

*Language Rights in Sri Lanka:  
Enforcing Tamil as an Official Language*

*Edited by B. Skanthakumar*



Law & Society Trust  
Colombo, Sri Lanka  
2008

***Language Rights in Sri Lanka: Enforcing Tamil as an Official Language***

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*Dedication*

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## Preface

Tamil is the mother tongue of one in every four Sri Lankans. It is the first language of three ethnic minority communities: Tamils living in or originating from the Northern and Eastern provinces; Tamils who originated from India in the 19<sup>th</sup> and early 20<sup>th</sup> century now described as Up-Country Tamils; and Muslims.

While Tamil is predominantly used in the North and East, the majority of Tamil speakers (61 percent) live in other regions of the island; including in urban centres such as Colombo and Kandy and districts such as Nuwara Eliya and Puttalam where their proportion in the local population is considerably higher than the national average.

Through the 13<sup>th</sup> Amendment to the Constitution in 1987, Tamil has joined Sinhala *de jure* as an official language. Following the passage of the 16<sup>th</sup> Amendment in 1988, Tamil speakers living anywhere in Sri Lanka have the right, *inter alia*, of communicating with any government office or officer in their own language and of receiving communications too in that language.

However, outside of the Northern and Eastern provinces (and imperfectly even there), Tamil speakers continue to be discriminated against in their access to, treatment within, and experience of public services such as government departments, police stations, courts, public transport and health service – through non-compliance of state agencies with the official languages law – thus denying them *de facto* equality.

Certainly there are real constraints of human and financial resources in the public service such that interpreters and translators from Tamil into Sinhala and vice-versa are in short supply. It doesn't help that the Official Languages Commission, the statutory agency created to monitor the enforcement of the law, is obliged to discharge its mandate on a desultory budget.

However, the absence of political will and hostility or disinterest on the part of the bureaucracy has hindered the enforcement of Tamil as an official language, as has the absence of any compelling reason for Sinhala-speakers to become proficient in a language spoken by linguistic minorities and unimportant to political, economic and social power.

In recent months there have been statements from the highest level of Government of intent to fully implement the 13<sup>th</sup> Amendment including the provisions on the Tamil language.

The current Government has made it compulsory for new entrants to the public service to acquire an adequate level of competence in the second official language other than their own. It has increased the material rewards for serving public officers to learn a second official language other than their own. It has also created a new institution for training of language educators. These measures owe not a little to the political convictions and personal commitment of the Minister for Constitutional Affairs and National Integration and the Chairman of the Official Languages Commission.

It is in this conjuncture that the Law & Society Trust (LST) organised a Consultation on the enforcement of Tamil as an official language, with the support of The Asia Foundation. The papers in this publication, with the exception of the final one, began as presentations to the Consultation.

LST has long been concerned with the issue of linguistic rights largely through its late founder, Dr. Neelan Tiruchelvam. The role and functions of an Official Languages Commission, inspired by its Canadian equivalent, was first urged by Dr. Tiruchelvam in a joint seminar with the Official Languages Department in 1989.

In his critical role in the drafting of constitutional reform proposals particularly during the Peoples Alliance government from 1994 onwards and culminating posthumously in the draft Constitution Bill of 2000, Dr. Tiruchelvam was conscious of entrenching parity of status for Tamil; and in so doing qualitatively extended reforms associated with his father, Senator Murugeysen Tiruchelvam.<sup>1</sup>

In 1998, LST facilitated the office of a non-governmental Language Rights Monitor to inspect public institutions for their compliance with the official languages policy, receive complaints from members of the public alleging violation of their rights, and to initiate investigations and remedial action with the relevant state authorities. Additionally, LST has engaged in regular research and advocacy on linguistic discrimination in its regular publications, LST Review and the annual State of Human Rights report.

Unfortunately, it has not been possible within these pages to convey the vigorous debate and acute analyses of participants at the Consultation. Therefore, this may be the appropriate place to register a few themes that arose in discussion.

One area of tension was the issue of ethnic representation of Tamil-speakers within the public service. None doubt the necessity or significance of the Government's current efforts to bilingualise the public service such that Sinhala-educated officers are able to effectively communicate with Tamil-speaking members of the public in Tamil.

However, some felt that what are also required are complementary efforts to increase the proportion of Tamil speakers in public service and at all levels. After all, the evacuation of non-Sinhala speakers (that is largely Tamils but also Burghers and English-educated Sinhala) from the public sector was not incidental to the enthronement of Sinhala as the only official language in Sri Lanka but a foreseeable and even anticipated outcome of the policy itself.

Thus, in the debates on the language of state in the House of Representatives in 1955, Dr. N. M. Perera was to warn:

“In point of fact, insisting on Sinhalese as the only official language, does it not come to the same thing in the end, namely, that those who do not speak Sinhalese will automatically get weeded out [of government service] by virtue of fact that they cannot speak the Sinhalese language?”<sup>2</sup>

While one wrong has been righted through legal equality of status between Sinhala and Tamil, no positive steps have been taken to date to correct the gross under-representation of Tamil speakers within government employment outside of the North

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<sup>1</sup> Balasubramaniam, Ram (ed.), *Senator Tiruchelvam's Legacy: Selected Speeches of and Tributes to Senator Murugeysen Tiruchelvam QC*, Colombo: Vijitha Yapa Publications 2007.

<sup>2</sup> Muttiyah, Wesley and Sydney Wanasinghe (eds.), *Two Languages One Nation – One Language Two Nations: The Lanka Sama Samaja Party on the State Language*, Colombo: Young Socialist Publications 2005, p. 57.

and East and particularly of historically disadvantaged minorities such as Up-Country Tamils and Muslims.

Even in the absence of affirmative action policies such as quotas – which are legitimate if crude and limited interventions of state policy to mitigate structural and historical biases against women, ethnic or religious minorities, oppressed social classes and marginalised castes – it is still possible for under-represented groups to be recruited on merit to government service such that it is more representative of the public that it is duty-bound to serve. Of course, this assumes that these groups are motivated to join the public service, and are assured of fair treatment within the public service.

Although the Consultation focused on the Tamil language the consequences of the ‘Sinhala Only’ policy for the use of English was also raised. Some participants pressed the urgency of greater attention to the English language because of the mismatch between linguistic and technical skills of school-leavers and graduates and the opportunities and challenges of the world economy. Others while not indifferent to the value of trilingualism and the facility of an international language were ambivalent of enhancing its present Constitutional position as a ‘link language’, recalling the cultural supremacy it had once enjoyed and the slights, indignities, and humiliations visited upon vernacular educated persons in employment and social mobility in the pre-1956 era.

In any case, English has remained the language of social privilege in Sri Lanka and the gateway to choice private sector jobs at home and skilled migration abroad. The anxieties of the 1940s and 1950s that Sinhala is an endangered language on the point of extinction have abated. There is greater self-confidence in the resilience of Sinhala and its rooted-ness in society even in the cultural and linguistic tide of ‘globalisation’. English is all but an official language, and only its belated anointment in law as such remains.

An undercurrent to any discussion of language rights is its relationship to what used to be known as the ‘national question’ but is now mistakenly reduced to the ‘ethnic conflict’.

It has become a banal observation that the linguistic discrimination experienced by Tamils heightened their national consciousness and fuelled the movement for separatism. Still, banality has much to commend itself, if from it springs the current understanding in Sinhala political and civil society that linguistic discrimination is mistaken and official language rights for Tamil are a fair and democratic demand.

The contribution of language policy to the consolidation of Tamil nationalism also leads some to draw the conclusion that the alienation of North-Eastern Tamils from the Sri Lankan state will dissipate through satisfaction of their language rights in particular and equality under the law in general.

Would that it were so simple to undo what has been done.

So far as many Tamil-speakers are concerned, particularly but not exclusively from the North-Eastern Tamil community, linguistic rights discrimination is symptomatic of their national oppression and it is the latter and not the former that preoccupies them at this present time.

This may explain the wariness of Tamils of initiatives for linguistic equality and their scepticism of state policy in this area so long as the ‘national question’ – by which is meant the “totality of political, ideological, economic and legal relations between national

communities”<sup>3</sup> – remains unattended; and its interrogation deferred by contests on a darkling plain.<sup>4</sup>

While one objective of this publication is to inform discussions and approaches to confront and eliminate linguistic inequality, it is also intended to be a resource to affected communities, civil society organisations, and public administrators.

Thus, no apology is offered for the large number of historical and contemporary documents related to language rights in Sri Lanka assembled here. Many of them are hard to find and have not been available in one place for convenient reference. Some others such as the UN Minority Rights Declaration and the European Charter on Regional or Minority Languages are poorly known and remain to be studied, critiqued, and utilised in Sri Lanka.

It is a matter for regret that it was not possible to obtain papers attentive to the experiences of Up-Country Tamils and Muslims, and of specific groups such as those displaced by conflict and disaster for this publication. There is surely scope for more studies and more finely grained ones. Nevertheless, while conscious of the limitations of the present work, the Law & Society Trust hopes that its publication in Sinhala, Tamil and English, will be of aid in the promotion and protection of language rights in Sri Lanka.

*B. Skanthakumar*  
*Colombo – 23 October 2008*

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<sup>3</sup> Nimni, Ephraim, “The great historical failure: Marxist theories of Nationalism”, *Capital & Class* (London), No. 25 (Spring 1985), pp. 58-83 at p. 59.

<sup>4</sup> Hewage, Thushara and Ahilan Kadirgamar, “Sri Lanka: Critical thinking in wartime”, *Himal Southasia* (Kathmandu), June 2008, pp. 55-59.







To ensure that the public service is bilingual, it is necessary to train the existing cadre of 600 000 public officers. But the acute shortage of trainers and teachers has affected the schools and other institutes of language training. Teaching skills of the instructors also need improvement.

To address the above concerns the National Institute of Language Education and Training (NILET) was established by Act No. 26 of 2007.

When being entrusted with the task of fully implementing the 13th Amendment, I was fully aware of the challenges ahead and why attempts by previous regimes failed.

Firstly, it was due to lack of political will on the part of government. Secondly, it was due to absence of political leadership to take forward the enforcement of Tamil as an official language. Thirdly, it was due to resistance by the bureaucracy to implementation of the official languages law. Fourthly, it was due to the weakness of civil society in addressing issues of linguistic discrimination.

The declaration of the government's support for full implementation of the 13<sup>th</sup> Amendment saw mixed reactions, with the majority of the members of the All Party Representative Committee being agreeable to it. I have been able to achieve much needed consensus on the political front.

