

LAW & SOCIETY TRUST



This proposal includes submissions to be incorporated in a future constitution and was prepared in response to the public invitation to submit proposals to the Ministry of Justice Experts Committee to Draft a New Democratic Republican Constitution for Sri Lanka.

This proposal is made on the following assumptions:

That the constitutional values and principles of a democratic republic will form the basis of the constitution and we recommend that these principles are incorporated as such as a chapter in the constitution. These constitutional values and principles will assist in constitutional interpretations and provide clarity of direction to governments:

Constitutional Values and Principles:

The principle that human freedom and human dignity are inalienable.

The new constitution affirms and marries the principles of Democracy and Republican Government, recognizing that:

The power of government is held by the people and this is undisputable;

The people give power to elected leaders to represent them and serve their common interests and the elected leaders hold this power temporarily and in trust and their exercise of this power is subject to limitations, checks and balances including principles of accountability;

The elected government leaders and public officials are stewards and custodians of public funds and other public and natural resources and are accountable for their use;

Citizens' participation by freely engaging through political parties and civic associations of their choice is integral to democratic governance;

Freedom of thought expression, communication and dissent through the media and other forms including artistic and creative practices is an essential aspect of democracy;

The elected government leaders and public officials are responsible for advancing the interests of all the people in the country without distinctions based on religion, ethnicity, caste, gender, disability, birth or other considerations;

The government is prohibited from limiting or taking away the inalienable and indisputable rights of the people, even if that government was freely chosen by an overwhelming majority of the people;

Any limitations to human freedoms are the exception and can only be made when the state is facing a grave national emergency and the limitations must be temporary and proportionate to address the emergency and within the limitations as laid down in the constitution.

That the new democratic, Republican Constitution further acknowledges and affirms:

The pluri-national composition and character of Sri Lanka and this is reflected in the institutions that devolve power and accommodate power-sharing;

That any provision of this Constitution must be interpreted in the spirit of retaining a plural legal system. We emphasize that any attempt at homogenizing the personal laws of the country under a uniform code would have an adverse impact on the plural and multicultural character of society and of our legal system. Any attempt by the state, including the judiciary, to bring personal laws in line with the Chapter on Fundamental Rights must seek to advance both the promotion and protection of individual rights and freedoms, and the value of legal pluralism.

That the new constitution will guarantee:

Equality, non-discrimination and social justice to all the people of Sri Lanka irrespective of ethnicity, religion, gender, abilities, caste, class, birth or social origin;

Substantive fundamental rights with respect to social, political, economic and cultural rights;

Procedural rights that will protect people's rights and freedoms from arbitrary government;

Language rights that acknowledge the historical, regional and cultural diversity of Sri Lanka;

Irreversible, meaningful, and extensive devolution of power within the united country of Sri Lanka;

Binding public authorities and organs of the state at all levels, including the executive, the legislature and the judiciary and devolved units and local government to the exercise their powers to advance democratic norms, values and procedures as laid down in the constitution; An impartial public administration that is accountable and capacitated to be the interface between state and society;

Independent courts (including at the devolved level) with the right to appeal decisions through the hierarchy of courts;

The powers of the Supreme Court and Court of Appeal (or a Constitutional Court if one is to be established) to exercise comprehensive judicial review of legislation and executive action, and otherwise exercise judicial powers and duties under the proposed chapter;

Independent institutions and commissions that ensure accountable, open, and transparent governance that serves and protects the interests of the people.

That the new constitution affirms:

The principles that fundamental rights require a high degree of protection, there will be constitutional limits to altering fundamental rights;

Derogation of fundamental rights may only take place in exceptional circumstances, temporarily and to the extent necessary to deal with the exceptional circumstances and national emergencies and with Parliamentary oversight.

A restricted, general limitations' clause (as opposed to the enumeration of discrete grounds of restriction attaching to each fundamental right or freedom) is founded on these principles and ensures that restrictions are not used to extinguish the essential substance of fundamental rights and freedoms.

The burden of proof for justifying a limitation lies in all cases with the state and the imposition of a limitation may be challenged in the courts.

Based on these assumptions and principles that shape our consciousness, we further engage in this process and recommend the following chapters:

Chapter #

PREAMBLE:

We the People of Sri Lanka, respecting the dignity of all human beings, and respectfully acknowledging and appreciating our diversity, we commit to healing the wounds and divisions of the past by creating a democratic republican constitution for all the people of Sri Lanka based on equality and inclusivity and without discrimination on the grounds of religion, ethnicity, caste, class, region, gender and disability;

Mindful of our obligations to the present and future generations to dignified and sustainable livelihoods, to a clean, liveable environment and to a development paradigm based on human rights, equity and social justice;

We commit, through this constitution to provide the foundations for a democratic, republic that devolves power to its constituent units to ensures a peaceful, equitable, just and united society that takes its place proudly among the community of nations, respecting for all time, the international covenants and treaties that bind the community of nations.

Chapter #

Foundational Constitutional Principles

Sri Lanka is a Democratic Republic founded on the following constitutional principles and values that:

Human freedom and human dignity are inalienable;

Equality, non-discrimination and social justice are assured to all the citizens of Sri Lanka irrespective of ethnicity, religion, caste, gender, wealth, abilities, caste, class, birth or social origin;

The pluri-national composition and character of Sri Lanka is affirmed and is reflected in the institutions that devolve power and accommodate power-sharing;

The recognition of Personal laws is compatible with the pluri-national state provided that they do not violate the fundamental rights of the individual;

The power of government is established and sustained by the people;

Governments hold delegated powers that are to be exercised only for the welfare and common good of all the people;

Elected leaders hold these delegated powers temporarily, and in trust and the exercise of these powers are subject to limitations including principles of responsibility and accountability;

No government may claim the power to limit the rights of the people on the grounds that they were elected with an overwhelming mandate;

Universal adult suffrage, regular elections managed by an independent commission and a multi-party system of democratic government, to ensure accountability, responsiveness and openness are assured;

Civic participation through associations is recognized as integral to democratic participation;

The Right to Information, freedom of expression and communication through the media are essential aspects of democracy and are assured;

Procedural rights shall protect people from arbitrary government;

Language rights that acknowledge the historical and regional diversity of Sri Lanka and the need for advancement in the modern world are secured;

The national anthem of the Republic is an anthem of unity and shall be sung in all the languages recognized by the constitution of Sri Lanka.

