

Tamil People's Council
Final Proposals for
Finding a Political Solution to the Tamil National Question

INTRODUCTION

The Tamil People's Council (TPC) appointed a Sub-Committee on 27th December 2015, mandating it to present a report based on which public consultations for an acceptable political solution for Tamil National Question could be initiated.

The Sub-Committee was comprised of representatives of political parties and civil society organisations represented in the Council. After several sittings in January 2016, this Sub-Committee produced the first draft of the proposal on January 31st in Jaffna for consultation with the people.

From February 1st, the political subcommittee had conducted several sittings of consultations with the Tamil public in all the districts of North and East, and in Colombo; the subcommittee also received suggestions and recommendations in the form of documents from Tamils living within Sri Lanka and living abroad; members of the subcommittee also received recommendations by way of phone calls/emails on the draft proposal. After giving full consideration to each and every suggestion provided, the political subcommittee has finalized this proposal on the 10th April 2016.

PREAMBLE

Recognizing that throughout the centuries from the dawn of history, the Sinhalese and Tamil nations have divided between themselves the possession of Ceylon,

Realizing that the Tamil Kingdom was overthrown in war and conquered by the Portuguese in 1619, and from them by the Dutch and the British in turn, independent of the Sinhalese Kingdoms,

Being aware that the British Colonists, who ruled the territories of the Sinhalese and Tamil Kingdoms separately, amalgamated under compulsion the territories of the Sinhalese and the Tamil Kingdoms for purposes of administrative convenience on the recommendation of the Colebrooke Commission in 1833,

Bearing in mind that the Tamil Leaders were in the forefront of the Freedom movement to rid Ceylon of colonial bondage which ultimately led to the grant of independence to Ceylon in 1948,

Recalling that the Ilankai Tamil Arasu Kadchi (ITAK – Federal Paty) in April 1951 articulated its claim that the Tamil People in Ceylon were a Nation distinct from that of the Sinhalese by every test of nationhood and were therefore entitled to the right to self-determination and as a necessary corollary to the exercise of this right, demanded a federal arrangement in the North and the East, where the Tamil Speaking Peoples are a predominant majority,

Mindful that the foregoing facts of history were completely overlooked, and power over the entire country was transferred to the Sinhalese nation on the basis of a numerical majority, thereby reducing the Tamil nation to the position of subject people,

Acknowledging that successive Sinhalese governments since independence have always encouraged and fostered the aggressive nationalism of the Sinhalese people and have used their political power to the detriment of the Tamils by-

- (a) Depriving one half of the Tamil people of their citizenship and franchise rights thereby reducing Tamil representation in Parliament,
- (b) Making serious inroads into the territories of the former Tamil Kingdom by a system of planned and state-organized Sinhalese colonization and large-scale regularization of recently encouraged Sinhalese encroachments, calculated to make the Tamils a minority in their own homeland,
- (c) Making Sinhala the only official language throughout Ceylon thereby placing the stamp of inferiority on the Tamils speaking people and the Tamil Language,
- (d) Giving the foremost place to Buddhism under the Republican constitution thereby reducing the Hindus, Christians, and Islamists to second class status in this Country,
- (e) Denying to the Tamils equality of opportunity in the spheres of State employment, education, land alienation and economic life in general and starving Tamil areas of large scale industries and development schemes thereby seriously endangering their very existence in Ceylon,

- (f) Committing cultural genocide by burning down the Jaffna Public Library in 1981 destroying over 97,000 books that were culturally and historically important and irreplaceable and irretrievable; by forcible Bhuddhisisation of Tamil non-Bhuddhist areas of the North East, such as the in the recent past the building of a large Buddha statue in the heart of the Trincomalee City; by bombing / shelling and destroying by other means, places of worship and areas of historical value to Hindu and Christian Tamils and in some instances converting Tamil places of worship to Buddhist temples like in the case of Kanniya Venneer Uuttu and Ahatheeswaram Temple in the Trincomalee District,
- (g) Permitting and unleashing State sponsored killings, forcible disappearances, sexual violence, communal violence and intimidation with the assistance of the Government Armed Forces against the Tamil people as happened in Amparai and Colombo in 1956; all over the country in 1958; army reign of terror in the Northern and Eastern Provinces in 1961; police violence at the International Tamil Research Conference in 1974 resulting in the death of nine persons in Jaffna; 1983 riots resulted in killing over 3,000 Tamils, raping 500 women, destroying 8,000 houses and 5,000 businesses and over 500,000 Tamils made to flee the country; atrocities that included 50 separate massacres of Tamil civilians before 2008; and over 145,000 Tamils being unaccounted for in the mass atrocities committed during the last phases of the war ending in May 2009 - all these calculated to instill terror in the minds of the Tamil people, thereby breaking their spirit and the will to resist injustices heaped on them,
- (h) By terrorizing, torturing, and imprisoning Tamil youths without trial for long periods on the flimsiest grounds,
- (i) By imposing on the Tamil Nation, three Constitutions which were drafted without the participation of the Tamil Nation thereby denying and depriving its effective role in the decisions making process and institutionalizing discrimination,