I started seminars, workshops, for the secretaries, Heads of Departments and Senior Public Officers at district level.

A general awareness programme was carried out in all the Ministries and at the District levels. I obtained the blessings of religious leaders of all faiths.

I have implemented two basic decisions of the Cabinet, viz:

1. To make the second language compulsory for new recruits to the Public Service with effect from 01 July 2007.
2. Incentives have been enhanced for the old entrants.

Proficiency exams at 3 levels – the Public Service has been categorised into three segments: Management, Middle and Lower grades – have been introduced. The first proficiency exam was held around April 2008 – 5000 or so candidates sat for Tamil language and 1700 sat for Sinhala language tests from the North and East Provinces.

A new residential institute for language training has been set up in Agalawatte for trainers and for training of trilingual public officers.

29 Assistant Government Agent (AGA) Divisions have been gazetted as bilingual areas under the 16th Amendment. A further 29 will be gazetted shortly. This covers all bilingual areas in the Island in terms of the ethnic wise population. A complete language audit in these bilingual areas has been carried out; excepting Hambantota, all other districts are considered minority group areas.

The Higher Education Ministry has agreed to start Tamil and Sinhala classes in the Universities. This includes translation courses.

A Multi-Media Distance Education System – a United Nations Development Programme (UNDP) project – to cater to the needs of the people at large is in the process of implementation.

These new initiatives of the Government have already had a positive response including the following:

- Introduction of Tamil as a subject in Sinhala medium schools
- Tamil teaching tutorials have sprung up in the South
- Translators' Courses have commenced in the private sector
- Tamil classes conducted in the Open University, Kelaniya University and Peradeniya University
- Tamil is taught in 59 pirivenas to Buddhist priests including from the Malwatte and Asgiriya chapters

I am seeking approval from the Cabinet to employ retired Tamil public servants to each government department and ministry as a transitional measure in order to attend to correspondence with the Tamil speaking public.

I am aware that the task before me is a big challenge. There are numerous practical problems. This is what should have been done in 1957 or 1987. We were able to make a dent into the problem only in 2007.

After English was introduced as the official language into our country in 1833 in the Colebrook – Cameron reforms, it took 50 years to produce the first Sri Lankan Cadet in the Ceylon Civil Service (CCS).

175 years have elapsed since the introduction of English to our country, but only 10% of our population has knowledge of English. Neither was the implementation of Sinhala as the official language, even being the language of the majority, straightforward. I went through the past records and found that it took 14 years (1956 – 1970) for Sinhala to be enforced as the official language and that too in four phases.

In the context of the prevailing situation in the country, taking into account all constraints, I am happy that I have been at least able to make a dent into the problem where previous administrations failed or never attempted.



***Reality Check and Recommendations on Language Rights<sup>1</sup>***  
***N Selvakkumaran\****

**Overview**

The present paper seeks to assess the ground situation with regard to the environment for, and implementation of, linguistic rights of people. In particular, it evaluates the practical reality of the enjoyment of rights of the linguistic minorities in certain selected areas in selected districts of the country based upon the findings of a field study directed by the present author. It also proposes a series of short, medium and long-term measures for the better implementation of Tamil as an official language.

The districts selected for the field study have been Colombo, Nuwara Eliya, Puttalam, Trincomalee and Vavuniya. The Divisional Secretary's Divisions selected for the field study have been Colombo D. S. Division and Thimbirigasyaya D. S. Division in the Colombo District, Ambagamuwa D. S. Division and Nuwara Eliya D. S. Division in the Nuwara Eliya District, Mundel D. S. Division and Puttalam D. S. Division in the Puttalam District, Trincomalee Town & Gravets D. S. Division and Muttur D. S. Division in the Trincomalee District and Vavuniya D. S. Division and Vavuniya South D. S. Division in the Vavuniya District.

Even in the above districts and divisions, the study concentrated on the following thematic areas – civil administrative institutions, transport, police, courts and health. The study was conducted through questionnaires administered for data collection, interviews with officers and members of the public, and through focus group discussions with stakeholders including civil society representatives.

This analysis has been affected by some limitations that constrained the team from carrying out an extensive study of the situation due to the prevailing 'security situation' in the country. The 'security situation' has been a serious constraint on the team members to travel to areas in the North and East. The badly affected district was Vavuniya and, to a certain degree Trincomalee. Even in other areas where 'security' was not a real worry to have physical access to these places, team members encountered a certain degree of reluctance on the part of officials to entertain and divulge data and information due to perceived 'security' and other concerns.

Our study team also found out that there has not been any official census, carried out by the relevant government authority, of the total number of officers with their linguistic abilities in the different departments and institutions in different districts or divisions. However, the Department of Census and Statistics of the Ministry of

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<sup>1</sup> This paper is extracted with permission from a longer study, "Language Rights in Sri Lanka: What Ails their Implementation", prepared for The Asia Foundation (Sri Lanka) as one component of its project on Access to Justice.

\* *Dean, Faculty of Law, University of Colombo.*

Finance and Planning has carried out a census of the linguistic competence of people in the different Ministries and other State institutions. But these do not give the figures for each department or institution in the district or divisional basis. But on the other hand, the Census and Statistics Department provides data of the trilingual competence of people who are ten years old and over living in different districts. These are not given by the Divisional basis. However, this gives an approximate idea of the linguistic needs of different institutions at different districts to serve the people of the areas.

However, subject to the above constraints, the above mentioned geographical areas and thematic sectors were investigated, data collected and analysed. Public officials and members of the public were interviewed and their responses collected. Parliamentary budgetary allocations were gone through.

Field survey of the districts of Colombo, Nuwara Eliya, Puttalam reveals an unsatisfactory state of the implementation of the Tamil language as an Official Language in the thematic areas of civil administration (such as Divisional Secretary's Office, Grama Niladharis' Office, Registrar of Birth, Marriages and Deaths Office etc.), transport, police, health, court.

In the districts of Trincomalee and Vavuniya, the Tamil language as an Official Language is satisfactorily implemented in almost all thematic areas referred to above, save some exceptions particularly in the Police department.

### **Non-Implementation of Constitution**

The unsatisfactory state of affairs of the implementation of the Tamil language as an Official Language in the districts other than those coming under the Northern and Eastern Provinces is aptly captured by the present Chairman of the Official Languages Commission when he commented that "there is an enormous gap between constitutional provisions and their application". Attributing the possible reason for this situation, he observed "that successive governments have failed to fully implement the policy as laid down in the Constitution, which calls for a bilingual administration at all levels and throughout the country...". Our investigation also confirms this fact.

As a general comment, it is to be noted that amongst a majority of officers there is a lack of sensitivity to recognise and respect the linguistic rights of the people whose mother tongue is Tamil but who are citizens of this country. Also it was recognised that there was a lack of initiative to implement the Tamil Language as an official language of the country, though it was recognised to be so in 1987. Although the availability of finances and cadre positions is inadequate, the sad scenario is that even those available funds have not been sought and obtained by the relevant offices for the implementation of the Official Languages Policy. This is attributable to their lack of will and commitment to ensure implementation.

A review of constitutional and legislative developments in Sri Lanka would illustrate that the linguistic rights of the people whose mother tongue is Tamil have been recognised very grudgingly but incrementally. However, this is done after creating a

sense of relegation with regard to the status of the language in the minds of those people in the mid-nineteen fifties. This has had a decisive effect on the ethnic relations of different communities in the country since 1956. Even though the situation was tried to be rectified and reversed in 1987, the telling effects of the ill-conceived, unfortunate and monumental policy decision taken in 1956 do still continue to afflict the ethnic relations of the communities in the country. So much so, although changes effected by constitutional amendments have neutralised officially the effect and purport of some of the legislation on the status and use of languages in the country, the restrictive and discriminatory pieces of legislation such as the 'Sinhala Only' Act of 1956 and the Tamil Languages (Special Provisions) Act, 1958 have not been repealed and removed from the statute book yet.

It is, however, to be noted that the recognition of collective rights of the majority community cannot be criticised as it upheld and recognised the linguistic rights of the majority people in the country. However, what was objectionable and unwise was the fact that only one of the native languages was made the official language while relegating the other to an inferior status and denying the minority linguistic community of its language rights. This was perhaps propelled by political expediency to ride to power overnight. Thereafter administrative convenience and political expediency have been dictating the incremental grant of language rights to the linguistic minorities in the country. The constitutional, legislative and administrative developments of language rights have not been driven by a desire to approach the issue from a rights based perspective. Political opportunism and administrative expediency have been the main reasons for the present parlous state of the implementation of linguistic rights of minorities.

One of the welcome measures adopted by the government was the steps it took to declare many Divisional Secretary's Divisions as areas where languages of administration have to be both Sinhala and Tamil. Although it started initially with twelve divisions in the districts of Badulla and Nuwara Eliya, it is now reported that around 29 such divisions have been declared by the President to be bilingual administrative divisions. However, in reality whether both languages are being used and practiced in those areas is a big question. The ground situation is far from satisfactory. It is not only the Divisional Secretary's Office in those divisions which should function bilingually. According to the relevant Constitutional provisions, all government offices, such as the police stations, hospitals, educational offices, irrigation offices, post offices etc. in those areas must function in both Sinhala and Tamil.

In this regard, it has to be noticed that the Official Languages Commission has, in its recommendations released in 2005, recommended to the Government that another forty-three D. S. divisions in thirteen districts must be declared by the President as bi-lingual Divisional Secretariat Divisions under Article 22 of the Constitution. However, one has to rush to state that the D. S. Divisions which have been already declared to be bi-lingual areas of administration do not function in the way it should be

functioning. This has been very regretfully commented upon by the Official Languages Commission in the following words:<sup>2</sup>

“The Secretariat Divisions which have been directed to use both Official Languages as Languages of Administration have so far failed to provide a satisfactory service to those speaking the Tamil language. In a sense mere direction that both Sinhala and Tamil languages should be used as Languages of Administration of a given Divisional Secretariat area is useless unless facilities for its implementation are provided. This unsatisfactory situation needs to be rectified expeditiously.”

One of the reasons for this state of affairs is the failure on the part of the Government and the ministries under the Government to provide for necessary financial and other resources needed for the effective implementation of the Official Languages Policy. There has been a lack of commitment on the part of authorities to take effective steps to ensure that all the people enjoy their linguistic rights.