Irreversible, meaningful, and extensive devolution of power within a united country is assured;

Public authorities and all organs of the state, including devolved units are bound to the exercise their powers to advance democratic norms, values and procedures, and ensure impartial and accountable public administration as laid down in the constitution;

The independence of the judiciary is secured;

The judicial power of the Supreme Court and Court of Appeal to exercise comprehensive judicial review of legislation and executive action is secured;

This Constitution, respecting these foundational clauses, is the supreme law of the Republic and any law or conduct inconsistent with it is invalid;

Any amendments to the constitution or a new constitution that replaces this constitution is bound by these universal principles and values and the obligations imposed by the constitution must be fulfilled.

Chapter

Fundamental Rights and Freedoms

Fundamental Rights and Freedoms as the Foundation of democracy

1. Fundamental rights and freedoms of the person form the cornerstone of democracy in the Republic of Sri Lanka, and are based on the values of human dignity and autonomy.
2. All persons have duties to other persons, and to the community to which they belong, and have the responsibility to strive for the promotion and observance of the rights and freedoms recognised in this Chapter.
3. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.
4. Any limitation on the enjoyment or exercise of fundamental rights and freedoms are permissible only to the extent provided herein.

Duties of the State

3. (1) All organs of the State, including its legislative, executive, and judicial branches, at all levels, must respect, protect, promote and fulfil fundamental rights and freedoms, and prevent the violation thereof.
- (2) The duties of the State to respect, protect, promote and fulfil fundamental rights and freedoms shall include the adoption of suitable policies, the allocation of adequate resources, and the effective implementation of all relevant budgetary commitments.
- (3) Such duties of the State shall be owed to all natural persons and legal persons. Such duties shall be owed to legal persons to the extent required by the nature of the right or freedom concerned, and the nature of that legal person.
- (4) The State shall provide effective remedies for the protection of all persons from the infringement or imminent infringement of their fundamental rights and freedoms due to the actions of private actors.
- (5) The State, including its officers, agents, and functionaries who perform functions or exercise powers of a public nature shall have the duty to expeditiously provide reasons for their decisions. Every person affected by such decisions shall have the right to receive such reasons in writing.

Inconsistency

4. (1) All written and unwritten laws that are inconsistent with any provision of this Chapter shall be void to the extent of such inconsistency.
- (2) The Provincial High Court, the Court of Appeal / Constitutional Court /the Supreme Court, as the case may be, in the course of exercising its jurisdiction under this Chapter, may declare any such laws to be inconsistent with this Chapter.

(3) It shall be the duty of the State to repeal or amend such laws, and in the case of the courts to develop and interpret such laws, to the extent necessary to ensure that such laws are consistent with the provisions of this Chapter.

Right to life

5. (1) Every person has the inherent right to life with dignity.
- (2) No person shall be arbitrarily deprived of their life, or punished with death.

Right to equality

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

Right to non-discrimination

7. (1) No person shall be discriminated against on the grounds of race, religion, ethnicity, colour, sex, gender, sexual orientation, caste, class, disability, language, political or other views, property, place of residence, or on any other similar ground.

(2) The State shall provide equal rights and opportunities for persons of all genders. The State shall adopt all reasonable measures to ensure the equality of persons of all genders.

(3) The adoption of temporary special measures aimed at accelerating equality between persons of all genders shall not be considered discrimination.

(4) All persons and communities shall have the right to develop their culture, to use their language in private and in public without any discrimination, to preserve their personal laws, and to freely pursue their economic, social and cultural development to the extent consistent with the provisions of this Chapter.

(5) The National Languages of Sri Lanka shall be Sinhala, Tamil, and English. Every person has the right to receive public services and official correspondence, and to interact with any public officer or institution, in a language of their choice. The State shall take all necessary measures to ensure such right. All official signage and documentation shall be in Sinhala, Tamil and English.

(6) No person shall, on any ground specified in paragraph 1 of this Article, be subject to any disability, liability, restriction or condition with regard to access to public institutions, shops, public restaurants, hotels, places of public entertainment, and places of public worship of their own religion.

Best interests of the child

8. (1) A child shall be any person under the age of eighteen years of age;

(2) In all matters concerning children, whether measures are undertaken by public or private institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be the primary consideration.

(3) The institutionalisation, including detention, of any child shall be the measure of last resort and for the shortest appropriate period of time, and shall be solely in the best interests of the child.

(4) Every child shall have, without discrimination on any ground specified in paragraph 1 of Article 7, the right to such measures of protection as are required by their status as a minor, on the part of their family, society and the State.

(5) Every child shall be guaranteed a minimum standard of living, through appropriate means, including through a scheme of universal child benefits.

Persons with disabilities

9. The State shall adopt necessary measures to ensure that persons with disabilities can meaningfully exercise their rights and freedoms under this Chapter.

Procedural rights

10. (1) Every person who is arrested or detained shall be informed, at the time of arrest or detention, of the reasons for their arrest or detention, and shall be promptly informed of any charges against them.

(2) Every person who is arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release. It shall be the general rule that persons awaiting trial shall not be detained in custody.

(3) Every person who is arrested shall be, as a general rule, granted bail, and the refusal to grant bail shall be the exception.

(4) Every person who is deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention, and order their release if the detention is not lawful.

(5) Every person deprived of liberty shall have, without delay, the right to communicate with and be visited by their relatives, attorney-at-law, or any other person of their choice.

(6) Every person charged with an offence shall be entitled to the following minimum guarantees:

(a) The right to be presumed innocent until proven guilty according to law;

(b) The right to be informed promptly and in detail, in a language which they understand, of the nature and cause of the charge against them;

(c) The right to adequate time and facilities for the preparation of their defense and to communicate with legal counsel of their own choosing;

(d) The right to be tried without delay in their presence, and be entitled to defend themselves in person or through legal assistance of their own choosing, and be informed, if they do not have legal assistance, of such right;

(e) The right to legal assistance assigned to them in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;

(f) The right to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(g) The right to have the free assistance of an interpreter if they cannot understand or speak the language used in court; and

(h) The right not to be compelled to testify against themselves or to confess guilt.

(7) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it

was committed, was criminal according to international law, including customary international law, applicable to Sri Lanka.