Noting that Vaddukoddai Resolution was adopted on 14 May 1976 for the creation of an independent State of Tamil Eelam by the Tamil United Liberation Front which received an overwhelming mandate for the said resolution at the 1977 Parliamentary Elections,

Acknowledging that the Tamil People did not grant their consent to the enactment of the 1978 Constitution that was enacted on the basis of unitary character of the State and by entrenching same,

Bearing in mind that the Tamil armed struggle as a measure of self-defense and as a means for the realization of the Tamil rights to self-determination arose only after more than four decades of non-violent and peaceful constitutional struggle / attempts by the various Tamil political parties to win their rights, by co-operating with the successive governments in order to achieve the bare minimum of political rights proved to be futile and due to the absence of means to resolve the conflict peacefully,

Noting that in view of the earnest desire for peace, all Tamil political formations, including political parties and armed organizations, unanimously put forward a set of cardinal principles at the Indian Government sponsored Peace Talks held in Thimpu, Bhutan in 1985, and declared that they were prepared to give considerations to any set of proposals in keeping with the stated cardinal principles that the Sri Lankan Government may place before them. The cardinal principles being:

- (a) recognition of the Tamils of Ceylon as a nation;

- (b) recognition of the existence of an identified homeland for the Tamils of Ceylon;
- (c) recognition of the right of self-determination of the Tamil nation;

Realizing that while no progress was being made on the political front to resolve the burning national issue, the Tamil armed struggle continued, though initially there were several armed groups, the LTTE emerged as a sole politico-military force fighting against the Sri Lankan State, the LTTE entered into negotiations on behalf of the Tamil people with successive governments, but with no solution being reached, and the armed confrontation came to an end in 2009,

Acknowledging that over 60 years long State sponsored violence against the Tamils people including, anti-Tamil pogroms, massacres, land occupations, sexual violence, acts of cultural and linguistic destruction have been committed by successive governments with the intention of destroying each of the pillars that gives recognition to the Tamil peoples' status of Nationhood, amounting to Genocide,

Noting that the Northern Provincial Council also passed a Resolution on 10/2/2015 recognizing Sri Lanka's Genocide against Tamils.

Noting that the case of Genocide against the Tamil people is unique among genocides in history because it occurred over several decades and under different governments culminating in the blood bath of 2009.

Recognizing that given the aforesaid reality it is only a political solution to the Tamil National Question that recognizes the Tamils as a distinct Nation within Sri Lanka with its inalienable right to self-determination that will ensure non-recurrence.

Recognising that at no point in the Tamil Nation's history has the Tamil people acted in a manner to surrender their distinct sovereignty,

Wherefore the Tamil Peoples Council places before all stakeholders the following proposals in order to reach an amicable political solution to the national conflict consistent with the principles of the rule of law, human rights and equality to all persons and the right to self-determination of Peoples and to bring lasting peace within a united Sri Lanka.