The following remarks by the Official Languages Commission put the position very clearly:<sup>3</sup>

“The government has generally failed to provide facilities to citizens in those areas where Sinhala is used as the language of administration to receive communications and to communicate and to transact business in the Tamil language. Nor are adequate facilities available to citizens in those areas to obtain copies of or extracts from or translations of such from any official register, record, publication or other document, in the Tamil language. Similarly, adequate facilities do not exist for them to obtain translations in Tamil of documents executed by an official and issued to them. In those areas where Tamil is the language of administration similar problems are faced by citizens who are entitled to obtain these same services in the Sinhala language.”

In fact, it is not untrue that in some of the areas where the language of administration is declared to be Tamil by the Constitution, the police stations and other institutions dealing with security do not operate in that language for maintenance of records or for transacting business with the people of the area. If this is the case in the areas where the Tamil Language has been declared to be the language of administration it is too much to expect that the implementation of the use of Tamil language in other areas will be satisfactory!

For instance, when Members of the Parliamentary Select Committee on the Human Rights Commission of Sri Lanka and its chair the Hon. Mahinda Samarasinghe, M. P., visited the Jaffna Peninsula in 2003 and held meetings with various groups, including police officers, security personnel, government officers, members of the public, it transpired that the police stations in the peninsula did not record statements

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<sup>2</sup> *Memorandum of Recommendations released by the Official Languages Commission in June 2005* at p. 5

<sup>3</sup> *Ibid* at

and complaints in the language of administration of the Northern Province, which is Tamil. Instead it was brought out that the records were maintained only in Sinhala.

With regard to the question of implementation of the official languages policy as enunciated in the Constitution, the picture that came out was not very satisfactory, though there seems to be some improvements noticeable when compared to the position in the past. One need not do a deep and penetrative investigation to know that the official languages policy has been implemented in an unsatisfactory manner when it comes to recognising and respecting the constitutionally accorded linguistic rights of the minorities.

#### **Linguistic Proficiency of Public Employees**

The Department of Census and Statistics has put out population data with linguistic competence as well as the percentage distribution of employees in the state sector, provincial sector and semi-government sector and their ethnicity. These give an approximate picture of the status of implementation of the official languages policy.

**Percentage Distribution of Employees by Sector and Language Proficiency**

Sector	Total No. of Employees	Language Proficiency (%)		
		Sinhala	Tamil	English
Total	813,030	91.3	15.7	32.0
State sector	325,272	94.8	13.9	32.0
Provincial Public	279,924	85.3	21.8	28.5
Semi-Government	207,834	93.7	10.4	36.3

It is clear that the percentage of employees who are Tamil language proficient in the State Sector and Semi-Government Sector overall is less than 14% whereas in the Provincial Public Service Sector it is in the range of 22%. The Census and Statistics Department has ventured to attribute this phenomenon to the fact that the Northern

and Eastern Provincial Council has employed more number of Tamil speaking officers than the State or Semi-Government sectors.

### **Colombo District**

It is also necessary to look at the language proficiency of people living in different areas. One has to know the percentage of people in different areas having the capacity to speak, read and write different languages. These will throw some light with regard to the necessity to provide state services in those areas in more than one language. It may also make us know which places may need immediate attention to rectify the non-availability of officers with bilingual capacity. The following data put out by the Department of Census and Statistics throw some pertinent light with regard to this issue (see **Tables 1 & 2, pp. 28 & 29**).

In the Colombo district, it is clear that there is a sizeable number of Sri Lankan Tamils, Indian Tamils, Sri Lankan Moors and Malays who speak Tamil. However, it is evident that the majority of these people are competent in Sinhala – both spoken and written. Hence, they could go about doing their business with the governmental institutions in Sinhala as they know the language, though their right to transact in their language of choice or mother tongue is not being upheld.

Our study finds that in the Colombo district, the Department of Registration of Persons, Registrar General, Health, and Post Offices provide somewhat manageable services to the Tamil speakers compared to the Departments of Police, Divisional Secretary's offices, and Grama Niladhari offices where the state of the implementation of the Tamil language is very unsatisfactory. In the case of the transport sector, while a majority of state (Sri Lanka Transport Board) and private buses carry the destination boards in all three languages or at least in two languages, the conductors and drivers do not display sufficient linguistic competence in Tamil. This affects the Tamil speakers though a substantial number of Tamil speakers in Colombo are capable of managing in Sinhala as shown earlier.

Of late, some of the traffic instructions are put out in Sinhala only, when internationally recognised traffic signs could also have been used. Announcements in the main Fort Railway Station takes place in both Sinhala and Tamil except in some cases where they are made in Sinhala only when the trains do travel to supposedly non-Tamil areas. Main Bus Stations have displays in both languages in a majority of instances.

The position with regard to the judiciary is also not very satisfactory. Although the right to file cases in Tamil is recognised, the delay in getting them heard is very inordinate. To obtain copies of records of proceedings in Tamil is also very difficult. However, the Attorney-General's Department and the Legal Draftsman's Department have adequate staff to operate in Tamil very satisfactorily.

All the Police Stations in the Colombo district are not geared to record statements or question and interview witnesses/suspects in Tamil. Copies of extracts or

police clearance certificates are issued to Tamil speakers in Sinhala. They are not issued in Tamil or English, as constitutionally stipulated. Police officers and soldiers, who visit homes for 'checking and verification' purposes, do not speak the Tamil language in a majority of cases, though of late there are attempts made by them to communicate in Tamil. In some cases, they do communicate in English. However, in most of the instances, it is done in Sinhala, but a majority of Tamil speakers can manage in Sinhala.

When it comes to registration of marriages, they could be done in Tamil as Tamil speaking Registrars have been appointed in the Colombo district. Solemnisation of marriages does take place in English, if they could not take place in Tamil. Official translation of certificates could be obtained in Tamil. This is also the same with regard to birth and death certificates.

Having said that, it is to be noted that there are areas where the Tamil language is not implemented as required in the Constitution. The Language Audit conducted by the Social Indicator polling organisation for the Foundation for Co-Existence<sup>4</sup> gives a sample of institutions in different areas with the total staff population and the approximate number of staff members who are Tamil literate. This table reveals the unsatisfactory state of the official languages policy.

For example, the Colombo Municipal Council (CMC) has 12,000 persons on its staff out of which only 100 are Tamil literate. The total population of the CMC area is in the region of 650,000 people. Out of this around 41% (266,000 people) are Sinhala and 31% (200,000 people) are Tamils and 25% (165,000 people) are Muslims. A majority of Muslims speak Tamil as their mother tongue, though, of late, they educate their children in the Sinhala/English medium. It seems more number of Tamil speaking people live in the Colombo Municipal area than Sinhala speaking people. Against this backdrop, it is startling to note that not even 1% of the total staff strength of the Colombo Municipality is Tamil proficient.

#### **Nuwara Eliya District**

With regard to the status of implementation of the Tamil language in the Nuwara Eliya District, the civil administration in major offices such as Divisional Secretary's Office, Grama Niladhari's Office, Pradeshiya Sabhas, Registrars of Birth, Marriages and Deaths, Land Registry, Local Authorities, is carried out satisfactorily. This is due to the fact that a satisfactory number of Tamil speaking officers has been employed in the area. Similarly, the police stations do have a satisfactory number of Tamil speaking officers; but there seems to be some reluctance on the part of these officers to function in Tamil. Many members of the public who were interviewed expressed the view that there have been many instances where police officers who are

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<sup>4</sup> [*Language Discrimination to Language Equality*, Foundation for Co-Existence: Colombo 2006, pp. 16-33 – Ed.].

Tamil speaking did not want to speak in Tamil perhaps due to some false sense of authority (see **Tables 3 & 4, pp. 30 & 31**).

The transport sector in the district is capable of implementing the official languages policy in a satisfactory manner; though in the case of display of notices and making announcements over the public address system, the Tamil language is not duly implemented. The staff strength is sufficient to offer a satisfactory service to the Tamil speakers though it is not done in practice. This applies to both train transport and bus transport.

With regard to the courts, a sufficient number of officers are capable of functioning in Tamil as well, though judges may not be competent in the language. However, the functioning has been to the satisfaction of the lawyers who are capable of conducting in Sinhala or at least in English. Obtaining records in English/Tamil is also not a big issue as competent officers are available.

In the health sector, there is inadequate staff who could implement the Tamil language with regard to doctor/nurse-patient relations; the officers are basically Sinhala speaking. But there are exceptions to this as well, for instance, there is a sufficient number who could manage in Tamil as well in hospitals in Nuwara Eliya and Watawala, and in some hospitals, notice boards, designation boards, etc. are in three or two languages.

### **Puttalam District**

In the Puttalam district civil administration offices, such as District Planning Secretariat, Divisional Secretariats, Grama Niladhari offices, Registrar of Births, Election Departments, etc., have sufficient number of Tamil speaking officers.

Police Stations also have adequate number of officers who are Tamil speaking, though the administration is mainly carried out in Sinhala. Records are maintained in the Sinhala language (see **Tables 5 & 6 pp. 32 & 33**).

With regard to the transport sector staff of the road transport has a satisfactory number of Tamil speaking officers. The train transport sector too is the same.

With regard to courts, although staff is satisfactorily representative of Tamil speaking officers, most of the documents, notices, forms, name boards, etc. are in Sinhala only. Translators are available from Sinhala to Tamil and vice versa in courts. Cases are filed in the Sinhala language and conducted in the same language. Lawyers are capable of managing their client's cause, though clients may not understand what is taking place with regard to their cause.

It is, however, evident that the people in the area in a position to manage to transact business in the Tamil language although the government service is not fully geared to provide its services in the Tamil language.

### **Trincomalee and Vavuniya districts**

With regard to Trincomalee and Vavuniya the statistical data relating to population aged 10 years and over by ability to speak, read and write Sinhala, Tamil and English languages and ethnic groups has not been provided in the data released in 2001 by the Department of Census and Statistics. However, the above data by ethnicity and language according to D. S. Divisions have been released by the Official Languages Commission having computed on the basis of 2001 Census Report<sup>5</sup> (see **Table 7, p. 34**).

However, both in Trincomalee and Vavuniya the implementation of the Tamil language as an official language has been good as these two Districts come within the Northern and Eastern provinces which are constitutionally declared to be areas where the official language and the language of administration have to be Tamil. However, it has to be considered how the Sinhalese speaking people in these areas are made to enjoy their linguistic rights. The situation in these areas is that there is a reasonably significant number who are capable of functioning in Sinhala and as such the language rights of Sinhala speaking people are not compromised in these areas.