Absolute freedoms

11. (1) Every person is born free, and with inherent and inviolable human dignity. The freedom and dignity of the individual shall include:

- (a) The freedom from torture, cruel, inhuman, or degrading treatment or punishment whether mental or physical;
- (b) The freedom from unlawful or arbitrary arrest or detention, or any other form of unlawful or arbitrary deprivation of personal liberty;
- (c) The freedom of thought and conscience, including the freedom to have or to adopt a religion, belief, or opinion of one's choice without coercion; and
- (d) The freedom from forced or compulsory labour.

(2) The freedoms recognised in this Article shall not be subject to any limitation or interference.

Freedoms

12. (1) Every person shall have:

- (a) The freedom from hunger and be assured of a basic, nutritious diet;
- (b) The freedom from all forms of violence including physical or mental violence, and gender-based violence;
- (c) The freedom from interference with one's bodily integrity;
- (d) The freedom to manifest a religion or belief, including the freedom to profess, practice and propagate religion or belief;
- (e) The freedom of expression, including publication, and the commemoration of the deceased;
- (f) The freedom of information, including the freedom to access any information held by the state, and information held by another person that is required for the exercise or protection of any rights or freedoms recognised in this Chapter;
- (g) The freedom from interference with one's privacy, family, home or correspondence;
- (h) The freedom to engage in a lawful occupation, profession, trade, business or enterprise;
- (i) The freedom of education, which shall include the freedom to found and maintain educational institutions;
- (j) The freedom of peaceful assembly;
- (k) The freedom of association, including the freedom to form and join a trade union, and participate in trade union action and the right to form and join political parties and the right to form and join civic associations committed to engage on political, economic, social, and cultural matters;

- (l) The freedom to enjoy and promote one's own culture and to use one's own language;
- (m) The freedom of movement, and of choosing one's residence within Sri Lanka; and
- (n) The freedom to return to one's place of nationality.

Data protection

13. (1) Every person has the right to the protection of personal data concerning them. Such data must be processed fairly for specified purposes, and on the basis of the consent of the person.

(2) Every person has the right to access data concerning them.

(3) Every person shall have the right, without undue delay, to the rectification, erasure or blocking of personal data concerning them, provided such data is irrelevant, incomplete or inaccurate. Taking into account the purposes of processing, every person shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

Limitations

14. (1) The international Minimum Standards of Human Rights Norms in a State of Emergency shall be the standard for framing and regulating Emergency regulations. Any limitation on any right or freedom recognised in Articles 12 and 13 shall be:

- (a) in strict accordance with laws framed on the basis of international standards;
- (b) necessary, reasonable, non-discriminatory, and justifiable in an open and democratic society;
- (c) solely in the interest of public security, safety or health, or for the purpose of protecting the duly recognised rights and freedoms of others; and
- (d) the least restrictive means through which an interest or purpose under subparagraph (c) of this paragraph may be advanced.

Right to Property

15. (1) Every natural person has the right to own and inherit property.

(2) The expropriation of private property shall only be permitted for public purposes and in cases of a pressing social need, and shall be carried out subject to the expeditious payment of full and fair compensation to all persons affected by such expropriation.

(3) The community has the right to the enjoyment of common property including but not limited to beaches, forests and grasslands. State lands are held in trust for the common good and for future generation and must be utilized in accordance with the needs and interests of the community and of future generations.

Right to education

16. (1) Every person has the right to primary and secondary education. The State shall provide such education free of charge.

(2) Every person has the right to tertiary education, which the State, through reasonable measures, shall make progressively accessible, free of charge.

(3) The State shall, through reasonable measures, make appropriate technology for educational purposes progressively accessible.

(4) The State shall respect and protect academic freedom, and the autonomy of higher educational institutions.

(5) The State shall address inequalities in the access to quality education and will progressively ensure equality in quality education irrespective of gender, class, caste, religion, ethnicity and region.

Right to health, food security, food sovereignty, a clean environment and social security

17. (1) Every person has the right to access affordable health care services, including reproductive health care, mental health services, adequate food and water, and sanitation.

(2) Every person has the right to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

(3) The State shall take all reasonable legislative and other measures, within its available resources, to guarantee the highest attainable standard of healthcare and to achieve the progressive realisation of the rights specified in paragraphs 1 and 2 of this Article.

(4) No person shall be refused emergency medical treatment.

(5) Every person has the right to food security and communities have the right to food sovereignty with access to a nutritious, culturally acceptable diet with food that is produced sustainably.

(5) The State shall reasonably regulate, for the purpose of protecting the rights contained in this Article, all health care institutions and the quality of medical services, and the production and circulation of pharmaceutical products.

Right to housing

18. (1) Every person has the right to access adequate and dignified housing.

(2) The state shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right specified in paragraph 1 of this Article.

(3) No person shall be arbitrarily evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances, and the provision of alternative housing that is compatible with their livelihoods and their social and cultural orientation.

Environment

19. (1) Every person has the right to live in a healthy environment, to full enjoyment of the natural environment, and to receive any environmental information held by the State in a timely manner.

(2) The State shall adopt all reasonable measures to ensure environmental protection and the sustainable use of natural resources, and to address climate change, taking into account the interests of current and future generations, and the right of every person to participate in environmental decision-making.

Standing

20. (1) All persons temporarily or permanently residing in Sri Lanka, including citizens of other states, and stateless persons, shall have the rights and freedoms specified in this Chapter.

(2) Every person is entitled to petition the Provincial High Court in respect of an infringement or imminent infringement, by State action, of any fundamental right or freedom to which such person is entitled under any provision of this Chapter, or in respect of any failure of the State to fulfil any duty specified in this Chapter. Nothing in this Article shall preclude a person from petitioning the Provincial High Court solely in the public interest.

Remedies and redress

21. Where any person alleges that any fundamental right or freedom has been infringed or is about to be infringed by State action, or that the State has failed to fulfil any duty specified in this Chapter, they may themselves, or by their representative in accordance with such rules of court as may be in force, apply to the Provincial High Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. The Provincial High Court may grant such relief or redress, including orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, or make such directions as it may deem just and equitable in the circumstances with respect to such petition.

Public officers etc.

22. Where a complaint concerns an infringement or imminent infringement of a fundamental right or freedom of a public officer or government institution, in the course of their official functions, such officer or institution shall first exhaust all other effective remedies provided by law prior to petitioning the Provincial High Court under this Chapter.

Appeal

23. Any person aggrieved by an order made by the Provincial High Court in any petition filed under this Chapter shall have a right of appeal to the Court of Appeal / Supreme Court against such order within three months of the date on which such order is made.