THE NEED FOR A POLITICAL AGREEMENT PRIOR TO A CONSTITUTIONAL ENACTMENT

The finding of a political solution cannot be a mere constitution writing exercise. The root cause of the national conflict is Sri Lanka being a Sinhala-Buddhist Nation State - a State that is identified with a single nation and demos and has a hierarchical structure with the Sinhala Buddhist Nation that sits on the top of the hierarchy. This hierarchy is represented in the unitary character of the State. Both major parties in the South (SLFP and UNP) stand by a Sinhala Buddhist unitary State, which is unacceptable to all shades of Tamil public opinion. It would not be possible to engage in a constitution making exercise without agreeing to the basic vision of the State. For Sri Lanka to become a secular non-hierarchical State, the Sinhala Buddhist polity will have to recognize that there needs to be a new social contract drawn between the Tamil Nation and the Sinhala Nation in Sri Lanka through which would emerge a new State – a new plurinational Sri Lanka. This would mean recognizing the Tamil People's uniqueness and their right to self-determination and recognition of the political aspirations of the Muslims and Up Country Tamils. The 13th amendment to the present Constitution failed not just by the fact that it was set within a unitary framework and because of its flawed institutional design but also because of a conception of a hierarchical state with Sinhala Buddhist Nation at its helm. Even a federal Constitution would not be workable unless the hierarchical conception of the State is altered. Hence we insist on the pre-constitutional recognition of the Tamil Nationhood and self-determination in a new constitutional scheme. It is from such a political vision that a new Constitution can be enacted. In the absence of such an understanding a constitutional process will, like in all previous instances be majoritarian and unilateral and bound to fail.

We think that a pre-constitutional agreement in the form of a treaty (like the Dayton Agreement and the Good Friday Agreement) is necessary prior to the constitution making process. The treaty should *inter alia* recognize the Tamil nation's right to self-determination, its sovereignty and constituent power and its traditional homeland in the areas of historical habitation of the Tamil people. The treaty should provide that in the event of the arrangements being unilaterally abrogated by the numerically larger Sinhala Buddhist majority and its political representatives and in the absence of any other alternatives, the Tamil people may decide to hold a referendum to further determine their political status. This treaty which we think should be underwritten by a third party (foreign governments such as the US/India or the UN) will help to bring international/external guarantee to the durability of the solution arrived at, beyond the contours of a constitution that otherwise rests within the domain of domestic law. This agreement should also spell out *inter alia* measures to be taken for accountability and justice, address issues relating to disappearances, release of political prisoners, release of land occupied by the Armed forces in the North-East, demilitarization, state-sponsored colonization, security sector reforms and contain guarantees of non-recurrence. It would be impossible to create a safe and open environment for the discussion of these political/constitutional issues without creating the above enabling conditions in the North-East.

Proposals for a Constitutional Arrangement

1. Character of the (Sri Lankan) State:

- 1.1. Sri Lanka is a pluri-national, multi-cultural, multi-lingual and multi-religious Country and is made up of its constituent Nations, Peoples and Communities. The Federation and States are obliged to recognize respect and protect the diversity of its Nations, constituent Peoples and other Communities.
- 1.2. Sinhalese, Tamils, Muslims, Up Country Tamils and other Communities make up the pluri-national Country of Sri Lanka.
- 1.3. The Tamil Nation's territorial unit shall be the Northern and Eastern Provinces as demarcated by the 1978 Constitution, being the areas of historical habitation of the Tamils.¹
- 1.4. Tamil people are a distinct Nation with the inalienable right to self-determination. The Tamil Nation pledges its commitment to a united and undivided Sri Lanka which respects and affirms the right to self-determination of the Tamils.

2. Sovereignty

- 2.1. Sovereignty vests in the distinct Nations and their constituents and is inalienable. The sovereignty of the federation and its units is derived from that of its constituent nations.
- 2.2. The Legislative power shall be exercised by the Parliament and the State Legislative Assembly exclusively within their spheres of competence according to the powers vested in them by the Constitution.
- 2.3. The Executive power shall be exercised by the Prime Minister and the Cabinet of Ministers of the Federal Government and by Chief Minister and the Board of Ministers of the State according to the power vested in them by the Constitution.
- 2.4. The Judicial power shall be exercised by the Constitutional Court and the Judicial bodies of the Federation and the States exclusively within their spheres of competence according to the power vested in them by the Constitution.
- 2.5. The fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of Federal Government and the States and shall not be abridged, restricted or denied, save in the manner and to the extent provided for

¹ We make no comments herein as to the territorial division of the rest of the country into Federal units and will leave the peoples of the rest of Sri Lanka to articulate.

by the Constitution.

- 2.6. The franchise shall be exercisable at the election of Members Parliament, and of the Members of State Legislative Assembly, and at every Referendum by every citizen who has attained the age of eighteen years.

3. Constitutional Supremacy

The Constitution is the foundational and the supreme law of the Federation and States. All actions of the Federation and States shall be in accordance with the Constitution.