When it comes to the Police and security personnel, there is a certain degree of non-implementation of the Tamil language in Trincomalee and Vavuniya districts, though it is not that acute like in the Jaffna District. There is, but, room for improvement in this respect.

### **Reasons for state of affairs**

The above state of affairs occurs due to a variety of reasons. Lack of commitment to take steps to implement the Official Languages Policy, lack of enforcing the circulars and directions issued for this purpose, lack of provision of adequate finances and other resources, lopsided practice of recruitment to the public service, incongruous national policy on education which does not go hand in hand with the Official Languages Policy are some of them.

The policy on recruitment of persons to the public service has not paid any due significant attention to the implementation of the official languages policy. Nor has the policy on transfer of public officers been sensitive to the spirit of the official languages policy. The recruitment of persons having different mother tongues to the Public Service has been carried out in a lopsided and disproportionate basis. More persons whose mother tongue is Sinhala and a meagre number of person whose mother tongue is Tamil have been recruited to the Public Service.

The number of officers who are Sinhala speaking in the Public Service outweighs disproportionately the number of officers who are Tamil speaking in the Service. This has resulted in a serious paucity of officers who could function in Tamil. As a result, there are many state sector institutions which have the required number of

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<sup>5</sup> See *Memorandum of Recommendations by the Official Languages Commission*, 2005 at pp 34-39.

staff or in excess of it but still wanting in officers to handle matters in the Tamil language. The Fire Brigade Department of the Colombo Municipal Council, for instance, does not have a single officer who is competent in the Tamil language. The government policy on recruitment to its different services has not been predicated on its official languages policy as enunciated in the Constitution. Thus the reality in the actual practice has resulted in the State Service having very few officers who are capable of functioning in the Tamil language.

Perhaps this is due to a lack of commitment and will on the part of the government leaders to implement the provisions of the Constitution and relevant laws relating to the rights of linguistic minorities. Even if there is a demonstration of commitment and will, they will mean nothing if they are not followed by concrete measures to translate them into action. Such action will include, but not restricted to, the allocation of sufficient funds, recruitment of suitable people, purchase of necessary equipment, setting up of monitoring mechanisms, fixing of targets, setting time-lines for the achievement of targets, etc.

It will also be required that officers are designated to be responsible for ensuring the implementation of the said activities. The government should also be ready to take proper and suitable actions against those who have been made responsible for implementation, fail to perform their functions and discharge their responsibilities. If these are not done, merely issuing circulars without following it up with meaningful steps to ensure the implementation of those circulars will end up in nothing. It will be nothing but an eye wash.

There should also be corresponding commitment and will on the part of the secretaries of Ministries and heads of departments and other institutions towards the implementation of the official languages policy. It is evident that a good number of them do not show any commitment and sensitivity to the issue.

The present Chairman of the Official Languages Commission has this to say on this matter:

“Often it has been found that certain officials in managerial positions overlook or do not show sufficient interest in carrying out directives given by political authorities on the implementation of the Official Languages Policy. A case in point is the Circular issued by President Kumaratunga on 30<sup>th</sup> June 1997 to Ministers with copies to all Secretaries and departmental heads... This Circular still remains a dead letter... What was the reason for the apathy displayed in the implementation of these elementary measures? ... The only logical conclusion that could be drawn in this regard is the lack of commitment on the part of relevant officials of yesteryear”.<sup>6</sup>

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<sup>6</sup> Address by Mr Raja Collure, Chairman, Official Languages Commission on “Obligations and Commitment of State Officials in Implementing the Official Languages Policy” at a workshop

One of the heads under which the ministries, departments and other government institutions could ask for funds from the annual budget is the item of 'Implementation of Official Languages Policy.' This is made available since 2003. This budgetary line item permits the officials to purchase equipment, hire translators and other necessary persons on contract basis, make sign boards, organise language classes, etc. However, the interest shown by the ministries, departments and other institutions has been very lackadaisical.

Of the 958 departments and institutions referred to in the budget estimates for 2004 only 114 had applied for allocation and a total sum of Rs.2,154,000/= was passed for it. The year 2005 showed a small increase to 200 and the year 2006 went up to 226. Allocations for the year 2005 was Rs.12,855,000/= and for the year 2006 it was Rs.15,136,000/=.

Adverting to the above details, the Chairman of the Official Languages Commission had the following terse comment on the situation:

"All these show the scant regard for the need to implement the Official languages Policy on the part of certain state officials. In fact during our Language Audits we found that most of the head of offices and establishments we visited were unaware of the availability of provisions to obtain funds for this purpose. These facts reveal the complete ignorance of some officials and the lack of commitment of some others in obtaining necessary funds to meet some basic requirements relating to the implementation of the Official Languages Policy."

A few departments have shown some interest in getting their officers trained in the Tamil language so that they could serve the needs of the linguistic minorities. However, there are occasions when officers who have undergone training in the second language have been transferred for a variety of reasons to stations where there is no great need for officers with bilingual ability. In some cases, the places where these officers are transferred are those where there was no necessity to have officers with this ability. Due to lack of usage of the second language, these officers tend to forget what they had learned earlier.

The Department of Official Languages has been conducting teaching programmes on Tamil and English languages to a majority of officers in the public service. Even though officers are provided with the facilities to learn a second language and third language – it is doubtful whether they really acquire the required skills as their main motive, in many cases, seem to obtain promotion and increments than work in the other language. Also there is much to be desired with regard to the standard of proficiency that it inculcated in these officers over the second language by the classes conducted to them. It is pertinent to investigate whether the language skills imparted by

these classes are sufficient enough to undertake work in that second language and whether it can cater to the requirements of the public. The quality of the curriculum used by the Official Languages Department is debatable.

According to the postal department, the officers recruited to the postal department should have trilingual ability. This is a mandatory requirement for all permanent cadres. However, this norm is not observed in practice. Even though they are required to sit for an examination on the second language, there is no proper mechanism to maintain and develop the language skills.

It has been observed that the minority Tamils are generally keen on learning a second language. This trend could be attributed to the fact that Tamils have to know Sinhala in order to communicate with the state engine – as most public servants cannot communicate in Tamil. This is more so out of the north and east. The state engine functions principally in Sinhala. Internal memos, circulars, letter to the staff, internal affairs are carried out in Sinhala in the other regions except in the North or East. But the important documents are issued to the public mostly in three languages. Even though there are laws and regulations which lay down the language policy, it is not implemented by the state institutions due to ignorance, carelessness, prejudice and negligence.

The Tamil linguistic minorities in the country should be able to use Tamil in their day to day activities. The Tamils generally resign themselves to the use of either English or Sinhala in order to communicate their needs and interests effectively. The lack of sensitivity towards language issues is a common complaint heard from a majority of linguistic minorities who are affected by the non-implementation of the official languages policy. They are becoming conscious of their rights and have started to demand that the government services are provided in their own language.

A significant outcome of the study is the finding that there is a definitive lack of interest amongst the linguistic majority to learn the Tamil language as a second or third language. As they can function in their offices with their present language ability, they do not see the necessity, urgent or otherwise, to learn the Tamil language or even the English language. They have not been pulled up for not knowing the other languages; nor have they been subjected to any disadvantage for not knowing the second and third languages.

A clear case in point is the position of police officers in the Sri Lanka Police Force. After the passage of the Thirteenth Amendment, it is a constitutional requirement that a police officer should acquire proficiency in a language other than in one's mother tongue to gain the first promotion and should acquire a knowledge of the third language for his or her next promotion, the three languages identified being Sinhala, Tamil and English. However, this is not followed in any meaningful manner when promotions are granted to police officers in the country. The constitutional prescription is followed in the breach. This apart there are some members of the public

service who feel that learning Tamil as a second language is demeaning. They do not see why they should learn it when it is not of any real or substantial help to them.

On the other hand, there is also a general reluctance on the part of Tamils and Tamil speaking people to use their own language for communication and transaction of business with government institutions. It is felt that the use of Tamil in communicating with these offices will result in bias against them and would also lead to delays in getting their work done. They are willing to get someone else to write for them or transact business for them in the language other than their mother tongue in order to expedite matters.

### **Recommendations**

The following section focuses on how best the linguistic rights of people could be better recognised, enjoyed and enforced in the country and make some long term, medium term and short term measures to achieve them. However, these suggestions are made keeping in mind that Sri Lanka is a multi-lingual, multi-ethnic and multi-religious country and that the linguistic and cultural rights of individuals and groups have to be recognised and respected in accordance with international human rights norms and standards. They are also proffered with a view to ensure the effective implementation and full enjoyment of language rights of the people in the country.

### **Rights Based Approach**

It is essential to appreciate that a rights based approach is the best course of action to recognise the linguistic rights of all the people in the country. If such a vision is kept in mind in designing and implementing the constitutional provisions it will respect everyone's linguistic rights and enable them to enjoy their rights. Therefore, rights based approach should guide the recognition and implementation of language rights of the people in the country; the enjoyment of linguistic rights should not depend on administrative convenience or political opportunism or expediency.

What does a rights-based approach to the enjoyment of language rights mean? The national policy on the use of Sinhala, Tamil and English languages should be drawn up from the perspective of rights of citizens. It should not be viewed from the standpoint of administrative expediency or political convenience. Citizens and their rights are central to national policy and should be the centre of focus; the convenience of administrative organs is secondary and should not relegate the rights of citizens.

In practical sense, rights based approach means that every citizen should be in a position to obtain the public service from the government in the language of his or her choice. Similarly he or she should be in a position to go about his or her business in the language of his or her choice. The government should provide its services in the language of the citizens irrespective of the sector in which the services is demanded or the geographical area in which it is required. In short, this captures the rights-based

approach to the recognition and enforcement of language rights of the people of this country.

The enjoyment of cultural, educational, social, economic, political and civil rights by an individual as well as those of his or her community is very much interconnected to his or her ability to function as well as receive services in his or her own language. At the same time, when one recognises and respects others' rights it naturally promotes and protects his or her rights as well. On the other hand, when one's linguistic rights are suppressed and disregarded this results in disharmony, prejudice, hatred and conflict in the country. To promote peace and sustain it amongst various communities in the country, one of the practical steps would be to make these people of various communities to communicate to each other, know each other, understand each other and respect each other and each other's culture better.

### **Long-Term Measures**

The present constitutional provisions relating to language rights of different linguistic communities in the country should be revisited and amended to reflect and give effect to the above principle. Otherwise, it will mean that language rights of the citizens of this country are given short shrift and foremost consideration to administrative convenience and/or political expediency is extended.

