local authorities shall be determined by law;
  - 4.2 Supervision of the administration of local authorities established by law, including the power of dissolution (subject to such quassi-judicial inquiries into the grounds for dissolution and legal remedies in respect thereof as may be provided by law, and subject to provisions relating to audit as may be provided by law);
  - 4.3 Local authorities will have the powers vested in them under existing law. Municipal Councils and Urban Councils will have the powers vested in them under the Municipal Councils Ordinance and the Urban Councils Ordinance. Pradeshiya Sabhas will have the powers vested in them under existing law. It will be open to a Provincial Council to confer additional powers on local authorities but not to take away their powers;
  - 4.4 Gramodaya Mandalayas will have the powers vested in Gramodaya Mandalayas under existing law. It will be open to a Provincial Council to confer additional powers on Gradmodaya Mandalayas.
5. *Provincial Housing and Construction -*
- 5.1 Implementing, co-ordinating, supervising and monitoring provincial housing development programmes and projects (other than National Housing Development Authority projects), including aided self-help housing projects, housing loans and the provision of building materials;

- 5.2 The implementation of the Protection of Tenants Act and the Rent Act within a Province;
  - 5.3 Construction activity in respect of subjects in this List.
6. *Roads and bridges and ferries thereon within the Province, other than -*
- (a) national highways;
  - (b) bridges and ferries on national highways.
7. *Social Services and Rehabilitation -*
- 7.1 Probation and Child Care Services;
  - 7.2 The Rehabilitation of destitute persons and families;
  - 7.3 Rehabilitation and welfare of physically, mentally and socially handicapped persons;
  - 7.4 Relief of the disabled and unemployable.
8. Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the Province and the provisions of inter-provincial road transport services.
9. *Agriculture and Agrarian Services -*
- 9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, State land and plantation agriculture);
  - 9.2 Rehabilitation and maintenance of minor irrigation works;

- 9.3 Agricultural research, save and except institutions designated as national agricultural research institutions.
10. *Rural Development*
11. *Health -*
- 11.1 The establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries (other than teaching hospitals and hospitals established for special purposes);
- 11.2 Public health services, health education, nutrition, family health, maternity and child care, food and food sanitation, environmental health;
- 11.3 Formulation and implementation of Health Development plan, and of the Annual Health Plan for the Province;
- 11.4 The provision of facilities for all institutions referred to in 1 above within the Provinces, excluding the procurement of drugs;
- 11.5 Awarding of Scholarships for Post-Graduate Education within Sri Lanka to personnel attached to the Institutions specified in 1 above.
12. *Indigenous Medicine - Ayurveda, Siddha and Unani -*
- 12.1 Establishment of Ayurvedic dispensaries and hospitals, grant to such dispensaries and hospitals;
- 12.2 Establishment and maintenance of herbaria.
13. 13.1 *Resthouses* maintained by local authorities and

- 13.2 *Circuit bungalows* presently administered by Government departments whose functions are exclusively specified in this List.
14. *Pawnbrokers* - Pawnbrokers other than pawnbrokers business carried on by Banks.
15. *Markets fairs.*
16. *Food supply and distribution within the Province.*
17. *Co-operatives*
- 17.1 Co-operative undertakings and the organization, registration, supervision and audit of co-operative societies within the Province;
- 17.2 Co-operative development within the Province including co-operative education and propaganda;
- 17.3 Provincial Co-operative Employees Commission;
- 17.4 Matters connected with employment, promotion, retirement and other connected matters of employees of co-operative societies within the Province.
18. *Land* - Land, that is to say, rights in or over land, land tenure transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II.
19. *Irrigation* - Planning, designing, implementation, supervision and maintenance of all irrigation works, other than irrigation schemes relating to rivers running through more than one Province or inter provincial irrigation and land development schemes.
20. *Animal husbandry* - Preservation, protection and improvement of stock and prevention of animal diseases within the Province.

21. Subject to the formulation and implementation of National Policy in regard to development and planning, the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects, within the Province without prejudice to the power of the Government and public corporations to have such enterprises and projects.

(This would include the promotion of scientific and industrial research within the Province and the preparation, co-ordination and the implementation of industrial development plans for the Province).