Interpretation

24. (1) When interpreting any provision of this Chapter, a court:

- (a) shall promote the values that underlie an open and democratic society;
- (b) shall ensure such interpretation is consistent with Sri Lanka's obligations under international law; and
- (c) may consider foreign law, and the jurisprudence of international courts, tribunals, and treaty bodies.

Chapter#

NATURE OF THE STATE

Sri Lanka is an Independent, Sovereign, Democratic Republic.

Sri Lanka is founded on the principles of inclusion, recognition of the fundamental rights of all persons and the religious, language and cultural rights of its constituent communities and their rights to the effective management of their affairs.

The supreme purpose of the State is to realize the common good of all citizens through the protection of the human person and the respect for human dignity.

National sovereignty belongs to the people of Sri Lanka, and it is irrevocable.

All state powers - Legislative power, Executive power and Judicial power, emanate from the people of Sri Lanka.

Fundamental rights and Franchise are integral aspects of the sovereignty of the people.

The legislative power of the people is exercised by Parliament, the Provincial Councils and the Local Councils.

The executive power of the people is exercised through the Prime Minister and the Cabinet of Ministers.

The Judicial power of the people is exercised through the Courts.

The power and duty to defend the Constitution and foster the unity of the country is vested with the President of Sri Lanka.

Chapter

NATURE OF GOVERNMENT EXECUTIVE POWERS OF THE STATE (PRESIDENT / PRIME MINISTER AND CABINET/ PUBLIC SERVICE)

President:

There shall be a President who is the Head of State and the ceremonial representative of the Republic.

There shall be a Council of Ministers to advise the President that is established by law.

The President is elected by an Electoral College.

The Electoral College is constituted by:

Members of Parliament (the House of Representatives and the Second Chamber

Powers and Duties of the President:

Powers and Duties of the President are to defend the constitution, symbolize the unity among the people and represent Sri Lanka internationally.

The President shall appoint the Prime Minister who is a member of the House of Representatives and who enjoys the confidence of the majority of the house.

The President shall call upon the leader of the largest party in Parliament to form a government.

In the event that no single party commands a majority of the seats in Parliament, the President shall appoint as Prime Minister, the leader of the party that is recognized as having established support in forming a coalition government with the support of a majority of members of Parliament.

The President as Commander in Chief of the Armed Forces and as the Chief Executive shall act on the advice of the Prime Minister provided that the advice does not violate the constitution.

The President shall act on the advice of the Prime Minister in appointing the Cabinet of Ministers.

All legislation requires the assent of the President to be valid, legal and binding.

The President has the power to request the Cabinet of Ministers to reconsider a decision and Parliament to reconsider legislation but the President is bound to give his or her assent after the prescribed period of deliberation is completed.

The President may seek an opinion from the courts on matters relating to a violation of the constitution and his constitutional duties.

Prime Minister

Appointment of the Prime Minister:

The Prime Minister shall be appointed by the President

The Prime Minister must command the support of Parliament and this is established by the President calling upon the leader of the largest party in Parliament to form a government.

In the event that no single party commands a majority of the seats the leader of the party that is recognized as having established support from a majority of members in forming a coalition government, shall be appointed as Prime Minister by the President

Term of the Prime Minister

The Prime Minister holds office until the next general election.

If the Prime Minister resigns from his post or dies, then Parliament may by expressing a constructive vote of confidence select another Member to fill the role of the Prime Minister for the duration of that term.

If parliament loses confidence in the Prime Minister, the Prime Minister may be removed from office when Parliament exercises a constructive vote of confidence in a new Prime Minister.

In the event that a government cannot be formed, Parliament may dissolve itself and call for fresh elections before the expiry of its term, and if a majority seek a dissolution of Parliament the Speaker shall inform the President that a replacement for the Prime Minister was not agreed upon and Parliament shall be dissolved and fresh elections held.

Note: The objective of providing for a constructive vote of confidence is to provide for stability and safeguard against over-frequent mid-term elections and politically motivated attempts to replace the Prime Minister.

Powers of the Prime Minister

The Prime Minister nominates the other Ministers and deputy Ministers who shall be appointed by the President on the advice of the Prime Minister.

The Prime Minister determines the allocation of ministries and can also change the allocation of ministries once made.

The Prime Minister presides over the meeting of the Cabinet and controls and directs the activities of all Ministers.

The Prime Minister can ask any minister to resign or advise the President to dismiss a minister in case of differences of opinion.

The Prime Minister declares government policies in Parliament, plays the leading role in shaping the foreign policy of the nation, and is the chief spokesman of the Government.

The Prime Minister advises the President on the deployment of armed forces to manage emergencies.

The Prime Minister advises the President with regard to summoning and proroguing of the sessions of the Parliament.

The Prime Minister shall advise the President when a State of Emergency is to be declared and the duration of the Emergency, subject to a review of the State of Emergency by Parliament,

The Prime Minister as a member of the Constitutional Council plays a role in either nominating members to key offices or in the final selection of key officials from among nominations made by other members of the Constitutional Council.

The objectives for establishing a Constitutional Council are to ensure a neutral and impartial process of selecting public officers to key constitutional bodies, provide them with security of tenure and increase public trust.

Chapter #

THE LEGISLATURE

Legislative authority of the Republic at the national level is vested in Parliament;

Legislative authority of the Republic at the provincial sphere of government is vested in the provincial legislatures, as set out in the Chapter on Devolution of Power;

Legislative authority of the Republic at the local sphere of government is vested in the Municipal Councils and local government as set out in the Chapter on Local Government.

The constitution promotes a legislature that is of:
The optimal size (based on population and is not over-large)

Representative of the people (taking into account the diversity and demographics of the country).

The drawing of constituencies and / or district representation shall be made on the basis of the reports of an Independent Delimitation Commission that has consulted with experts and the public and ensures fair representation for minorities, political groupings and the Provincial Councils.

Parliament

The constitution establishes a Parliament composed of two Chambers: a directly elected House of Representatives and a Second Chamber that includes representation from the Provincial Councils and a prescribed number of Eminent persons with an established record of public service.

The constitution and the appropriate law will establish the criteria and procedure for nominating eminent persons to the Second Chamber and the selection of representation from the Provincial Councils to the Second Chamber.

The House of Representatives shall be elected on the basis of a mixed electoral system with 50% of the seats assigned to constituency and members elected on the basis of First-Past the Post and 50% of the seats filled on the basis of Proportional representation.