4. Language, Religion, Citizenship and Fundamental Rights

- 4.1. The Federal Republic of Sri Lanka shall be a secular country that guarantees the freedom of religion of all persons and treat all religions equal
- 4.2. Sinhala and Tamil shall be the official languages of Sri Lanka. English shall be the link language.
- 4.3. Tamil shall be the language of courts and the language of public records in the North-Eastern State.
- 4.4. All citizens have the right to access public service and judicial service in the language of their choice including in those areas where their preferred language is not the official language of administration.
- 4.5. All those ordinarily citizen or resident in Sri Lanka on 4th February 1948 and their descendants shall be entitled to Sri Lankan citizenship. There shall be no distinction between citizens by registration and by birth.

4.5.1 The grant of citizenship shall be by the Federation.

4.5.2 Applications by those in accordance with Article 4.5 above seeking to be domiciled within the North-East shall be processed through the North-East State. A recommendation by the North-East State for citizenship shall not be refused by the Federation.

4.5.3 Applications by highly skilled foreign nationals not falling under the category of persons described in 4.5 above, but who wish to be domiciled within the North-East State shall be processed through the North-East State. A recommendation by the North-East State for citizenship shall not be refused by the Federation.

4.5.4 Domicile in the North-East shall not affect the right to freedom of movement throughout Sri Lanka or any other right of the citizen so concerned.

- 4.6 There shall be a fundamental rights chapter that closely follows the architecture of the rights

found in the International Covenant of Civil and Political Rights. These rights shall be justiciable. Economic, Social and cultural rights shall also be included in the fundamental rights chapter following the architecture laid down in the South African Constitution.

5. **System of Governance**

5.1. Sri Lanka shall be a Federal Republic.

5.2. There shall be two tiers of government; the Federal and the State.

5.3. The Unit of Federation shall be States. One such unit of the federation shall be the 'North-East State' comprising the Northern and Eastern Provinces as demarcated under the Constitution of 1978.

5.4. The Federal Government shall be organised on the principles of the Westminster style of Government.

5.5. The States by their own constitutions shall provide for the functioning of their respective system of governance, in accordance with the federal constitution.

5.6. The electoral system at both levels of Government is to follow the proportional representation system

5.7. The President is to be elected by an electoral college consisting of the elected members of the Lower House, Senate and State Legislatures .

5.8. Parliament and the State Legislative Assembly shall continue for four years from the date of its first meeting and no longer.

5.9. Constitutional Council as envisaged in the 17th amendment to the 1978 constitution²

Notes:

- a) We recognize the distinctive political character of the Muslim Community in the North-East. We are committed to discussing with the Muslim Community any proposal they put forward with regard to accommodating their interests and aspirations in an institutional form within the merged North-East.
- b) Sinhalese living in the North-East State shall enjoy all rights enshrined in the Constitution and the laws additionally to be enacted by the North-East State Assembly through its own enactments on human rights.
- c) We similarly express our commitment to the rights of the Up-Country Tamils to a measure of institutional rights that safeguard their collective interest in their areas of habitation. We are absolutely committed to working with Up-Country political parties and civil societies in this regard.

² Certain amendments that will rectify its flaws as discerned from practice will be necessary– such as fixing quorum for the Council etc.

Shared rule at the Federal Level

6. Second Chamber

- 6.1. Each State will have equal representation in the Second chamber to be called the Senate. The State legislatures shall each by proportional vote elect 09 members to the Senate.
- 6.2. Each Bill shall be passed by both the Lower House and the Senate before being approved by the President. If a Bill is rejected in the Senate it does not become law.
- 6.3. Where a majority of the members representing the North-East State are of the opinion that a bill will specifically harm the interests of its State the bill cannot proceed to its second reading. Where the issue of whether a bill specifically harms the interests of the North-East is disputed the Chairman following a debate shall rule on the matter. The ruling of the Chairman is reviewable by the Constitutional Court.

7. GOVERNOR

- 7.1. The Governor shall be appointed by the President with the consent and concurrence of the Chief Minister. The post of Governor shall be a ceremonial position except in instances where a state of emergency has been declared in that State.
- 7.2. The Governor shall appoint as the Chief Minister of the State, a member of the State Legislative Assembly who in his opinion commands the confidence of the majority of the members of the State Legislative Assembly. The Chief Minister shall appoint the Board of Ministers.
- 7.3. In the event the Governor exceeds the powers vested in him under the Constitution the State may seek to remove him through a process of impeachment.