22. Reformatories, Borstal institutions and other institutions of a like nature and persons detained therein, arrangements with other Provinces for the use of such institutions.
23. Possession, transport, purchase and sale of intoxicating liquors.
24. Burials and burial grounds, cremations and cremation grounds, other than those declared by or under law made by Parliament to be national memorial cemeteries.
25. 25.1 Libraries, Museums and other similar institutions controlled or financed by a Provincial Council;
- 25.2 Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.
26. The regulation of mines and mineral development to the extent permitted by or under any law made by Parliament, within the Province.
27. Incorporation, regulation and judicial winding up of corporations with objects confined to the Province, excluding trading corporations, banking, insurance and financial corporations.

28. Regulation of unincorporated trading, literary, scientific, religious and other societies and associations.
29. 29.1 Theatres and dramatic performances, music, cinemas, entertainments and amusements, excluding the sanctioning of cinematograph films for exhibition and public performances.
- 29.2 Encouragement and development of sports (other than national sports associations).
30. Betting and gambling, other than imposition of licence fees and taxes.
31. Provincial debt.
32. Offences against statutes with respect to any of the matters specified in this List.
33. Fees in respect of any of the matters in this List, excluding fees taken in any court.
34. Development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy (other than hydro-electric power and power generated to feed the national grid).
35. The borrowing of money to the extent permitted by or under any law made by Parliament;
36. 36.1 Turnover taxes on wholesale and retail sales within such limits and subject to such exemptions as may be prescribed by law made by Parliament;
- 36.2 Betting taxes, and taxes on prize competitions and lotteries, other than National Lotteries and lotteries organized by the Government of Sri Lanka;

- 36.3 Licence taxes, arrack, toddy rents, tapping licence fees, and liquor licence fees;
- 36.4 Motor vehicle licence fees within such limits and subject to such exemptions as may be prescribed by law made by Parliament;
- 36.5 Dealership licence taxes on drugs and other chemicals;
- 36.6 Stamp duties on transfer of properties, such as lands and motor cars;
- 36.7 Toll collections;
- 36.8 Fines imposed by courts;
- 36.9 Fees charged under the Medical Ordinance;
- 36.10 Fees charged under the Motor Traffic Act;
- 36.11 Departmental fees in respect of any of the matters specified in this List;
- 36.12 Fees under the Fauna and Flora Protection Ordinance;
- 36.13 Fees on lands alienated under the Land Development Ordinance and Crown Lands Ordinance;
- 36.14 Court fees, including stamp fees on documents produced in court;
- 36.15 Regulatory charges under the Weights and Measures Ordinance;
- 36.16 Land revenue, including the assessment and collection of revenue, and survey and maintenance of land records for revenue purposes;

- 36.17 Taxes on lands and buildings, including the property of the State to the extent permitted by law made by Parliament;
- 36.18 Taxes on mineral rights within such limits and subject to such exemptions as may be prescribed by law made by Parliament;
- 36.19 Licensing fees on the possession, transport, purchase and sale of intoxicating liquors;
- 36.20 Other taxation within the Province in order to raise revenue for provincial purposes to the extent permitted by or under any law made by Parliament;
- 37. Protection of environment within the Province to the extent permitted by or under any law made by Parliament.

## APPENDIX I

### Law and Order

1. The subject devolved shall be described as follows:-  
  
Public Order and the exercise of Police powers as set out in the Appendix within the Province, but not including -
  - (a) national defence;
  - (b) national security; and
  - (c) the use of any armed forces or any other forces under the control of the Government of Sri Lanka in aid of the civil power.

2. The I.G.P. shall be the head of the Sri Lanka Police Force. The Sri Lanka Police Force shall be divided into -

- (a) the National Division (including Special Units); and
- (b) a Provincial Division of each Province.

2.1 The National Division shall consist of the I.G.P., D.I.G.G., S.S.P.P., A.S.P.P. and other ranks recruited at the national level.

2.2 A Provincial Division shall consist of the D.I.G., S.S.P.P., S.P.P. and A.S.P.P. all seconded from the National Division and Provincial Assistant Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors, Sergeants, and Constables recruited in the Province. Members of the Provincial Division shall be eligible for promotion to the National Division.

3. Recruitment to the National Division and promotions of Police Officers in the Provincial Divisions to the National Division shall be made by a National Police Commission composed of three members, namely -

- (a) the I.G.P.
- (b) a person nominated by the Public Service Commission in consultation with the President; and
- (c) a nominee of the Chief Justice.

3.1 The National Police Commission shall, before promoting any Police Officer serving in any Provincial Division to the National Division, call for a Confidential Report on such Officer from the relevant

Provincial Police Commission and take the matters specified in such report into consideration in deciding whether to promote such Officer or not.