The Constitution expresses its commitment towards inclusion and requires a minimum 1/3 representatives to be women in all levels of government.

Accordingly, parties are required by law to nominate women to a minimum of one third of the seats on both the constituencies and party lists.
In respect of the party lists, they must be constructed with every alternate place assigned to the alternate gender.

Criminalization of politics:

Those who have found guilty of certain criminal offences shall not be allowed to contest elections or be appointed to constitutional commissions or to the higher echelons of public service (present law: 2 Yr imprisonment?).

The Constitution expresses its commitment towards accountability and responsibility:

Accordingly, representatives chosen on the basis of party lists shall resign their seats in the event that they are unable or unwilling to support the party platform on which they were elected by the people.

Note: The Constitution must be clear in its commitment to increase women's representation in the national assembly and in all levels of government.

The Constitution expresses its commitment towards maintaining high ethical standards. Accordingly, there shall be eligibility requirements and criteria for disqualification for members of parliament and a code of conduct for members of parliament attached as a Schedule to the Constitution.

Eligibility requirements for Members of Parliament:

Eligibility requirements for the House of Representatives

Age (lower and upper limits?)

Citizenship (Single citizenship or dual citizenship)

Character (No Criminal record – Consider a requirement to stand down if indicted of a serious crime – murder? Rape? Grievance assault? Financial crimes?)

Eligibility requirements for the Second Chamber

Age (lower and upper limits?)

Citizenship (Single citizenship or dual citizenship)

Residency requirement – be a resident of the Province, demonstrate abiding ties to the Province through past or present employment, home or land ownership etc.

Character (No Criminal record – is there to be a requirement to stand down if indicted of a serious crime – murder? Rape? Grievance assault? Financial crimes?)

Along with Members drawn from Provincial Councils, consider a prescribed number of eminent Personalities with a proven track record of distinction fields that benefit the public.

Note: Many of these issues are contested and the rationale for including these requirements must be discussed by the public)

The Powers of the House of Representatives includes the powers to:

- i. Review and deliberate over important decisions, policies and Bills;
- ii. Create and pass laws that are compatible with the constitution;
- iii. Authorise and review expenditure
- iv. Serve as an oversight body holding the government accountable for policies and implementation
- v. Amend the constitution in accordance with the provisions of the constitution;
- vi. Maintain national security;
- vii. Maintain economic unity;
- viii. Maintain essential national standards;
- ix. Establish minimum standards required for the rendering of services; or
- x. Introduce in accordance with the constitution legislation with regard to any matter within a functional area and any other matter required by the Constitution to be passed in accordance with the constitution

- xi. Ratifying international treaties; and
- xii. Oversight on the use of Emergency regulations.

The Powers of the Second Chamber includes the powers to:

- i. Review and deliberate over important decisions, policies and Bills which had been passed by the House of Representatives;
- ii. Create and pass laws to improve the performance of Provincial Councils;
- iii. Create and pass Bills other than Finance Bills that shall require assent from the House of Representatives;
- iv. Serve as an oversight body holding the government accountable
- v. Participate in amending the constitution in accordance with the provisions of the constitution;
- vi. Advise on matters relating to Provincial Councils;
- vii. A high majority (2/3?) of the Second Chamber may vote against legislation and executive actions taken by the government that undermine the powers and protections accorded to the Provincial Councils or that is prejudicial to the interests of any province or to the country as a whole.
- viii. The Second Chamber may not reject or amend or delay beyond one month the budget or bills relating to finances.
- ix. If any other bill that had been passed twice by the House of Representatives was rejected by the Second Chamber twice, it is deemed to have been passed by both chambers.

Procedure for enacting legislation:

The Constitution shall provide for a procedure that requires parliament to:

Allocate sufficient time and resources to enable Parliament to perform its deliberative and oversight functions.

This shall include the opportunity for the public, including civic groups to make submissions to Parliament and share research findings with members and parliamentary committees and to challenge legislation through the courts and other legal means.

When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

Procedure for enacting Constitutional amendments

Constitutional amendments require a 2/3 majority of votes in both chambers, determined on the basis of the composition of the chamber

Any amendment that impacts on the constitutional principles require a 2/3 majority of votes in both chambers, and a vote through a referendum.

Notwithstanding these procedures for amendment, this constitution recognizes that there are values and principles and freedoms and protections that may not be abrogated.

Chapter

DEVOLUTION AND POWER-SHARING

Note: There is a long history to the demands for devolution based on the need to provide for inclusion, autonomy, administrative efficiency and responsiveness to the needs and expectations of the marginalized, including marginalized ethno-religious communities and underdeveloped regions.

We urge that the principles of devolution are framed on the basis of the history of youth and regional deprivation and ethnic conflict in Sri Lanka, the levels of development, the potential of communities and regions and the mechanisms for devolution are framed on the basis of those principles.

In Sri Lanka, devolution has been conceded grudgingly and through a mere replication of a scaled-down set of national institutions at the provincial level. Furthermore, efforts were made to prevent the implementation of the legislative framework. The present institutional framework and its failures to achieve stated objectives should not be the basis for rejecting devolution. Sri Lanka is at a juncture where it is free to design institutions for power-sharing that are contextually relevant, drawing from the experiences of countries that have designed asymmetrical institutions for power-sharing to address specific regional

Effective devolution will create economic opportunities for people at the provincial level and reduce the incentives for them to migrate to the over-congested Western Province in search of education, work and livelihoods. This is envisaged through the creation of several Mega-polis that will require special representative and administrative mechanisms if they are to be engines of equitable growth and development. The conversation for devolution must focus on power sharing and ensuring that the tasks that can be best undertaken at the provincial level should be undertaken at the provincial level and the tasks that can be undertaken by the megapolis be undertaken at that level and the tasks that can be managed at the local level be managed by the local authorities. This requires representative provincial bodies that are capacitated to identify provincial needs, and design and implement programs to respond to local needs, representatives' councils to identify and manage the needs of the mega polis and local government representatives to manage the needs of local authorities. They also need integrative mechanisms to resolve potential disputes

Power sharing, devolution and self-government must be conceptualized as the opportunity for:

- 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 practice 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 and English as official languages will establish communications between the two communities and as the vehicle for Sri Lankans of all communities to engage with the external world of finance, trade and commerce that is embedded in Sri Lanka's development paradigms;*
- 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;

G) ensuring that all regions receive attention and investments to ensure that the inhabitants enjoy an equal standard of living irrespective of whether they live in urban centers or rural areas.