8. Powers of the Federation and the States

- 8.1. Powers of Government shall be shared between the Federation (Centre) and the States.
- 8.2. The Federal List of the Constitution shall determine the powers to be exercised by the Federation.
- 8.3. The States shall exercise all powers not falling within the Federal List including those powers listed under the States List.
- 8.4. The Federation and the States shall be supreme in their respective spheres of competence.

Note: The States' List has been prepared from the perspective of the powers that the North-East State Assembly would exercise. While we have no objections to a multi-unit federal Sri Lanka (these proposals are in fact made on the assumption that Federal Sri Lanka will be a multi-unit

federalism) we do not wish to elaborate on whether all units of the federation need to have the same powers (symmetrical federalism). We recognize that unlike the North-East no other part of the country makes claims to maximum self-government. We hence recognize that the North-East may enjoy asymmetrical powers in the Federation while the other states may opt for lesser powers. This may be achieved by there being three lists – for the North-East, other states and the Centre)

States List

1. Land.
2. Health and indigenous medicine
3. Education and Educational Services including Higher Education including Universities
4. Agriculture and agrarian services,
5. Irrigation
6. Animal husbandry
7. Economic Resources including fisheries, mines and minerals in relation to maritime zones including historical waters and territorial waters, inclusive of Economic Zones and Continental Shelf
8. Forestry, Sanctuary and protection of the environment within a State.
9. Industries and industrial development
10. Generating and supplying energy, electricity and power.
11. Mines and minerals, quarries
12. Transport including State Railway.
13. State Census and Statistics.
14. Airports, Ports and harbours
15. Rivers and waterways.
16. Roads and Highways.
17. Housing and construction
18. Urban planning and Development
19. Rural development
20. Local Government
21. Co-operatives.
22. Supply and distribution of food within the State
23. Promotion of tourism
24. The regulation of cultural activity, including public performances
25. Electronic and print media

26. Relief, rehabilitation and reconstruction
27. Social security
28. Police, law and order, (Police shall establish a unit called 'Coastal Guard' to carry out rescue operation to ensure fishing rights and protect coastal resources)
29. Administration of Borstal and reformatory institutions
30. State public service
31. Sports
32. Regulation of unincorporated associations and societies within the State.
33. Debt of the State
34. Domestic and international borrowing (international borrowings above a specified limit would require the concurrence of the centre).
35. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the State.
36. State financial and credit institutions
37. Excise duties
38. Turnover taxes / VAT on wholesale or retail sales in the State.
39. Betting taxes, taxes on prize competitions and lotteries other than National Lotteries
40. Motor vehicle license and fees
41. Stamp duties on transfer of properties, such as land and motor cars
42. Fines imposed by courts
43. Court fees, including stamp fees on documents produced in courts.
44. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes.
45. Taxes on mineral rights,
46. State Audit.
47. Enact laws with respect to any of the matters specified in the list
48. Fines in respect of the matters in the State List
49. Planning at the state level.
50. Elections for the State Legislative Assembly and Local Authorities.
51. Archaeological and heritage sites, museums and Archives.
52. Administration within the State.
53. Administration of Justice within the State.
54. State Consolidated fund.

55. Labour laws and regulations.

Federal List

1. Defence, federal security, and the security forces
2. Federal Department of Investigations, policing powers in respect of all matters within the Federal List.
3. Immigration, Emigration
4. Foreign Affairs
5. Federal Census and Statistics
6. Currency and Foreign Exchange, international economic relations and monetary policy
7. Public Debt of the Federal Government.
8. Foreign loans of the Federal Government.
9. Regulation of banking and other financial institutions
10. Insurance
11. Stock Exchange and futures markets
12. Audit of the Federal Government.
13. Taxes on income capital and wealth of individuals, companies and corporations
14. Federal Turnover Tax/ VAT other than State taxes
15. Custom duties including import and export duties
16. Pensions payable by the Federal Government or out of Federal consolidated fund.
17. Atomic Energy
18. Maintenance and management of the National Grid
19. International transportation.
20. Civil aviation
21. Federal highways and Federal Railways
22. Maritime security in relation to maritime zones including historical waters and territorial waters, inclusive of Economic Zones and Continental Shelf, international shipping lines and navigation.
23. Federal Elections
24. Posts and telecommunications
25. Federal Public Service and the Federal Public Service Commission
26. Drugs, poisons and narcotics
27. Administration of justice at the Federal level.
28. Federal Industrial Research & Training

29. Regulation of minimum standards for subjects including Education, Hygiene, Health.
30. Patents, inventions, designs, copyright, trademarks and merchandise marks
31. Monopolies and mergers
32. Federal Telecommunication Regulatory Commission and cyber security
33. Federal Archives and Museums,
34. Development of Federal sports administration and infrastructure
35. Assistance in instances of (natural and environmental) disaster and epidemics
36. Labour standards
37. Citizenship.