3.2 The Commission shall also be responsible for promotions, transfers, and disciplinary control of members of the National Division other than the I.G.P. subject to paragraph 4.1 below.

3.3 It shall hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Commissions.

3.4 It shall set standards for recruitment and promotion of Police Officers of all Divisions and such standards shall be uniform for all Provincial Divisions.

4. Recruitment to each Provincial Division shall be made by a Provincial Police Commission composed of three members, namely-

- (a) the D.I.G. of the Province;
- (b) a person nominated by the Public Service Commission in consultation with the President; and
- (c) a nominee of the Chief Minister of the Province.

4.1 A Provincial Police Commission shall be responsible for transfers, promotions and disciplinary control over officers in the Provincial Division; for promotion of Officers of the National Division seconded to the Provincial Division up to the rank of S.S.P.; and for transfer and disciplinary control over officers seconded to the Provincial Division, except the D.I.G.

Provided that any Officer of the National Division seconded to any Provincial Division against whom disciplinary action has been taken by a Provincial Police Commission, shall have the right to appeal to the National Police Commission, whose decision on such appeal shall be final.

5. The National Police Commission or a Provincial Police Commission shall be entitled to delegate such of its powers as may be prescribed to such other person or authority as may be prescribed.
6. The I.G.P. shall appoint a D.I.G. for each Province with the concurrence of the Chief Minister of the Province. However, where there is no agreement between the Inspector-General of Police and the Chief Minister, the matter will be referred to the President, who after due consultations with the Chief Minister, shall make the appointment.
7. 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 President, 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.

These principles shall be uniformly applied to all Provincial Divisions.

- 7.1 The cadres of the Provincial Divisions shall be fixed on ascertained principles such as population, area, number of Police Stations involved and other relevant considerations. These principles shall be applied to all Provincial Divisions without distinction.

- 7.2 The salary scales and perquisites of office enjoyed by the various ranks in the National and Provincial Divisions shall be determined by the Government of Sri Lanka after consultation with the Chief Ministers of the Provinces. The salary scales and perquisites of office a enjoyed by members of the Provincial Divisions shall apply uniformly to all Provincial Divisions.
8. The nature, type and quantity of fire-arms and ammunition and other equipment for the National Division shall be determined by the National Police Commission. The nature, type and quantity of fire-arms and ammunition and other equipment for all Provincial Divisions shall be determined by the National Police Commission after consultation with the Provincial Police Commission and uniform standards and principles shall be applied for all Provincial Divisions.
9. Recruitment to the National Division shall be made at the ranks of P.C., S.I., and A.S.P. Recruitment to the Provincial Division shall be made at the ranks of P.C., S.I., and P.A.S.P. (rank referred to in paragraph 2.2 above).
  - 9.1 Recruitment to the National Division shall be made by the National Police Commission and recruitment to the Provincial Division shall be made by the Provincial Police Commission having regard to the standards of recruitment and other criteria prescribed in this behalf:

Provided also that a recruit may, on appointment, set out his preferences as to the Division in which he wishes to serve and that he shall, if possible, be posted to the Division of his choice, with the consent of the Division concerned.

- 9.2 The Government of Sri Lanka shall be responsible for the training of all recruits to and of members of all Divisions of the Sri Lanka Police Force.

The president may, where he considers it necessary, provide for alternative training for members of any Provincial Division.

10. Members of the National Division and the Provincial Divisions shall wear the same uniforms and insignia of rank, provided that uniforms of the members of each Division shall bear a distinctive shoulder flash, indicating the Division to which he belongs.

- 10.1 There shall be one uniformed police force in each Province comprising of the members of the Provincial Division and the officers seconded thereto. Members of the National Division shall ordinarily be in plain clothes provided that they may wear uniforms when performing any duties in respect of the maintenance or restoration of public order as set out in paragraph 12.2, 12.3 and 12.4. Provided also that the I.G.P. and such other Officers as may be specified shall ordinarily be attired in uniforms.

11. 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 D.I.G. of such Province.

- 11.1 The D.I.G. of the Province 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.