### **Constitutional Amendment**

In this regard, it is undesirable to have many different contextual uses of different languages for different persons depending on their official capacity or private capacity. Similarly, it is also not desirable to have different contextual uses of different languages for different persons depending on the geographical areas where the persons are located. It is important and it accords with a rights-based approach that the language of administration and record must be viewed from the service receiver's perspective. Every citizen in the country should be in a position to enjoy his or her linguistic rights and receive services from the public sector in any one of the three languages of his or her choice. His or her language right should not be dependent on the geographical area in which he or she is situated or the sector from which he or she is seeking service from an institution. Neither the geographical area nor the sector from which he or she is seeking should have an impact on the full enjoyment of the linguistic rights of the people in the country.

### **National Policy on Languages**

The national policy on the status and use of the Sinhala, Tamil and English languages shall be either that all three languages are recognised as the State Languages or Official Languages. If there is any dislike to recognise the English language as one of the State Languages or Official Languages, the Constitution must recognise at least the Sinhala and Tamil languages as such in all parts of the country. The present method of

providing separately for the linguistic rights of different people in different contexts and in different geographical areas is very convoluted and cumbersome. It does not recognise the language and cultural rights of people which are not in consonance with international norms and standards.

The fundamental law of the land should recognise the full range of linguistic rights of all Sinhala-speaking, Tamil-speaking and English-speaking citizens of the country irrespective of the geographical area one is situated in and /or the sector from which he or she is seeking the service. The formulation and recognition of the language rights of all citizens, including the linguistic minorities should be stated in simple form and from the perspective of the rights of citizens who are service receivers.

If from the above principle is adopted every citizen of the country will receive the services from the State institutions in the language of his or her choice from any of the three or two State Languages or Official Languages as the case maybe. There will not be any need to provide for the different use of languages in different contexts and different areas. That will replace the present system of providing separately and differently for language of legislators, language of legislation, and language of administration, language of admission to the public service, language of education, language of communication and language of the courts.

Any citizen must have the right to transact business and get about in any part of the country using any one of the three languages of his or her choice. He or she must enjoy the right to have the official records pertaining to him or her, the records of which he or she has a right to obtain a copy, maintained in the language of his or her choice. And that should be the language of administration, including the maintenance of records and transacting business, with regard to that person. However, those records and data that are not legally accessible by a citizen can be maintained in any language, with a preference to maintain them in the language of the mother tongue of the person or his or her choice.

The said national policy on the use and status of languages, however, will require a substantial and onerous commitment to change the present constitutional and legal position on the part of the government. In addition, given the present state of near mono-lingual competency of a majority of the public officers, long term, medium term and short term measures have to be introduced and implemented if the use of languages as envisioned in the earlier paragraphs is to be achieved.

If the Government and Opposition accept the proposed national policy on languages they could agree that it will not be changed for about fifteen to twenty five years so that the implementation of such policy will run smoothly and will not be hampered with the change of government. They should also agree that the governments will not cut down on allocation for the implementation of the national policy on languages once the action plan with a time line is agreed upon.

There should also be an understanding that a high-powered body, such as the State or Official Languages Commission, will be given the task of monitoring the

implementation of the action plan which is intended to translate the national policy into a realisable outcome.

In addition, both the Government and Opposition should agree to reflect upon the country's educational – secondary, higher secondary, tertiary – priorities, and schemes of recruitment to, and promotion in, the public service which must also undergo some revision to further, but not frustrate, the proposed national policy on languages. This will warrant a review of the national policy on education and the national policy on employment in the public sector.

### **National Policy on Education**

Following the above discussion, it is incumbent on the government to revisit its national policy on education – at least primary, secondary and higher secondary – to ensure that it does not undermine the government's national policy on languages. The national policy on education has to reflect and further the educational priorities set by the national policy on languages. The national policy on education should not be formulated in such a way that it frustrates, undermines or works against the objectives of the national policy on languages. To successfully implement the national policy on languages, there is obviously a need for correctly formulating the national policy on education.

The national educational policy should place a high premium on the teaching and testing of bilingual (Sinhala and Tamil) competencies or trilingual (Sinhala, Tamil and English) competencies from the primary level up to higher-secondary level. Although teaching of Sinhala and Tamil has already been introduced in many schools, there is much to be desired with regard to its practical implementation. Its implementation has been beset with so many difficulties which undermines the effective implementation of the national policy on languages. Therefore, the national policy on education should be revamped or overhauled and effective policy decisions, consonant with the government's national policy on languages, are to be made and implemented with commitment, dedication and purpose. Satisfactory augmentation of finances and human resources must be ensured and provided with proper and regular monitoring of the implementation.

In this regard, every school should be mandated to teach both the Sinhala and Tamil languages in their curriculum from the early childhood of a person. The mother tongue of a child should be taught from Year I and the other language should be taught from Year II. The English language could be commenced in Year I or Year III. Every student should sit for both Sinhala and Tamil languages at the G. C. E. (Ordinary Level) Examination and must pass them to further continue the studies. In ten to fifteen years time, all the citizens of this country will be competent in both Sinhala and Tamil languages and will be capable of functioning in both languages when they are recruited for the public service.

### **National Policy on Employment in the Public Sector**

Until the above stated national policy on education is formulated and implemented by the government, the national policy on employment in the public sector has to be revised in order to promote the national policy on languages of the country. A considerable period of time will be required to fully implement the national policy on education and reap the benefit of such in the employment sector. It is found that a large segment of officers in the public sector is monolingual and the public service is not provided in the language of service receiver in a majority of cases. If this situation were to change, the existing policy on recruitment to, as well as promotion in, the public service must be reviewed.

The Public Administration Circulars issued in 2007 (PA Circulars Nos. 3 & 7 of 2007) are welcome measures, though a majority of officers in the outstations do not know them. In addition, the PA Circular No. 7 of 2007 relating to the requirement of obtaining competence in other languages for confirmation does not prescribe any effective sanction for non fulfilment of the requirements stated therein. This has to be tightened to ensure that those who are not obtaining the required level of competence within the prescribed period must be discontinued until they obtain the necessary proficiency within a further stipulated period. If they fail to obtain the required language proficiency within the extended period, they should not be permitted to join the public service. This will prove to be a very salutary step if the government is really committed to ensuring that the public services becomes truly bilingual within a short period of time.

### **State or Official Languages Commission**

The State or Official Languages Commission (Commission) should be strengthened and more powers and responsibilities must be given to it in order to ensure the effective implementation of the national policy on languages. The Commission should be provided with adequate human and financial resources to monitor and evaluate the status of implementation of the State Languages Policy. The Commission should engage with public sector institutions – at national level, provincial level and local level – on a priority basis, to work out a plan of action with a time-line to the full implementation of the State Languages Policy. Progressively they should extend their coverage to the private sector institutions which are providing services to the public. The enabling Act should give the necessary powers and authority to the Commission in this regard.

There should be financial allocation by Parliament to ensure that the State Languages Policy is implemented as Ministries, Departments both in the capital and peripheries as well as in other governmental and semi-governmental institutions. The allocation must be made to the Commission which should engage with these institutions to ensure the practical implementation of the Languages Policy.

The provision of required cadres and filling of them must be coordinated with the Treasury, Public Service Commission, National Police Commission, Human Rights Commission, Election Commission, etc. at the national level and Provincial Public Service Commissions etc., at the provincial level and local authorities at the local levels.

The State/Official Languages Commission should also ensure the proper implementation of the recent PA Circulars, in particular Nos. 3 and 7 of 2007. A timeline must be drawn up to ensure the incremental fulfilment of these requirements. The Commission could undertake this as a promotional function.

The effective implementation of the State Languages Policy at every level in the country must be monitored and reviewed by the Commission. For this purpose, the Commission should set up Monitoring Committees (MCs) at Divisional Levels with delegated powers to engage with divisional level officers. There will be many non-governmental organisations and civil society institutions or retired public servants and public spirited citizens at the divisional levels who would come forward to perform these tasks without expecting any substantial remuneration for their services. Their services could be meaningfully tapped to carry out the monitoring function of the SLC. These MCs must have complaint handling mechanism and reporting on complaints to the SLC.

The SLC must initiate dialogue with public sector institutions to organise 'Language Week Programmes' in their institutions annually. In addition, the SLC could institute Prizes for the Best Bi-lingual Friendly Institution amongst public authorities. This could be done annually to coincide with the Language Week celebrations. These steps will promote a sense of being recognised at the national level for being bi-lingual friendly.

Promotional activities showcasing the virtue and value of being able to work and provide services in more than one language should be undertaken by the SLC. This could be done in association with institutions – both governmental and non governmental – in order to promote the long term vision and objective of the State.

The SLC should also exercise its powers to take some defaulting institutions or recalcitrant officers to courts to ensure enforcement of the SLP. If individual officers cannot be made responsible for lapses and recalcitrant refusal to carry out the SLP, the enabling legislation should be amended suitably to hold the Institutional heads responsible for the failure. There will be a feeling of frustration and lack of trust if institutions fail to act decisively to remedy situations through legal and judicial means when they are invested with statutory authority to take defaulting or infringing officers to judicial forums.

### **Medium Term Measures**

While the long term objective is accepted in principle and action is taken to amend the fundamental law and other connected laws, some medium term and short term measures must be undertaken to work towards achievement of the long term

objective. These will pave the way for achieving the long term objective in an incremental way. It is obvious that the long term objective cannot be fulfilled overnight or within a very short period, even if the necessary legislative and constitutional measures are put in place. It needs a public service whose members will possess at least bilingual competence, if not trilingual competence.

Initially, steps could be taken to plan and implement a bilingual – Sinhala and Tamil – policy in the State and semi-State sectors and progressively it could be made into a trilingual – Sinhala and Tamil and English – practice. All public and semi-public officers must be competent in Sinhala and Tamil and in time to come they should be equipped to work in English as well. It will take some time to make the public service to function bilingually. However, proper planning and monitoring with suitable incentives and disincentives will deliver the desired results within a period of a decade and half.

With regard to the existing staff of the public service attractive incentives could be offered to help them to learn the other language/s. The government should also assess the present strength of its staff and its proportionality with regard to the number whose mother tongue is Sinhala *vis a vis* those whose mother tongue is Tamil. There should be a reasonable balance struck between these two segments in the public service.