Detailed proposals on certain important subjects in the Federal/ State List:

9. Land

- 9.1. All Land defined as 'State Land' under the State Land Ordinance shall vest in the States.
- 9.2. All land within the State presently under the control of the Federation, in relation to a subject falling within the Federal List shall revert to the State except for such land that may reasonably be required in relation to a subject within the Federal List. And if there be any dispute, it may be referred to mediation and then finally resolved by the Constitutional Court.
- 9.3. 'State' land presently under the control of the Federation in relation to a subject no longer within the Federal List shall revert to the State.
- 9.4. All private land within the State under the occupation or control of the Federation must be restored to the possession of its lawful owners.
- 9.5. The States shall be entitled to exclusively exercise rights in or over such land, including land tenure, transfer and alienation of land, land use, land settlement, and land improvement.
- 9.6. Any existing law, regulation or circular inconsistent with powers over land vested in the State, shall be considered void.
- 9.7. Where Federal Government wishes to make use of land within the State for the purpose of a subject within the Federal List, the federal Government may request the State for such land. And if there be any dispute, it may be referred to mediation and then finally resolved by the Constitutional Court.
- 9.8. Any land provided by the State for the purposes of a subject falling within the Federal List to the Federal Government shall only be used for such purpose.

10. Local Government

- 10.1. The State shall pass legislation defining the structure of local government, powers and composition.

10.2. Such local government bodies shall be accountable to the respective States and shall exercise such functions as are allocated to them by law and will carry out those functions as agents of the relevant States.

10.3. Demarcation of boundaries of the administrative units including local authorities shall be by the States.

11. Police, Law and Order

11.1. Law and order including public order and exercise of police powers shall be the subject of the States, but may be reserved to the Federation in the Colombo Capital Territory and its environs, including Sri Jayawardenapura Kotte.

11.2. There shall be a Police Force in every State which shall be responsible for the preservation of public order within the State and prevention, detection, investigation and prosecution in the relevant Courts in respect of such offences.

11.3. There shall be a Coast Guard unit within police to carry out rescue operations to ensure fishing rights and to protect coastal resources.

11.4. There shall be a Federal Department of Investigation (FDI) which shall be responsible for the prevention, detection, investigation and prosecution of offences against the matters listed in the Federal List, international crimes and offences committed within the Capital territory.

11.5. There shall be an independent Police Commission in each State and an independent Federal Policing Commission at the Federal level.

11.6. The members of the Federal Policing Commission shall be appointed by the Constitutional Council. The members of the State Police Commission shall be appointed by the State Constitutional Council.

11.7. The Chief Minister of a State may seek the intervention of the Head of the Federal government to the deployment of the armed forces in any grave situation which may occur within the State. The request of the Chief Minister lapse if the State Legislative Assembly does not ratify the decision within a period of two weeks.

12. Foreign Policy

12.1. Foreign policy shall be a subject on the Federal List. However when a matter on the State List is the subject of a foreign policy decision the States shall participate in the preparation of decisions of foreign policy which concern their powers or their essential interests. The Federation shall inform the States in time and fully, and consult them. The position of the States shall have particular weight when their powers are concerned. In these cases, the

States shall participate in international negotiations as appropriate³.

12.2. The North East State shall have the right to establish a unit within the embassies of the Federation to promote its economic, educational and cultural interest.

13. Public Service

13.1. The Chief Secretary of the State, the Secretary to the Chief Minister and the Secretaries to the Board of Ministries shall be appointed by the Chief Minister in consultation with the Board of Ministers.

13.2. There shall be a State Public Service for the purpose of carrying out the functions of the State in respect of matters within the competence of the State.

13.3. There shall be a State Public Service Commission in every State established under the Constitution. The Commission will be responsible for the recruitment, appointment, transfer, promotion, dismissal and disciplinary control over respective State Public Service Cadre. The members of the State Public Service Commission shall be appointed by Chief Minister on the recommendation of the State Constitutional Council .