- 11.2 The provisions of paragraph 11.1 above are subject to the qualifications that-

- (a) upon the declaration of an emergency to the province, the President may assume such powers and responsibilities of the Chief Minister and the Provincial Administration in respect of public order within the Province as he may, by regulation, provide; and
- (b) where the President is of the opinion that the security of or public order in a Province is threatened by grave internal disturbance, he may, without the declaration of an emergency, but in consultation with the Chief Minister of such Province, and subject to the provisions of the Public Security Ordinance by order deploy in aid of the civil power, any unit of the National Division in the Province for the purpose of restoring public order:

Provided that every such order shall cease to be in force as soon as the President is satisfied that public order has been restored or on the expiry of thirty days from the date of the order, whichever is earlier.

- 12.1 The Provincial Division shall be responsible for the preservation of public order within the Province and the prevention, detection and investigation of all offences (except the offences specified in the Schedule) and subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, the institution of prosecution in the relevant Courts in respect of such offences.

The National Division of the Sri Lanka Police Force shall be responsible for the prevention, detection and investigation of all offences specified in the Schedule

and subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, for the institution of prosecutions in the relevant Courts in respect of such offences.

12.2 Where the Chief Minister seeks the assistance of the National Division to preserve public order within a Province, the I.G.P. shall deploy such personnel of the National Division as are necessary for the purpose, and place them under the control of the D.I.G. of the Province.

12.3 Where a State of Emergency is declared in the Province the I.G.P. may deploy such units of the National Division as he deems necessary in any Province for the restoration and maintenance of public order within such Province.

12.4 Any offence which may ordinarily be investigated by a Provincial Division may be investigated by the C.I.D. or any other unit of the National Division-

- (a) where the Chief Minister requests, that such investigation be undertaken by the C.I.D. or any other unit of the National Division; and
- (b) where the I.G.P. is of opinion that an investigation of such offence by the C.I.D. or any other unit of the National Division is necessary, in the public interest, and directs, after consultation with the Chief Minister, and the approval of the Attorney-General, that such offence be investigated by the C.I.D. or any other unit of the National Division.

13. The National Division shall perform all the functions vested in a Provincial Division, in any Province, for a period of one

year or until a Provincial Division is established in such Province, whichever is earlier.

14. All gazetted officers of the National Division and Provincial Divisions shall be required to attain the prescribed standard in Sinhala and Tamil. All Officers of the rank of A.S.P. and above shall also be required to attain the prescribed standard of English.

Every recruit to the Sri Lanka Police Force shall have proficiency in his mother tongue. For the first promotion he shall acquire proficiency in a language other than his mother tongue. For the next promotion he shall acquire a knowledge of the third language. The three languages recognized for this purpose are Sinhala, Tamil and English.

## SCHEDULE

### List of Offences to be investigated by the National Police

1. Offences against the State.
2. Offences relating to the Navy, Army and Air Force.
3. Offences relating to the Elections.
4. Offences relating Coins, Currency and Government Stamps.
5. Any Offence committed against the President.
6. Any Offence committed against a Public Officer, a Judicial Officer, or the Speaker, or the Prime Minister or a Minister, or a Member of the Judicial Service Commission, or a Member of Public Service



Commission or a Deputy Minister or a Member of Parliament or the Secretary General of Parliament or a Member of the President's Staff or a Member of the Staff of the Secretary General of Parliament.

7. Any offence relating to property belonging to the State or a State Corporation or Company or Establishment, the whole or part of the capital whereof has been provided by the State.
8. Any Offence prejudicial to National Security or the maintenance of Essential Services.
9. Any offence under any law relating to any matter in the Reserve List other than such offences as the President may, by order published in the *Gazette*, exclude.
10. Any Offence in respect of which Courts in more than one province have jurisdiction.
11. International Crimes.

## Appendix 11

### Land and Land Settlement

State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing the matter.

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions:-

### 1. State land-

- 1.1 State land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject.
- 1.2 Government shall make available to every Provincial Council State land within the Province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilise such State land, in accordance with the laws and statutes governing the matter.
- 1.3 Alienation or disposition of the State land within a Province to any citizen or to any organization shall be by the President, on the advice of the relevant Provincial Council in accordance with the laws governing the matter.