It is also necessary for the government to resuscitate the Translators' and Graduate Translators' services and the Interpreters' services which were at one time performing a great service in the public sector. However, these translators and interpreters were mainly involved in translating from English to Sinhala/Tamil or from Sinhala/Tamil to English. It is necessary that the government promote translators and interpreters to translate from Sinhala to Tamil and *vice versa*. This will also ease somewhat, as a medium term measure, the present pathetic position of the implementation of the State or Official Languages Policy in the country.

It has been recently found that there is a dearth of qualified personnel who could be recruited as translators or interpreters as a majority of those who applied for such positions did not have sufficient competency in two languages. This shortage can be filled by our Universities if they come forward to offer language teaching to undergraduates along with their degree programmes. We have a sizeable number of students who get admitted to follow courses in social sciences and humanities as well as other courses in the Sinhala or Tamil mediums. These undergraduates are potential candidates to learn the other language in addition to their mother tongue. Given the similarity that exists in constructing sentences in these languages, and the environment in which these students mingle with each other speaking different languages, it will not be a difficult exercise to gain competence in the other language within their period of stay in the University. A proposal on this matter was submitted to the Minister of Constitutional Affairs and National Integration as well as to the chairman of the University Grants Commission.

In this respect, as seen already, the Public Administration Circulars Nos. 3 and 7 of 2007 are welcome measures. If they are implemented effectively and strictly, they will provide the necessary and conducive environment to make the public service really bilingual. These Circulars must be accompanied by opportunities and incentives for learning the other native language. In this respect the passage of the Act of Parliament No. 26 of 2007 establishing the National Institute of Language Education and Training is a progressive step and the Institute should be set up without delay and given adequate finances to function effectively and efficiently.

Of course, the long term objective cannot be achieved overnight. But this could be achieved, and should be achieved. It is not unachievable! We could have medium-term and short-term plans and measures designed on a staggered time-frame. They may relate to different sectors and different geographical areas. Sectors such as the police service, transport service, health service, postal service, services provided by the local authorities, the department of registration of persons, registrar-general's department, district secretaries, divisional secretaries and grama niladhari officers, courts of law etc. can be prioritised taking into consideration their impact on the civil society. Similarly geographical areas inhabited by people speaking different languages could be identified on a priority basis for concerted effort to making the service providers bilingual.

As a medium term exercise, teaching of Sinhala and Tamil as subjects in schools could be undertaken on an incremental basis, identifying six to twelve schools per district to commence the teaching of Sinhala and Tamil in each year and expanding this number every year. This will not impose a big burden on the Treasury to find adequate finances for recruitment of suitably qualified teachers.

When we recommend the commencement of teaching of Sinhala and Tamil in schools, we are not downplaying the importance of subjects which have been receiving higher priority amongst the authorities concerned other than languages. While the authorities continue to give those subjects high priority as they are also based on some valid and compelling grounds, it is our view that learning the other language is also important, if not the most, part of the curriculum, given the present state of the relations between the three main communities.

We have never seriously worked towards learning both the native languages of this country from early school days. One of our educational priorities should have been teaching both the languages to all if we were to have a peaceful, united and co-existing country. It is a fundamental requirement that we learn each other's language as we are living in the land together. We learn each other's language in order to understand each other better and respect each other better.

It is realised that there should be peace and tranquillity if Sri Lanka is to progress. One of the key aspects to bring and sustain peace in the country is to make people communicate to each other, know each other, understand each other and respect each other better. Hence one of the priority areas of educational concern must be to

introduce teaching of Sinhala and Tamil in each school – whether private or public – in the country at a very early stage. Learning languages from a tender age is not a difficult exercise. Our neighbouring country, India, is an example where more than one language is being taught to children at a very early age.

While promoting the national policy on the status and the use of languages as one of bilingualism, i.e. Sinhala and Tamil shall be the State or Official Languages, we recommend that the English language should not be neglected. The recommendation for bilingualism, however, does not mean that the State should ignore the recognition and promotion of the use of English, which is considered to be an international language as well as the language of international commerce. The State should promote the learning and use of English as well. This too should be introduced at a very early stage in schools so that children will pick up the language very easily. However, to what extent governmental functions must be transacted in English will depend on the nature of functions and the people who ask for them.

### **Short-Term Measures**

There are some initiatives which could be taken as short term measures to address urgent and serious concerns of the linguistic minorities in the country. They relate to the following areas of governmental activities: transport sector, police service, health service, postal service, services provided by pensions department, education department, district secretary, divisional secretary, grama niladhari, local authorities, registration of persons, registrar general, electricity board, water supply and drainage board etc..

### **Transport Sector**

Immediate steps should be taken to display in all three languages all destination boards, notices, instructions etc. Similarly, all announcements made over the public address system in bus stations and buses should be in all three languages. Conductors of buses must be in a position to converse in at least two languages (Sinhala and Tamil). These urgent steps will equally apply to trains, railway stations, airplanes and airports. Forms to be filled by members of public to obtain services from the transport service providers should also be available in all three languages.

### **Police Service**

Name boards, designation boards, notices and instructions should be displayed in all three languages in all police stations. Similarly all announcements made to the public should be in all three languages. Instructions and notices relating to the regulation of road traffic must be displayed in all three languages along with international sign language. Forms issued to collect data from the public must be issued in all three languages or at least in Sinhala and Tamil. Police stations must have Tamil speaking officers to conduct investigations, to receive and record complaints, to record

statements from people relating to the maintenance of law and order. This is urgent in regard to areas where linguistic minorities live in a considerable number. All police stations in major cities must have sufficient number of police officers who are capable of functioning in Sinhala and Tamil.

Recording of statements must be in the language of the person who is making the statement. If it is to be recorded by the police officer in another language other than the language in which it is made, the original statement must also be maintained in the language in which it was made.

### **Health Service**

Name boards, designation boards, notices and instructions should be displayed in all three languages in all hospitals. Similarly all announcements made to the public should be in the three languages. Forms issued to collect data from the public must be issued in all three languages or at least in Sinhala and Tamil. Doctors must be competent to converse in all three languages and communicate with their patients in the language of the patient. At least they should have adequate knowledge of Sinhala and Tamil to find out from their patients details relating to the illness the patients complain of. Nurses and other support staff in hospitals too should be competent to communicate with their patients in Sinhala and Tamil at least.

### **Other Services**

Steps should be taken immediately to address the similar issues in other service sector areas such as postal service, services provided by pensions department, education department, district secretary, divisional secretary, grama niladhari, local authorities, registration of persons, registrar general, and electricity board, water supply and drainage board, state banks etc. The notices and instructions displayed in their offices or issued to the public must be in all three languages. Forms and other instruments supplied to the public for their use must also be in all three languages. In all these institutions, a public relations officer who is capable of functioning in all three languages must be available at all time to assist the clients who turn up or call in for help. There should be sufficient number of Sinhala, Tamil and English speaking officers in these institutions so that they could serve all the customers in their own language. This should be so particularly in areas and cities where there is a multi lingual population.

### **Conclusion**

Language is not only a communicative tool but also an integral part of a person's identity. It is of importance in a person's life for gathering knowledge, communicating thoughts to others, and sharing ideas and feelings with others. It is also firmly intertwined with his or her culture and identity. Respect for human rights entails the recognition of a person's right to use his or her own language. This includes one's right to transact business and go about in his or her own country using his or her own

language. Language rights are recognised as human rights and they are expressly and implicitly recognised as fundamental rights under the 2<sup>nd</sup> Republican Constitution of Sri Lanka of 1978, though the recognition has come to pass belatedly and after causing immense harm to the mutual trust and ethnic harmony among various communities in the country.

There is no doubt that the non-recognition and non-implementation of linguistic rights of minorities have contributed in no small way to the origin of the ethnic conflict in the country. This also led to an environment in which people speaking different tongues could not understand each other, and mistrust and misunderstanding grew in place of good-will and harmony amongst these people who belonged to different communities in the island. In addition, a feeling of being culturally and ethnically relegated due to one's language and further more a sense of being denied opportunities in the public sector have contributed to the deterioration of ethnic relations in the country.

**Population aged 10 years and above by ability to speak, read and write Sinhala, Tamil & English languages  
and ethnic group**

**Table 1 – Colombo District**

All groups	Population >10 years	Ability to speak						Ability to read and write					
		Sinhala		Tamil		English		Sinhala		Tamil		English	
		No	%	No	%	No	%	No	%	No	%	No	%
All	1924867	1834641	95	493926	25	620606	32	1608280	83	374287	19	637764	33
Sinhala	1484792	1482157	99	75680	5	427633	28	1407447	94	35307	2	458880	30
SL Tamil	214458	158651	74	213985	99	83405	38	75931	35	180750	84	77373	36
Indian Tamil	21906	18023	82	21841	99	6321	28	7842	35	17133	78	6072	27
SL Moor	160260	137911	86	159901	99	71652	44	88038	54	125677	78	66901	41
Burgher	13657	12736	93	3033	22	13591	99	10655	78	1981	14	11441	83
Malay	18021	16774	93	12963	71	10588	58	12734	70	8604	47	9900	54
SL Chetty	1325	1206	91	767	57	868	65	932	70	557	42	860	64
Bharata	669	480	71	326	48	521	77	318	47	235	35	493	73
Other	9779	6703	63	5430	55	6027	61	4383	44	4043	41	5844	59

Population by ethnicity and language according to D. S. Divisions

Table 2 – Colombo District

District	D. S. Division	Total No of persons	Ethnicity					Language	
			Sinhalese	SL Tamil	Indian Tamil	SL Moor	Others	Percentage	
								Sinhala speaking	Tamil speaking
Colombo	Colombo	377,396	117,090	17,510	7,946	120,109	14,741	31.03%	65.07%
	Thimbirigasyaya	264,767	148,567	68,162	6,022	33,190	8,826	56.11%	40.55%

**Population aged 10 years and above by ability to speak, read and write Sinhala, Tamil & English languages and ethnic group**

**Table 3 – Nuwara Eliya District**

All Groups	Population > 10 year	Ability to speak						Ability to read and write					
		Sinhala		Tamil		English		Sinhala		Tamil		English	
		No	%	No	%	No	%	No	%	No	%	No	%
All Groups	57097	362319	63	377247	66	60751	10	249135	43	270510	47	76109	13
Sinhala	231773	231338	99	38818	16	25145	10	205146	88	9872	4	29283	12
SL Tamil	37450	19688	52	37378	99	7011	18	7802	20	29806	79	7402	19
Indian Tamil	296961	100507	35	286637	99	24775	8	30061	10	219014	76	35183	12
SL Moor	12774	9210	72	12750	99	2833	22	5106	40	10636	83	3387	26
Burgher	507	422	83	341	67	506	99	317	62	205	62	308	60
Malay	842	697	82	755	89	306	36	475	56	545	64	297	35
SL	90	57	63	79	87	22	24	33	36	56	62	20	22
Bharatha	23	12	52	21	91	9	39	4	17	13	56	6	26
Other	554	388	70	468	84	144	26	191	34	363	65	223	40