13.4. The State Public Service Commission shall appoint, transfer and have disciplinary control over the District and Divisional Secretaries and Grama Sevakar (Niladharis) within the State. These officers will also carry out the different functions allocated to them by the Federal Government through the Chief Secretary or State as the case may be.

13.5. There shall be a Federal Public Service Commission for the purpose of carrying out the functions of the Federal List in respect of the matters within the competence of the Federal government.

13.6. The Federal Public Service Commission shall be responsible for the powers of recruitment, appointment, transfer, dismissal and disciplinary control over the Federal Public Service. Appointments to the Federal Public Service Commission shall be made by the Prime Minister, upon the recommendation made to him by the Constitutional Council.

14. Recruitment Policy

14.1 Recruitment to the Federal Public Services and Armed services shall reflect the ethnic ratio of the whole country.

14.2 Recruitment to the State Public Services and Police services shall reflect the ethnic ratio of the respective State.

³ Adopted from Section 55 of the Swiss Constitution

15. Education

- 15.1. The subject of education shall be vested with the States. This includes primary, secondary and tertiary education including universities and other institutions providing technical and vocational training.
- 15.2. The establishment and maintenance of any school, university or tertiary educational institution shall be within the competence of the State.
- 15.3. The powers of recruitment transfer and disciplinary control over the personnel employed in educational institutions referred hereto shall be under the State Educational Service Commission.
- 15.4. There shall be a commission to set out minimum standards countrywide.

16. Fiscal Federalism

- 16.1. Fiscal arrangements shall make sure that the States are able to exercise their powers independently.
- 16.2. The impact of the war on the North-East should be taken into consideration while taking measures to implement fiscal equalization and horizontal equality.
- 16.3. There shall be a Federal Finance Commission with powers to make binding recommendations to the Federal Government on matters relating to fiscal relations. The Financial commission shall reflect the pluri-national character of the country and is accountable to both the Federal government and the States equally.
- 16.4. The North-East State shall have international borrowing powers and the right to receive international aid directly without the interference of the Federal Government as long as the debt of the North-East is not the responsibility of the Federation. Where the borrowing has an impact on the Federation, the State shall consult the Federal government.

Resolution of Disputes between the Federal and State

17. Constitutional Court

- 17.1. There shall be a Constitutional Court vested with sole jurisdiction to adjudicate with regard to all matters pertaining to the constitution and shall be the final Court of Appeal in relation to fundamental rights and writ jurisdiction.
- 17.2. The Constitutional Court shall also be the Court for judicial review of legislation enacted by both the Federal Parliament and the State legislatures.
- 17.3. Appointments to the Constitutional Court shall reflect the pluri-national character of Sri Lanka
- 17.4. A colloquium of the Chief Ministers of States and the Prime Minister shall appoint 9 members to the Constitutional Court from among eminent jurists. The Chief Ministers and the Prime Minister shall act respectively on the recommendation of the State Constitutional Council and the Constitutional Council.
- 17.5. The Chief-Minister of the North-East *in lieu* of the asymmetric nature of the Federal arrangements shall be entitled to nominate 3 members of the Constitutional Court. At least two of the three judges nominated by the Chief Minister of the North-East should concur with a judgment in a case that concerns the North-East State.
- 17.6. Any citizen may challenge any law passed by the Parliament and /or the State for constitutionality before the Constitutional Court.

18. Judiciary

- 18.1. There will be a Court of Appeal (CoA) in every State. The CoA shall exercise appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court or by any Court of first instance tribunal or other institutions and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum* of all causes, suits, actions, prosecutions matters and things of which such High Court, Court of first instance, tribunal or other institutions may have taken cognizance. The CoA shall also have original fundamental rights and writ jurisdiction within the State.
- 18.2. The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as the Parliament and the State Assembly may by law vest or ordain.
- 18.3. The Federal Judiciary shall be comprised of the Supreme Court only which shall be the final appellate court.
- 18.4. The State Judicial Service Commission, which will be appointed by Chief Minister in consultation with the State Constitutional Council will consist of the President of the Court of

Appeal and the two other Court of Appeal judges next in seniority.

18.5. State Judicial Service Commission shall be responsible for the appointment of other CoA judges and minor judiciary within the State. The State Judicial Service Commission will consult with the Federal Judicial Service Commission with regard to the transfer of judges.