### 2. Inter-Provincial Irrigation and Land Development Projects.

- 2.1 Such projects would comprise irrigation and land development schemes-
  - (a) within the Province initiated by the State and which utilize water from rivers following through more than one Province; a Provincial Council however, may also initiate irrigation and land development schemes within its province utilizing water from such rivers;
  - (b) within the Province which utilize water through diversions from water systems from outside the Province ; and

- (c) all schemes where the command area falls within two or more Provinces such as the Mahaweli Development Project.
- 2.2 These projects will be the responsibility of the Government of Sri Lanka
- 2.3 The principles and criteria regarding the size of holdings of agricultural and homestead lands arising out of these projects will be determined by the Government of Sri Lanka in consultation with the Provincial Councils.
- 2.4 The selection of allottees for such lands will be determined by the Government of Sri Lanka having regard to settler selection criteria including degree of landlessness, income level, size of family and agricultural backgrounds of the applicants. The actual application of these principles, selection of allottees and other incidental matters connected thereto will be within the powers of the Provincial Councils.
- 2.5 The distribution of all allotments of such land in such projects will be on the basis of national ethnic ratio. In the distribution of allotments according to such ratios, priority will be given to persons who are displaced by the project, landless of the District in which the project is situated and thereafter the landless of the Province.
- 2.6 Where the members of any community do not, or are unable to take their entitlements of allotments from any such project, they would be entitled to receive an equivalent number of allotments in another inter-provincial irrigation or Land Development Schemes. This unused quota should be utilized within a given time-frame.
- 2.7 The distribution of allotments in such projects on the basis of the aforesaid principles would be done as far as

- possible so as not to disturb very significantly the demographic pattern of the Province and in accordance with the principle of ensuring community cohesiveness in human settlements.
- 2.8 The administration and management of such projects will be done by the Government of Sri Lanka.
3. National Land Commission
- 3.1 The Government of Sri Lanka shall establish a National Land Commission which would be responsible for the formulation of national policy with regard to the use of State land. This Commission will include representatives of all Provincial Councils in the Island.
- 3.2 The National Land Commission will have a Technical Secretariat representing all the relevant disciplines required to evaluate the physical as well as the socioeconomic factors that are relevant to natural resources management.
- 3.3 National policy on land use will be based on technical aspects (not on political or communal aspects) and the Commission will lay down general norms in regard to soil, climate, rainfall, soil erosion, forest cover, environmental factors, economic viability.
- 3.4 In the exercise of the powers devolved in them, the powers shall be exercised by the Provincial Councils having due regard to the national policy formulated by the National Land Commission.

## Appendix 111

### Education

1. Provision of facilities for all State schools other than specified schools (Specified Schools will be National Schools, Special Schools for Service Personnel and schools for specified development schemes)
2. Supervision of the management of-
  - (a) all pre-schools; and
  - (b) all State schools other than specified schools indicated above.

(In order to ensure standards the Ministry of Education will retain the right to inspect and supervise the management of schools).

3. The transfer and disciplinary control of all educational personnel, i.e. Teachers, Principals and Education Officers. Officers belonging to a National Service but serving the Provincial authority on secondment will have the right of appeal to the Public Service Commission. Officers belonging to the Provincial Public Service will have a right to appeal to the Public Service Commission against dismissal.
4. Recruitment into the Teaching Service of those with diplomas and degrees, from Colleges of Education and Universities, recognised as teaching qualifications.
5. Until adequate numbers of these categories are available recruitment into the Teaching Service will be on the results of recruitment examinations conducted by the Public Service

Commission. On the results of these examinations interviews and selection will be conducted together with the Provincial Authorities.

6. Appointment of Principals of all schools other than those in 1A, B, C, categories. (Criteria will be laid down by the Minister of Education.)
7. Appointment of Principals of 1A, B, C, schools will be by the Secretary to the Ministry of the Minister in charge of the subject of Education or the Public Service Commission.
8. Training of teachers and other educational personnel will come within the purview of the National Institute of Education. Provincial Authorities will indicate their needs to the National Institute of Education.
9. Appointment of Provincial Boards of Education which will have the advisory functions, will be the responsibility of the Minister of Education. However, this will be done with concurrence of the Chief Minister of the Provincial Authority.
10. Provincial Authorities will establish School Boards conforming to the specifications laid down by the Ministry of Education.
11. Provincial Authorities will supervise the working of School Boards.
12. Preparation of plans (educational development plan and annual implementation plan) will be the responsibility of the Provincial Authority.
13. Implementation of the Annual Education Development Plan.
14. Appraisal of the performance of Principals, Teachers and Education Officers.