In this context we re-present, with some modifications, the proposals for devolution that were framed on the basis of multi-party cooperation as a basis for taking the conversation on devolution forward.

POWER SHARING AND SELF-GOVERNMENT

The Constitution shall accommodate the rights and aspirations of all communities and regions through effective arrangements for power sharing and the sharing of sovereignty.

There will be four tiers of government: national, regional and local., with special arrangements made for the administration of the Capital city and the six mega polis entities of Colombo, Trincomalee, Galle, Kandy, Jaffna, and Matara, currently identified and defined, providing that the special arrangements will be extended to any mega polis that may be established in the future.

The powers of each tier shall be laid down in the constitution and no tier shall be entitled to exercise the powers of the other tier.

Power may be divided equally among all provinces or asymmetrically, depending on the needs and history of the province.

Power may be divided equally among all megapolises or asymmetrically, depending on the needs and history of the megapolis.

Power may be divided equally or asymmetrically among all local government authorities and be defined by law, depending on the needs and history of the local authorities

The Constitution must protect the rights and security of all minorities in each province and each mega polis.

I. Structure of Devolution

1.1. Unit of Devolution

A provincial council will be established for every province identified by a new schedule to the Constitution.

A city council will be established for each mega polis.

Each province will be divided into local government authorities and the number of local government authorities are to be determined by the size, population and history of the province.

A local government council will be established for each local government authority.

Megapolis

The megapolis will be capacitated to exercise the powers necessary to be the engines of growth.

Consultative and regulatory institutions and mechanisms will be established under the constitution to ensure that the mega polis advances growth with equity and is in harmony with national objectives and the needs and aspirations of the province in which it is located.

Local government

The laws for the elections of local government bodies, and the regulation of local government authorities will be established to align with the principles and the text of the constitution

Dispute resolution

A mechanism to resolve conflicts between the National Government, the Provincial Council, and the Megapolis will be established in accordance with the Constitution and the law.

1.2 Provincial Councils

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

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

1.2.3 Membership of Provincial Councils

Elections shall be held for members of the Provincial Councils as determined by law.

Eligibility requirements for the members of the Provincial Councils

Age (lower and upper limits?) -

Citizenship (Single citizenship or dual citizenship)

Gender representation

Youth representation

Requirement of residency in the province the member seeks to represent

Character (No Criminal record – is there to be a requirement to stand down if indicted of a serious crime – murder? Rape? Grievance assault? Financial crimes?)

1.3 Governor

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

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

1.3.2 The Governor may summon, dissolve and prorogue the Provincial 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 Provincial Council to form the Provincial 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 Provincial Council.

1.5 Capital territory and megapolis

The territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte and the six Mega polis will be excluded from the jurisdiction of the respective Provincial Councils in which they are located and constituted for the Western Region and will be administered in accordance with the constitution and the law, recognising the development imperatives and the special challenges of urbanization that they face.

The megapolis will be bound by mechanisms to ensure harmony with the province in which it is located.

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

2.3 Provincial 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 Provincial 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 Provincial Police Commissioner appointed by the Chief Minister, in consultation with the Governor of the Province. The Provincial Police Commissioner will be responsible to, and function under the control of, the relevant Chief Minister. The Provincial 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 Provincial 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 Provincial Police Commission.

3.5 The National Police Commission and the Provincial Police Commission will both be appointed by the Constitutional Council. In the case of appointment of the Provincial 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 Provincial Councils. State land within a Province required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in consultation with the relevant Provincial 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 Provincial Council.

5.4 Training of teachers will be the responsibility of both the Centre and Provincial 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 Provincial 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 Provincial Judicial Service Commission will be responsible for the appointment of Provincial High Court Judges and minor judiciary within the Province. The Provincial 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 Provincial 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 Province.

VII. Public Service

7.1 There will be a Provincial 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 Provincial Councils.

7.2 The Provincial 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 Province.

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, Provincial 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 Provincial Boards of Ministers to the extent hereinafter provided.

X. Substance of devolution

10.1 Provincial 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. (Schedule 3)

Chapter

Franchise and Elections Including Referendum

The franchise is an inalienable right of all citizens and the Constitution shall ensure that all citizens of Sri Lanka have the opportunity to periodically exercise their franchise to elect their representatives to the National Assembly, the Provincial Councils and to the Local government bodies.

The Constitution shall ensure that all citizens of Sri Lanka have the opportunity to exercise their franchise and provide for the rights of Sri Lankans living and working overseas and working away from their homes to exercise their franchise.

Note: Sri Lanka must take into account the reality that it disenfranchises significant sections of the population – i.e., Migrant workers, internal migrant workers (e.g. workers in the Free Trade Zones) and the Diaspora, even as the state looks to these groups to make significant contributions to the economy.

On the basis of this constitutional provision, the law must ensure representation for these groups (either through facilities to vote for overseas and /or secure postal votes.)

The House of Representatives shall be elected on the basis of a mixed electoral system with 50% of the seats assigned to constituency and members elected on the basis of First-Past the Post and 50% of the seats filled on the basis of Proportional representation.

The Second Chamber shall include the Chief Ministers of the Provincial Councils and a prescribed number (XX) of members elected from and by the Provincial Councils.

The membership of the Second Chamber will not exceed 1/3 of the House of Representatives.

Note: The country has experimented with several forms of electoral representations (First-past-the- post, and later, District based Proportional representation with the facility to vote for a representative within the party list. Each system has had its challenges.

Drawing from these experiences, the public has called for a mixed system of representation that:

Provides constituency representation and party list representation. The advantages of this mixed system are that: constituency representatives are more responsive to people's needs and party representation is linked with the party's policies and also ensures that there are no wild electoral swings where the winner takes it all.

Megapolis

There shall be elections for the Councils to administer the megapolis in accordance with the Constitution and the prescribed law.

Referendum:

To strengthen the opportunities for democratic participation of the people, the Constitution shall provide for referendums that are either legally binding referendums or a non-legally binding referendums whereby the electorate is consulted on the following matters:

- I. The partial or total revision of the constitution,
- II. Soliciting an opinion on a specific proposal or proposals that relate to questions of principle or public interest.