Population by ethnicity and language according to D. S. Divisions

Table 4 – Nuwara Eliya District

District	D. S. Division	Total No of persons	Ethnicity					Language	
			Sinhalese	SL Tamil	Indian Tamil	SL Moor	Others	Percentage	
								Sinhala speaking	Tamil speaking
Nuwara Eliya	Ambagamuwa	202,432	44,600	11,760	141,066	141066	482	22.03%	77.73%
	Nuwara Eliya	206,944	43,497	22,266	134,554	5,950	777	21.021%	78.61%

**Population aged >10 years by ability to speak, read & write Sinhala, Tamil & English languages  
and ethnic group**

**Table 5 – Puttalam District**

All groups	Population > 10 years	Ability to speak						Ability to read and write					
		Sinhala		Tamil		English		Sinhala		Tamil		English	
		No.	%	No	%	No.	%	No.	%	No.	%	No.	%
All	569,334	489,092	85	165,335	29	46,816	8	423,095	74	125,918	22	62,280	10
Sinhala	428,203	427,265	99	25,750	6	35,036	8	389,916	91	10518	2	44,743	12
SL Tamil	38,401	25,746	67	38,291	99	3,673	9	14,054	36	26,561	69	4,676	12
Indian Tamil	1,851	1,240	67	1,842	99	114	6	530	28	990	53	149	8
SL Moor	98,356	32,716	33	98,199	99	6,891	7	16,818	17	86,903	88	11,832	12
Burgher	614	551	89	204	33	604	98	493	80	142	23	358	58
Malay	950	796	88	649	68	285	30	634	66	528	55	309	32
SL Chetty	553	516	93	186	33	122	22	462	83	121	21	119	21
Bharatha	30	21	70	18	60	9	30	18	60	11	36	8	26
Other	376	241	64	196	52	82	21	170	45	144	38	86	22

Population by ethnicity and language according to D. S. Divisions

Table 6 – Puttalam District

District	D. S. Division	Total No. of persons	Ethnicity					Language	
			Sinhalese	SL Tamil	Indian Tamil	SL Moor	Others	Percentage	
								Sinhala speaking	Tamil speaking
Puttalam	Mundel	56,064	22,724	12,105	89	21,058	88	40.53%	59.31%
	Puttalam	70,915	21,060	7,699	406	41,260	490	29.70%	69.61%

**Population by ethnicity and language according to D. S. Divisions**

**Table 7 – Trincomalee and Vavuniya Districts**

District	D. S. Division	Total No. of persons	Ethnicity					Language	
								Percentage	
			Sinhalese	SL Tamil	Indian Tamil	SL Moor	Others	Sinhala speaking	Tamil speaking
Trincomalee	Trincomalee Town & Gravets	21,170	11,821	2,014	192	4,473	670	55.84%	41.00%
	Kinniya	55,628	6	2,120	35	53,467	0	0.01	99.99%
Vavuniya	Vavuniya	115,335	1,280	109,252	1,267	3,501	35	1.11%	98.86%
	Vavuniya South	10,989	10,843	125	5	16	0	98.67%	1.33%

*Bilingualisation of the Public Service*  
*Raja Collure\**

### **Introduction**

The Official Languages Commission (OLC)<sup>1</sup> was set up to carry out four main objectives. The first object is to recommend principles of policy on the use of the official languages and to monitor and supervise compliance with the provisions of the Constitution on language in Chapter IV. Secondly, it is expected to take all such actions and measures as are necessary to use the official languages (Sinhala and Tamil) and the link language (English) in accordance with the spirit and intent of Chapter IV of the Constitution. Thirdly the OLC should promote the appreciation of the official languages in regard to their status, equality and right of use (i.e. awareness creation). Fourthly, it should conduct investigations in regard to complaints on violations of language rights and take remedial action.

In the opinion of the Official Languages Commission the provisions of Chapter IV of the Constitution on language are comprehensive in regard to their status, equality and right of use. Although certain aspects need improvement, clarity and correction they could wait, in the present circumstances, until the drafting of a new constitution. However, what has to be noted is the enormous gap that still exists between the constitutional provisions and their application.

### **OLC Recommendations**

We firmly believe that the 2005 Memorandum of Recommendations of the Official Languages Commission is a landmark in the march towards the implementation of the official languages policy as contained in the Constitution. This Memorandum made an in depth analysis of the existing situation and problems that have to be overcome in order to ensure its proper implementation.

With due respect to other opinions the Recommendations of the OLC show the way forward. The objective set out in the Memorandum is the establishment a bilingual administration, at all levels, throughout the country. On an examination of the provisions of Chapter IV one cannot come to a different conclusion in regard to the objective. The OLC is pleased to say that its 2005 Memorandum of Recommendations have been well received by the Government as well as civil society.

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\* *Chairman, Official Languages Commission of Sri Lanka.*

<sup>1</sup> Established in 1991 under the provisions of Act No. 18 of 1991. Dr. Neelan Tiruchelvam, founder of the Law & Society Trust, was the force behind bringing this legislation to Parliament.

### Government Circulars

On the part of the Government two of the major recommendations of the OLC have been endorsed and made government policy. They are:

- That the government should ensure that all new entrants to the public service are either proficient or attain an adequate degree of proficiency in the Second Official Language relevant to their functions within a specified period.
- That incentive payment to public servants who acquire proficiency in the Second Official language to a level relevant to their functions should be increased to a realistic level.

We earnestly hope that the relevant Public Administration Circulars Nos. 3 and 7 of 2007 will be faithfully implemented. Had these steps being taken at the outset, i.e. soon after the introduction of the 13th Amendment to the Constitution in 1987, there would not have been a serious problem of the sort that we are confronted with today.

However sending out government circulars is one thing and their implementation is another. For e.g. President Kumaratunga's Circular dated 30th June 1997 on implementation of the official languages policy was not implemented by the Ministerial Secretaries and Heads of Departments to whom it was addressed. There were also other Public Administration Circulars<sup>2</sup> which were also not heeded. Only time will tell the extent to which these Circulars are given effect to. I believe that civil society has an obligation to follow their implementation.

Considering these facts it is necessary that the Government enacts legislation for the implementation of the provisions in Chapter IV of the Constitution as directed in Article 18 (4).<sup>3</sup>

### Dearth of Human Resources

The basic problem facing the public administration in rendering its services in both official languages all over the country is the dearth of the necessary human resources i.e. officials who are proficient in both official languages to the level relevant to their functions.

Presently, Tamil speaking people living in the provinces outside the North-East cannot obtain a satisfactory service in their own language at public offices and institutions situated in these provinces. It is true that the Sinhala speaking minority living in the North-East have similar problems. But the problem is not comparable with that faced by the Tamil speaking people living in the provinces outside the North-East who comprise 61 percent of the total Tamil speaking population in the country.

According to a survey conducted in 2002 by the Census and Statistics Department the total number of Tamil speaking employees in government service was only 8.31 percent compared with their national proportion of 26 percent. This is where

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<sup>2</sup> PA Circular No. 36/92 and PA Circular No. 28/97.

<sup>3</sup> ["Parliament shall by law provide for the implementation of the provisions of this Chapter" – Ed.].

the problem begins. If there had been Tamil speaking public servants in government service comparable to their national proportion the problem would have been less severe.

Table I shows the number of public servants proficient in Tamil and English, by sectors in 2006.

**Table I**  
**Percentage Distribution of Employees by Sector and Language Proficiency**

Ministry	Total Employees	Language Proficiency (%)		
		Sinhala	Tamil	English
<b>Total</b>	<b>813,030</b>	<b>91.3</b>	<b>15.7</b>	<b>32.0</b>
State Sector	325,275	94.8	13.9	32.2
Provincial Public	279,924	85.3	21.8	28.5
Semi-Government	207,834	93.7	10.4	36.3

*Source: Preliminary Report – Census of Public and Semi-Government Sector Employment – 2006, Department of Censuses and Statistics*

Table 2 gives the total number of Tamil speaking public servants and their ethnicity.

**Table 2**  
**Tamil speaking public servants by sector and ethnicity (2002 - provisional)**

Sector	Total number of employees	Muslims	Sri Lanka Tamils	Tamils of recent Indian origin	Tamil speaking employees ( Total )
State	295,734	3.09%	5.06%	0.25%	8.40%
Provincial Council	292,072	5.75%	12.3%	1.76%	19.81%
Semi-government	247,845	3.20%	5.48%	0.37%	9%

A more recent (2006) survey shows certain improvements in the proficiency of public servants in the eight Provincial Councils (prior to de-merger of the North-East province).

**Percentage Distribution of Provincial Public Sector Employees by  
Provincial Council and Language Proficiency**

Provincial Council	Total	Language Proficiency (%)		
		Sinhala	Tamil	English
<b>Total</b>	<b>279,924</b>	<b>85.3</b>	<b>21.8</b>	<b>28.5</b>
Western	60,898	94.7	8.3	27.9
Central	39,339	90.6	23.0	35.3
Southern	37,459	98.9	3.3	22.9
North-Western	40,534	95.3	10.2	26.3
North-Central	19,210	96.0	10.6	24.4
Uva	19,214	95.5	15.1	26.9
Sabaragamuwa	25,541	96.2	9.2	25.1

*Source: Preliminary Report – Census of Public and Semi-Government Sector Employment – 2006, Department of Census and Statistics*

In both tables the percentages that relate to the Provincial Public Sector are higher than in other sectors. This is because the administration in the North-East is carried out in Tamil and consequently the number of public servants proficient in Tamil in that province is higher.

There is an increase in the overall number of Tamil speaking public servants according to the 2006 survey – 8.31 percent in 2001 increases to 15.7 percent.

### Overcoming the dearth of personnel proficient in Tamil

The deficiency of public servants proficient in Tamil has to be overcome as rapidly as possible. That is why we propose that the intake of Tamil speaking employees to the public sector be increased to meet the necessary requirements.

The OLC is aware of certain legal issues that have been raised in this regard after the *Ramupillai case*.<sup>4</sup> However, the Commission is of the opinion that this case has no direct relevance to the recruitment of persons with special qualifications as are necessary for carrying out the administration.