15. Conducting of In-service training programmes for which prior approval of the National Institute of Education has been obtained.
16. Conducting of local examinations approved by the Commissioner General of Examinations.
17. Implementation of non-formal education programmes.
18. Registration and supervision of pre-schools.
19. Obtaining the approval of the National Institute of Education for local variations in the primary curriculum and selected subjects in the secondary curriculum.
20. Construction and maintenance of educational buildings, libraries and playgrounds.
21. Procuring and distribution of teaching aids, visual aids and audio visual materials, furniture and other equipment.
22. Procuring and distribution of science equipment other than certain specified items indicated by the Ministry.
23. Production and distribution of school textbooks after approval by the Ministry.
24. Organization and development of school libraries in accordance with guidelines given by the National Library Services Board.

( Above based on the recommendations of Committee 1 of the Political Parties Conference.)

### List 11

( Reserved List)

### National Policy on all Subjects and Functions

Defence and National Security : Internal Security ; Law and order and prevention and detection of crime except to the extent specified in item 1 of List.

This would include-

- (a) Defence of Sri Lanka and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination, to effective demobilisation ;
- (b) Naval, military and air forces ; any other armed forces of the Government of Sri Lanka;
- (c) Deployment of any armed force of the Government of Sri Lanka or any other force subject to the control of the Government of Sri Lanka or any contingent or unit thereof in any Province in aid of the civil power ; powers, jurisdictions, privileges and liabilities of the members of such forces while on such deployment ;
- (d) Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas;
- (e) Naval , military and air force works;
- (f) Arms, firearms, ammunition and explosives;

- (g) Atomic energy and mineral resources necessary for its production;
- (h) Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war;
- (i) Criminal Investigation Department ;
- (j) Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of Sri Lanka, persons subject to such detention ; and
- (k) Extention of the powers and jurisdiction of members of police force belonging to any Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in any area outside the Province without the consent of the Provincial Council in which such area is situated; extention of powers and jurisdiction of members of a police force belonging to any Province to railway areas outside that Province.

#### Foreign Affairs

This would include-

- (a) Foreign Affairs; all matters which bring the Government of Sri Lanka into relation with any foreign country;
- (b) Diplomatic, consular and trade representation;
- (c) United Nations Organization,
- (d) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;
- (e) Entering into treaties and agreements with foreign countries;
- (f) War and peace ; and
- (g) Foreign jurisdiction

#### Posts and Telecommunications ; Broadcasting ; Television

This would include-

- (a) Constitution, organisation, jurisdiction and powers of the Supreme Court ( including contempt of such Court), and the fees taken therein : persons entitled to practise before the Supreme Court, Court of Appeal and other Courts;
- (b) Constitution, organisation, jurisdiction and powers of the Court of Appeal , and the fees taken therein; and
- (c) Jurisdiction and powers of all courts, except the Supreme Court and the Court of Appeal. .

#### Finance in relation to national revenue, monetary policy and external resources; customs

This would include-

- (a) Public debt of the Government of Sri Lanka;
- (b) Currency , coinage and legal tender ; foreign exchange ;
- (c) Foreign loans ;
- (d) Central Bank ;
- (e) National Savings Bank ;
- (f) Lotteries organised by the Government of Sri Lanka or a Provincial Council ;
- (g) Banking ;
- (h) Bills of exchange, cheques, promissory notes and other like instruments;

- (i) Insurance;
- (j) Stock exchanges and futures markets ;
- (k) Audit of the Government of Sri Lanka and of the Provinces;
- (l) Taxes on income, capital and wealth of individuals, companies and corporations ;
- (m) Customs duties , including import and export duties, and excise duties ;
- (n) Tutnover taxes and stamp duties, except to the extent specified in list 1.

#### Foreign Trade ; Inter-Province Trade and Commerce

This would include-

- (a) Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers ; and
- (b) Inter-province trade and commerce .

#### Ports and Harbours

This would include-

- (a) Ports declared by or under law made by Parliament or existing law to be major ports including their delimitation, and the constitution and powers of ports authorities therein; and
- (b) Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

#### Aviation and Airports

This would include-

Airways ; aircraft and air navigation; provision of acrodomes ; regulation and organisation of air traffic and of aerodromes ; provision for aeronautical education and training and regulation of such education and training provided by Provinces and other agencies.

#### National Transport

This would include-

- (a) Railways ;
- (b) Highways declared by or under law made by Parliament to be national highways; and
- (c) Carriage and passengers and goods by railway, land , sea or air or by national waterways in mechanically propelled vessels .

Rivers and Waterways ; Shipping and Navigation: Maritime Zones including Historical Waters, Territorial Waters, Exclusive Economic Zone and Continental Shelf and Internal Waters ; State Lands and Foreshore, Except to the Extent Specified in Item 18 of List 1.