The constitutional referendum may:

- (a) Be required by the text of the Constitution which provides that certain texts are automatically submitted to referendum after their adoption by Parliament (mandatory referendum);
- (b) May take place following a popular initiative whereby:
- (c) either a section of the electorate (1/3 ?) puts forward a text which is then submitted to popular vote;
- (d) or a section of the electorate (1/4 ?) requests that a text adopted by Parliament be submitted to popular vote;
- (e) be called by Parliament itself or a specific number of members of Parliament;
- (f) the Head of State or the government;
- (g) Two or more Provincial Councils.

The electorate, once registering its intent to advance a popular initiative has a prescribed number of months (18?) to collect the required signatures that will then be submitted to a popular vote within the period prescribed by law (Xx months ?).

Matters to be addressed at a referendum

The Constitution provides that a referendum may be held both with respect to texts already approved or not yet approved by Parliament.

They may take the form of:

- A vote on specifically-worded draft amendments to the constitution or a specific proposal to abrogate existing provisions of the Constitution;
- A vote on a question of principle; or
- On a concrete proposal, known as a "generally worded proposal" that does not have the form of specifically worded amendments.

General norms and principles governing the franchise shall apply to the conduct of a referendum. These include:

1. The constitutional principles of electoral law (universal, equal, free, direct and secret suffrage) apply to referendums.
2. The fundamental rights, especially freedom of expression, freedom of assembly and freedom of association must be guaranteed and protected during the referendum campaign and vote.

Criteria for referendum

1. The use of referendums must comply with the legal system as a whole and especially the rules governing revision of the Constitution.
2. In particular, referendums cannot be held to derogate the fundamental rights of citizens or the principles of a democratic Republic.
3. Judicial review shall be available to ensure that:
 - a. The question put to the vote at a referendum do not violate the chapter and principles of fundamental rights and democratic, republican constitutionalism, and the international human rights covenants;
 - b. The intent of the referendum (advisory referendum or to amend the constitution or pass a law) is clear and unambiguous;
 - c. The question requiring affirmation is clear and unambiguous;
 - d. The question to be approved does not conflict with other provisions of the constitution, unless the referendum is to replace the entire constitution, provided that the foundational principles of democratic republicanism and fundamental rights of persons, the recognition of the pluri-national state and devolution of powers continue to be respected in the new constitution.

Referendum question

The Questions submitted to a referendum to amend the constitution must respect:

1. the unity of form whereby the same question must not combine a specifically-worded draft amendment with a generally-worded proposal or a question of principle;
2. the unity of content whereby there must be an intrinsic connection between the various parts of the text except in the case of total revision of the Constitution;
3. the unity of hierarchical levels whereby same question does not simultaneously apply to the Constitution and to the subordinate levels of government and to subordinate legislation;
4. the free suffrage of the voter, who must not be called to accept or refuse as a whole, provisions without an intrinsic link. The revision of several chapters of the Constitution at the same time is deemed to be the equivalent to a total revision.
5. the right to expect that referendums provided for by the legislative system will be organised, and in compliance with the procedural rules; in particular, referendums must be held within the time-limit prescribed by law;
6. the fairness of the vote.

Public awareness of the Referendum issues

1. The question submitted to the electorate must be clear (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; electors must be informed of the consequences of the referendum; voters must answer the questions asked by yes, no or a blank vote;
2. The authorities must provide objective information. This implies that the text submitted to referendum and an explanatory report should be made available to electors sufficiently in advance, as follows:
 - a. they must be published in an official gazette at least one month before the vote;
 - b. they must be sent directly to citizens and be received at least two weeks before the ballot;

- c. the explanatory report must give a balanced presentation not only of the executive and legislative authorities' viewpoint but also the opposing one.

The rules applicable to referendum campaigns and the conduct of referendums shall be aligned with the laws governing free and fair elections relating to funding, use of public places, access to media and oversight and validation by an independent electoral commission and shall be elaborated by law.

Prevent the subversion of procedures

For a certain period of time, a text that has been rejected in a referendum may not be adopted by another procedure for constitutional revision;

During the same period of time, a constitutional provision that has been accepted in a referendum may not be revised by another method of constitutional revision.

The above restrictions do not apply:

- (a) in the case of a consultative referendum (which does not bind the authorities);
- (b) in the case of a referendum on partial revision of the Constitution, where the previous referendum concerned a total revision;
- (c) in the event of rejection of a text adopted by Parliament and put to the popular vote at the request of a section of the electorate; a similar new text must not be submitted to vote unless a referendum is requested.

The role of Parliament

When a draft constitutional revision is proposed by a section of the electorate or an authority other than Parliament, Parliament must state its opinion on the text submitted to vote. It may be entitled to put forward a counter-proposal to the proposed text. A deadline must be set for Parliament to give its opinion: if this deadline is not met, the text will be put to the popular vote without Parliament's opinion.

Effects of referendum

Referendums on specifically worded draft amendments will have a binding character and their implementation will not present particular problems.

Referendums on questions of principle or other generally-worded proposals are consultative only. Parliament must frame legislation or propose procedures on addressing the findings of a consultative referendum.

Sanctity of the vote

The franchise is sacred and Members of Parliament may not violate the trust of voters:

A Member of Parliament elected on the party list or the national list is bound to respect the mandate given to the party.

If a Member of Parliament exercises a conscience vote against the member's party, the member must resign from the party and from parliament and the Party must appoint the member who was next on the list.

By elections must be held to fill the seat of a constituency members who choose to cross over/

Note: Principles of accountability must be constitutionalized and included in for Electoral laws to overcome the trend in Sri Lanka where members of political parties cross over to government for political inducements, thereby violating the mandate given to them by the voters.

Institutionalizing the date for election

To ensure the smooth functioning of elections the constitution should consider providing a fixed date for elections and consider holding all the elections (Provincial councils and local government Parliamentary election and Presidential elections) to take place on the same day.

Note: this will place a burden on the commission during the count but has several advantages – streamlines the costs, removes the elements of discretion that the government of the day may wield in degerming the date of elections, and the impact of the outcomes of one set of elections on succeeding elections are minimized.

Chapter

LANGUAGE

It is time to rethink and develop a realistic and effective language policy that supports the aspirations of future generations.

The language policy should be aligned with the Country's educational policy and its development aspirations.

The attitude of successive governments towards language as an instrument of power, identity and status rather than as a means of social communication, education and advancement has contributed towards a divided society.

The current policy of two national language and with English a link language has served no useful purpose as there has been no commitment (in terms of financial and human resources vested in this policy to implement it and it has not led to an effectively bi-lingual public.