19. State Constitutional Council

19.1. There shall be a State Constitutional Council to ensure independent appointments are made to important government positions and bodies within the State.

19.2. **Composition:** CM, Opposition Leader, Speaker of the State and 8 members of eminent standing from different walks of life jointly nominated by the CM and the OL. Out of the 8 civil society members at least 3 shall be female.

19.3. **Responsible for:** Appointments to the State Judicial Services Commission, President of the Court of Appeal, State Advocate General, Public Services Commission, Police Services Commission, State Police Commissioner, State Human Rights Commission, etc.

20. State Advocate General

20.1. The Chief Minister of a State shall on the recommendation of the State Council for Good Governance appoint a State Advocate General who will advise the Chief Minister on the Constitutionality of laws passed by the State Legislative Assembly.

20.2. Where any law passed by the Parliament is deemed to be unconstitutional, the State Advocate General after consultation with the Chief Minister may institute action before the Constitutional Court.

21. Emergency Powers

21.1. Where the Head of Federal Government is satisfied that a government of the State is seeking to unconstitutionally secede from the Federation and that the secession of that State from the Federation is imminent, he may declare a state of emergency and the Governor shall take over such executive functions and powers of the Chief Minister and the Board of Ministers as may be necessary in the circumstances.

21.2. Any declaration of emergency shall be reviewed and pronounced upon the Constitutional Court *ex meromotu* within a period of one month from the date of declaration. Where the Constitutional Court rules that the declaration of emergency was justified, the head of the Federation shall dissolve the State Legislative Assembly and hold fresh elections within a period of six months from the date of declaration of emergency. In the event the

Constitutional Court rules that the said declaration of emergency was not justified, the said state of emergency shall forthwith cease to have any force or effect.

21.3. Upon the cessation of emergency as aforesaid, the Chief Minister and the Board of Ministers shall continue in office and carry out their functions without being bound by any act or thing done in the interim.

21.4. Where the Chief Minister of the State is of opinion that it is expedient so to do in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community the Chief Minister may, proclaim state of emergency throughout the State or in such part or parts of the State.

21.5. Such state of emergency proclaimed by the Chief Minister shall be approved by the State Legislative Assembly within ten days of the such proclamation.

21.6. Such state of emergency proclaimed by the Chief Minister shall not be extended more than a period of one month.

22. Federal – State, Inter-State Co-operation

22.1. *Ad-hoc* fora and instruments shall be created for issues relating to the States and the Federal government and for matters between -State to be discussed and resolved amicably.

22.2. There shall be a permanent Chief Ministers Conference convened by the Federal Government which shall provide an overarching space for the resolution of these disputes

22.3. Specialised *ad-hoc* fora for subjects such as education and transport may also be created.

22.4. Any matter such as railway, water, electricity, energy pipelines, that concerns two or more States shall be decided upon with the concurrence of the respective States.

23. Amendments to the Constitution

23.1 Constitutional amendments proposed by the Parliament, relating to the geographical territory of the States, the powers of States and all other matters relating to States can be amended only if such amendment is approved by 2/3 majority in both houses of Parliament and by 2/3 majority in each State Legislative Assemblies of all the States. Any Constitutional amendment approved as aforesaid by the Federal but not approved by a given State or States shall not apply to that State or States.

23.2 Other Constitutional amendments shall be adopted if approved by a 2/3 majority vote of both houses of Parliament.

24. Some proposals for the conduct of Governance in the North East State

As noted earlier the respective States shall provide for the functioning of Governance in their State. These proposals are made as with regard to the policies that we believe should guide the North-East State

1. Minimum 1/3rd of seats reserved for women in the legislature and the executive
2. Maximum of 14 Ministers in addition to the CM. No Deputy Ministers or other similar ministerial portfolios
3. A State Human Rights Charter that includes justiciable economic social and cultural rights justiciable at the Court of Appeal - monitored by a State Human Rights Commission which follows standards laid down by the UN for National Human Rights Institutions.
4. Affirmative action to eliminate caste discrimination to be included in directive principles of State policy document to be developed in consultation with the people.
5. An independent Citizen Ombudsman modelled on the Indian Jan Lokpal Bill developed by Indian anti-corruption activists.
6. An independent State Environmental Authority with powers to ensure sustainable development and green growth.
7. Independent commissions shall be established to address issues such Bribery and Corruption, Financial Crimes etc.