This would include -

- (a) Piracies and crimes committed on high seas or in the air ; offences against the law of nations committed on land or the high seas or in the air;
- (b) Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways;

- (c) Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by Provinces and other agencies ;
- (d) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;
- (e) Regulation and development of inter province rivers; and river valleys to the extent to which such regulation and development under the control of the government of Sri Lanka is declared by Parliament by law to be expedient in the public interest;
- (f) Fishing and fisheries beyond territorial waters; and
- (g) Property of the Government of Sri Lanka and the revenue therefrom, but as regards property situated in a Province, subject to statutes made by the Province save in so far as Parliament by law otherwise provides.

#### Minerals and Mines

This would include-

- (a) Regulation and development of oilfields and mineral oil resources ; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable ; and
- (b) Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest.

#### Immigration and Emigration and Citizenship

This would include-

- (a) Citizenship, naturalization and aliens;
- (b) Extradition ; and
- (c) Admission into and emigration and expulsion from, Sri Lanka; passports and visas

#### Elections Including Presidential, Parliamentary, Provincial Councils and Local Authorities

This would include -

Elections to Parliament, Provincial Councils, Local Authorities and to the Office of President; the Department of Elections.

#### Census and Statistics

This would include-

- (a) Census ; and
- (b) Inquiries, surveys and statistics for the purpose of any of the matters in this List.

#### Professional Occupations and Training

This would include-

- (a) Institutions such as Universities declared by Parliament by law to be institutions of national importance ;
- (b) Institutions for scientific or technical education by the Government of Sri Lanka wholly or in part and declared by Parliament to be institutions of national importance;

- (c) Provincial agencies and institutions for -
- (i) professional, vocational or technical training, including the training of police officers ; or
  - (ii) the promotion of special studies or research ;or
  - (iii) scientific or technical assistance in the investigation or detection of crime; and
- (d) Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

National Archives ; Archaeological Activities and sites and Antiquities declared by or under law made by Parliament to be of National Importance.

This would include -

Ancient and historical monuments and records , and archaeological sites and remains declared by or under law made by Parliament to be of national importance.

All Subjects and Functions not Specified in List 1 or List 111 including-

- (a) Pilgrimages to places outside Sri Lanka;
- (b) Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies ;
- (c) Incorporation , regulation and winding up of corporations, whether trading or not , with objects not confined to one province, but not including universities;

- (d) Patents, inventions and designs; copyright, trade marks and merchandise marks;
- (e) Establishment of standards of weight and measure;
- (f) Establishment of standards of quality for goods to be exported out of Sri Lanka or transported from one Province to another;
- (g) Industries , the control of which by the Government is declared by Parliament by law to be expedient in the public interest;
- (h) Regulation of labour and safety in mines;
- (i) Manufacture , supply and distribution of salt by agencies of the Government of Sri Lanka; regulation and control of manufacture, supply and distribution of salt by other agencies;
- (j) Cultivation , manufacture , and sale or export , of opium;
- (k) Industrial disputes concerning employees of the Government of Sri Lanka;
- (l) Institutions such as Museums and war Memorials financed by the Government of Sri Lanka wholly or in part and declared by Parliament by law to be institutions of national importance;
- (m) The survey of Sri Lanka, the Geological , Botanical, Zoological and Anthropological Surveys of Sri Lanka; Meteorological organizations;
- (n) National Public Services; National Public Service Commission;
- (o) Pensions, that is to say , pensions payable by the Government of Sri Lanka or out of the Consolidated Fund;
- (p) Salaries and allowances of Members of Parliament , and the Speaker and the Deputy Speaker of Parliament;



- (q) Powers, privileges and immunities of Parliament and of the members and the Committees; enforcement of attendance of persons for giving evidence or producing documents before Committees of Parliament or Commissions appointed by Parliament;
- (r) Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers of the Government of Sri Lanka; the salaries, allowances and rights in respect of leave of absence and other conditions of service of the Auditor General;
- (s) Inter-Province migration; inter-province quarantine;
- (t) Offences against laws with respect to any of the matters in this List; and
- (u) Fees in respect of any of the matters in this List, but not including fees taken in any Court.