The major communities are largely mono-lingual and are unable to communicate with each other. Those unable to speak fluent English are also deprived of advanced employment and educational opportunities creating a further schism in society.

Given that the mega polis and industrial and development hubs are major themes in the policies of successive governments, the government must invest in an effective tri lingual or bi-lingual policy that will lead to an integrated society and a population that is open to the world through proficiency in English.

Sinhala, Tamil and English shall be the Official languages of Sri Lanka.

The National government and the Provincial Councils and the Megapolis shall invest sufficient resources in all levels of educational institutions and other public institutions to give effect to this provision.

Chapter

THE JUDICIARY

Note: We urge that international best practices form the basis of defining the powers, responsibilities and protections of the Courts in the constitution.

*These principles call for:
the vesting of the judicial power of the people in the courts;
the independence and impartiality of the judiciary, and
a transparent and credible process of accessing the courts.*

The constitution establishes that the Judicial power of the people is vested in the courts.
The constitution establishes the powers and functions of the various courts.

The courts are empowered to:

1. Interpret the law and apply legislation in accordance with the national constitutions;
2. Exercise the power of judicial review and ensure that the legislative and executive actions of governments comply with:
 - a. The Constitution, with relevant statutes and other laws (Rule of Law) ;
 - b. Principles of Natural Justice.
 - c. International human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.
3. The Judiciary is empowered to review:
 - a. Legislation (framed by parliament and /or Provincial Councils) that violated the constitution; and
 - b. Activities of the legislature and / or Executive that may violate the separation of powers;
 - c. Activities that may question the division of powers among branches of government;
 - d. Activities that may question the division of powers between different levels of government;
 - e. Actions and omissions of the state or state authorities that contravene constitutional provisions
 - f. Government actions that may demonstrates bad faith in government decision-making.
 - g. Disputes between private persons, between private persons and the state.

Circumstances and timing of judicial review

The Constitution recognizes the right of citizens or organizations to seek :

- a. Pre-enactment review
- b. Post enactment review
- c. Special application to the Constitutional Court to review legislation that in the course of adjudication appears to violate the constitution.

The power of judicial review is to be exercised by:
Supreme Court and the Court of Appeal

To secure these aims Judicial appointments should be made on the basis of :

- A. Clearly defined criteria for appointments (*age – [minimum / limit]; educational qualifications; experiences; may include other considerations such as ethnicity/ regional representation, gender to ensure an inclusive judicial architecture;*)
- B. A publicly declared process. (*process of appointment could include: Executive to appoint and legislature to approve; Judicial Service commission appoints lower court judges and recommends name to the President / Prime Minister to select and appoint etc.; the objective is to prevent a central authority alone to decide on appointments to the courts.*)

The process must ensure:

- (h) Equality of opportunity for all who are eligible for judicial office; appointment on merit;
- (ii) Appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;
- (iii) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;
- (iv) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought; (*Funds allocated to the Judiciary charged to the Consolidated Fund*);
- (v) Interaction, if any, between the executive and the judiciary should not compromise judicial independence;
- (vi) Judges should be subject to suspension or removal only for reasons of incapacity or misbehavior that clearly renders them unfit to discharge their duties. (*Independent Judicial Service Commission that includes Chief Justice, head of the Court of Appeal, and retired judge(s) determine appointments and disciplinary proceedings*);
- (vii) Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public;
- (viii) Superior Court decisions should be published and accessible to the public and be given in a timely manner. (*Superior courts must be mandated to give judgments with reasons for their decisions and not simply issue verdicts as this will increase transparency and trust and develop case law.*);
- (ix) An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.;

Additional Powers that a Court may be vested in the courts:

- a. Provide advisory opinions on the constitutionality of a Bill / law
- b. Impeaching the head of state;
- c. Regulate political parties
- d. Oversee electoral processes;
- e. Executive to seek judicial authorization before declaring or extending a state of Emergency;
- f. Chief Justice to step in to fill the void caused by the absence or the death of the head of State.

The Constitution shall specify the hierarchy of courts and special courts in the constitution. They include: The Supreme Court, a Court of Appeal, high Courts, District Court and Primary Courts. The constitution may provide for duly established special courts (e.g., *Tax court,*) etc.

Sri Lanka must review these criteria when drafting constitutional provisions relating to the judiciary Sri Lanka faces a backlog of cases and steps must be taken to expand the infrastructure of the courts, increase the number of judges to support the speedy and efficient delivery of justice without compromising the integrity of the judicial process. Investing in technology and establishing special courts for subject matters.

Chapter

Other matters:

Oversight of Government

Constitutional Council

A constitutional Council with representation from the political parties in Parliament and civil society representatives shall be established to ensure a neutral and impartial procedure of appointments to high public offices.

Independent Constitutional Commissions

Independent Constitutional Commissions must be established to promote zero-tolerance of corruption, and to promote a culture of transparency, impartiality and accountability.

This is vital for good governance and to improve the prospects of growth and development. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process.

The constitution provides for the following independent commissions and establishes the possibility for progressively increasing the number of independent constitutional commissions.

The commissions established under this constitution shall include:

1. The Election Commission.\
2. The Delimitation Commission.
3. The Audit Service Commission.
4. National Procurement Commission
5. The Public Service Commission.
6. The National Police Commission.
7. Judicial Service Commission
8. The Human Rights Commission of Sri Lanka.
9. The Gender Equality Commission
10. Disability Commission
11. Commission to Investigate Allegations of Bribery or Corruption / Anti-Corruption (or Ethics and Integrity) Commission
12. The Finance Commission.
13. Planning Commission
14. Devolution Commission
15. Freedom of Information Commission
16. Languages Commission

Steps which may be taken to encourage public sector accountability that include the establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities.

The Constitution establishes the authority of the government to establish statutory bodies and commissions.

Constitutional Schedules

The Constitution may include as a schedule a code of conduct for public officials and standards for ethical governance

Schedule 1

1. Code of Conduct for Public Office Holders *These include the members of the Constitutional Commissions and Public service.*

Schedule 2

2. Standards of Ethical Governance
 - (a) Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct.
 - (b) These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.
 - (c) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;(ither through examinations to recruit persons to the Public Service or eligibility criteria to make special recruitment for senior positions)
 - (d) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

Schedule 3

Annexes including the powers of the national government and the Provincial Councils

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 license 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. Defense, 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 e.g. 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.