### **List 111**

#### **(Concurrent List)**

#### **1. Planing-**

- 1.1 Formulation and appraisal of plan implementation strategies at the provincial level ;
- 1.2 Progress control ;
- 1.3 Monitoring progress of public and private sector investment programmes;

- 1.4 The evaluation of the performance of institutions and enterprises engaged in economic activities;
- 1.5 The presentation of relevant data in the achievement of plan targets;
- 1.6 The dissemination of information concerning achievement plan targets;
- 1.7 Publicity of implementation programmes;
- 1.8 Manpower planning and employment Data Bank;
- 1.9 Nutritional planning and programmes

2 and 3 Education and Educational Services.- Education, except to the extent specified in items 3 and 4 of List 1.

#### **4. Higher Education-**

- 4.1 The establishment and maintenance of new Universities.
- 4.2 The establishment of degree awarding institutions under the Universities (Amendment) Act, No. 7 of 1985, and other institutions for tertiary, technical and post-school education and training.

5. National Housing and Construction.- The promotion of integrated planning and implementation of economic, social and physical development of urban development areas.

6. Acquisition and requisitioning of Property.

#### **7. Social Services and Rehabilitation-**

- 7.1 Relief, rehabilitation and resettlement of displaced persons;

- 7.2 Relief of distress due to floods, droughts, epidemics or other exceptional causes and rehabilitation and resettlement of those affected;
- 7.3 Restoration, reconstruction and rehabilitation of towns, villages, public institutions and properties, industries, business places, places of worship and properties destroyed or damaged, grant of compensation or relief to persons or institutions who have sustained loss or damage and the reorganization of civil life.
8. Agricultural and Agrarian Services-
  - 8.1 Establishment and promotion of agro-linked industries, the establishment and maintenance of farms and supervision of private nurseries;
  - 8.2 Soil conservation;
  - 8.3 Plant pests.
9. Health-
  - 9.1 Schools for training of Auxiliary Medical Personnel;
  - 9.2 The supervision of private medical care, control of nursing homes and of diagnostic facilities within a Province;
  - 9.3 Population control and family planning;
  - 9.4 Constitution of Provincial Medical Boards.
10. Registration of births, marriages and deaths.
11. Renaming of Towns and Villages.

12. Private lotteries within the Province.
13. Festival and Exhibitions.
14. Rationing of food and maintenance of food stocks.
15. Co-operatives,- Co-operative Banks.
16. Surveys.- For the purpose of any of the matters enumerated in the Provincial or Concurrent List.
17. Irrigation.-
  - 17.1 Water storage and management, drainage and embankments, flood protection, planning of water resources;
  - 17.2 Services provided for inter-provincial land and irrigation schemes, such as those relating to rural development, health, education, vocational training, co-operatives and other facilities.
18. Social Forestry and protection of wild animals and birds.
19. Fisheries.- Other than fishing beyond territorial waters.
20. Animal Husbandry.-
  - 20.1 Production, processing, distribution and sale of livestock and livestock products;
  - 20.2 Veterinary training services and research, inclusive of the provision of science laboratories and science equipment;
  - 20.3 Animal breeding, care and health.
  - 20.4 The establishment of pastures.

21. Employment.-
  - 21.1 Employment planning at Provincial level;
  - 21.2 Special Employment programmes relating to the Province;
  - 21.3 Promotion of youth employment activities relating to the Province;
  - 21.4 Technical Manpower Development Programmes in relating to the Province.
22. Tourism.- Development and control of Tourist Industry in the Province.
23. Trade and commerce in and the production, supply and distribution of.-
  - (a) the products of any industry where the control of such industry by the Government is declared by Parliament by law to be expedient in the public interest and imported goods of the same kind as such products: and
  - (b) foodstuffs and cattle fodder.
24. Newspapers, books and periodicals and printing presses.
25. Offences against the statutes with respect to any matter specified in the List.
26. Fees in respect of any of the matters in this List, excluding fees taken any Court.
27. Charities and charitable institutions, charitable and religious endowments and religious institutions.
28. Price Control.

29. Inquiries and statistics for the purpose of any of the matters in this List or in the Provincial Council List.
30. Adulteration of foodstuffs and other goods.
31. Drugs and Poisons.
32. Extension of electrification within the Province and the promotion and regulation of the use of electricity within the Province
33. Protection of the environment.
34. Archaeological sites and remains, other than those declared by or under any law made by Parliament to be of national importance.
35. Prevention of the extension from one province to another of infectious or contagious diseases or pests affecting human beings, animal or plants.
36. Pilgrimages.

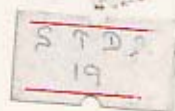
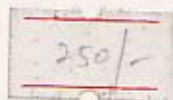




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ISBN 955-580-009-X