In the alternative, the OLC suggests the creation of an auxiliary service to assist the public administration in serving the Tamil speaking citizens. Although competitive examinations for the enrolment of persons to public services are held in the medium of both official languages, for some reason or other, those sitting in the Tamil medium have become less competitive. As a result relatively fewer persons speaking the Tamil Language are recruited to the public service at present. This situation should not affect the services to the public in the Tamil language. That is why an extraordinary step like the establishment of an auxiliary service comprising persons proficient in Tamil becomes necessary.

Human resources necessary for a bilingual administration can also be obtained through training of public servants in the Second Official Language to the requisite level sufficient to carry out their functions.

In the 2005 Memorandum of Recommendations of the OLC three levels of language training relevant to those serving in the public administration were identified:

- Proficiency in speech (for public servants such as doctors and nurses who are not in administrative positions)
- Proficiency in speech and the written language (for public servants such as the Management Assistants Service)
- Higher level of proficiency in both aspects of language training mentioned above (for those in administrative and executive positions).

From the beginning of 2007, syllabi of the Official Languages Department have been changed following the Recommendations of the OLC. The OLC commissioned two panels of experts under the chairmanship of the well known philologist Prof. S. Suseendrarajah (Professor Emeritus of Jaffna University) to prepare two text books for language training in Tamil for the first two levels mentioned above.<sup>5</sup> Prof. S. Thillainathan, Professor Emeritus in Tamil of the Peradeniya University, and

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<sup>4</sup> [*Ramupillai vs. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others* 1991 1 Sri LR 11 (SC). In *Ramupillai*, a seven bench panel of the Supreme Court including three members of minority communities found for the petitioner, a Tamil, who alleged that in the matter of selection to a higher rank where his merit and seniority had been disregarded in favour of an ethnic quota, that promotion within the public service based upon ethnic quotas violates the Constitutional right of equality protected by Article 12 – Ed.]

<sup>5</sup> These are referred to as the preliminary level and the secondary level in PA circulars No. 3 of 2007 and No. 7 of 2007.

Mr. Abeyasinghe Jayakody, Lecturer in Tamil at the Open University were the other members of the panel. These are the text books presently used by the Department of Official Languages which is authorised by the Government to carry out language training for public servants and to hold examinations to judge their competence relevant to the different levels.

### **Language Training for Public Servants**

The OLC has found that the Official Languages Department (OLD) cannot cope with the growing demand for language training as it lacks the necessary human resources and the infrastructure to carry out such a massive task. It is for this reason that the OLD has delegated the function of organising language programmes to Provincial Councils. The OLC observes that the Provincial Councils have failed in carrying out this function effectively.

On the other hand sufficient funds are not allocated to the OLD and the OLC (which engages in language training for police officers and health personnel) to expand their language training programmes.

The 2005 Recommendations of the OLC proposed the conversion of the OLD into an independent institution with divisions at the centre and branches in different areas so as to effectively handle the training of public servants in the official languages and the link language. In our view it is also absurd for a department to be put in charge of such a subject which should be the preserve of a training institute.

There is much to learn from Canada which has been involved in developing a bilingual administration at the federal level. The federal administration in Canada has set up institutions where full time courses are in place to train public servants in the Second Official Language. We have recommended the adoption of a similar system so that groups of public servants are given intensive training in the Second Official Language<sup>6</sup> every year under such programmes.

The training of public servants, both new entrants and old, in the Second Official Language is a time consuming exercise. Every year about 4-5 percent of public servants retire or go out of service. They are replaced by new hands needing training. According to our estimates even if this policy is faithfully carried out it would take a minimum of twenty years to build a public service in which all are bilingually proficient. May be in about 10 years a dent can be made.

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<sup>6</sup> The 'Second Official Language' denotes Tamil for those recruited in the Sinhala medium and Sinhala for those recruited in the Tamil medium.

### Translators and Interpreters

What should be done to meet the immediate problems like translations and interpretation? The gravity of the problem relating to translators can be understood from the following table.

**Government Translators Service (2004)**

Total	Sinhala/Tamil Tamil/ Sinhala	Sinhala/English	Tamil/English
166	44	108	14

*Source: Ministry of Housing and Public Administration*

There are two aspects in regard to solving the problem. One is training the necessary personnel. The other is to make maximum use of those who are already competent and available.

In regard to the training of translators and interpreters we have proposed that the university system which has the human resources relevant to such a task and the necessary infrastructure should be made use of. These resources can be used to train competent Translators and Interpreters. We have also suggested that the universities which teach Sinhala, Tamil and English languages commence courses of a job oriented nature by coupling another language to their courses.

As regards the second aspect we have proposed the setting up of a National Translations Centre (2006 OLC Recommendations) where translations can be assigned to selected members of panels through electronic means (emails and faxes) and obtain the product also by similar means. Thereafter the Centre could go through the translations, edit them if necessary and authenticate them. This dispenses with the need for each and every ministry or department to employ translators of their own. This could be modelled on the Translations Bureau of Canada.

### Teaching Sinhala and Tamil in Schools

From a long term point of view the OLC's proposal to make Sinhala and Tamil apart from English as compulsory subjects in the secondary schools is of far reaching importance. If this proposal is implemented nationally within a period of about 10 to 12 years there would be a generation of citizens who will not need translations or interpretation.

### **Language Audits**

The Official Languages Commission conducts language audits to ascertain the extent of implementation of the language policy. This exercise is not very rewarding as at almost every government office or public institution visited, we are told that the authorities (the Ministry of Home Affairs and Public Administration) have not provided them with the necessary personnel proficient in the Second Official Language to conform to the official languages policy. And the Ministry has not got the necessary resources either, for neither have the necessary personnel proficient in Tamil been recruited nor others trained in sufficient numbers.

### **Awareness Programmes**

The awareness programmes carried out by the OLC have been generally productive. This is because we have been able to convince the public servants in places where the awareness programmes have been held of the need to adhere to the official languages policy. Such awareness programmes have helped to enlist large numbers of public servants to follow courses in language training, particularly in Tamil. The OLC observes that after its awareness programmes the public servants generally appreciate the need for services in the Second Official Language.

### **Violation of Language Rights**

The OLC is also empowered to inquire into violations of language rights. Unfortunately the complaints are few. This is not a reflection that the situation in this regard is satisfactory. A person whose language rights are violated may be more interested in getting his job done than making complaints. The OLC has found that where services in Tamil are not available certain members of the public who are not proficient in Sinhala get their letters written in Sinhala by third persons (often paying a fee) and go to offices with persons who could help them with interpretation. The OLC has made every effort to promote the public to make complaints. It has on a number of occasions initiated inquiries on its own motion.

### **Conclusion**

All these facts reveal that enforcing language rights in Sri Lanka is a task of a complex nature. Although the requisite legal frame work is in place human resources required for the purpose are not available. This is the main aspect of the problem. It can be solved only through direct recruitment and language training. All these are time consuming.

In Canada the process of bilingualisation has already taken over forty years. If the recommendations of the OLC are implemented swiftly Sri Lanka will be able to boast of a bilingual administration in less than fifteen years.



*Civil Society's Role in Enforcing Language Rights*  
*Kumar Rupesinghe\**

**Introduction**

Rights, such as fundamental human rights while being crystal clear to those who have drafted and fine tuned them are either too vague or too obscure to others.

Hence, when people are not educated about what exactly their rights are, any International Declarations, Conventions and other instruments, which States sign on behalf of their citizens, or enshrine within their respective Constitutions, become empty commitments.

Lack of awareness of one's rights could provide the loophole through which those very same rights could be denied by interested parties. In other words, public ignorance provides the breeding grounds that spawn denial and abuse of fundamental rights.

One of the basic needs of civil society is an awareness of its fundamental human rights as espoused in the Constitution and in International Conventions – the right to education, housing, food and security, the right of association, right to practice one's own faith and speak one's own language etc.

Civil society organisations have a bounden duty to educate the public on their rights – particularly in relation to language rights, since language presupposes the right to co-exist in a pluralist society such as ours. People need to become aware of the laws and regulations governing the language policy of our country and the constitutional guarantees of parity of status to the Sinhala and Tamil languages.

Language rights in a multi-ethnic and multi-cultural society afford minorities the respect due to their cultural, ethnic and religious differences. In order to appreciate the need for an unbiased language policy and its effective implementation, it is important for all Sri Lankans to learn about the causes that have led to the armed conflict, which has sapped the lifeblood of our nation over the better part of two and a half decades.

To understand the pivotal role played by language in the exacerbation of feelings of frustration and anger amongst the minority Tamils, one has to turn back to the emotive issue of the Sinhala Only Act of 1956, which resulted in the marginalisation of the Tamil speaking people. The collective legacies of the Sinhala Only Act and the subsequently enacted Tamil Language (Special Provisions) Act continue to bedevil the public services, education, law and the administration of justice.

**Towards a Bi-Lingual Policy**

It was not until 1988 that both Sinhala and Tamil were assigned the status of "Official Languages" of the country, with the proviso that while Sinhala would remain

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\* *Chairman, Foundation for Co-Existence and Prayathna Peoples Movement.*

the language of administration in all areas outside of the North and East, the language of administration in those two provinces would be Tamil.

The Constitutional Amendment to Article 18 was the outcome of the Indo-Lanka Peace Accord of 1987. Despite the shortcomings of a geographic division of the country by language, the policy was meant to provide for parity of language, since Tamil was considered to be “*also an official language*” along with Sinhala. The 13<sup>th</sup> Amendment assumed that the proportion of ethnic Tamils in the public service would automatically increase thereby reducing the humiliation, inconvenience and flagrant rights violations of the minorities. However, it is regrettable that even 20 years hence, there has been no appreciable decrease in such language rights violations.

Several changes to the language policy were introduced through the 16<sup>th</sup> Amendment to the 1978 Constitution. Article 22 of the 13<sup>th</sup> Amendment was repealed and in the 16<sup>th</sup> Amendment it was declared that Sinhala and Tamil would be the languages of administration throughout Sri Lanka. Sinhala would be the language of administration and used for the maintenance of public records and the transaction of all business by public institutions in all the provinces except the Northern and Eastern provinces. With regard to the North and East, Tamil would be the language of administration and could be used for the maintenance of public records and the transaction of all business by public institutions. The 16<sup>th</sup> Amendment to the Constitution effectively returned the language policy to its original position under the Tamil Languages (Special Provisions) Act of 1958.

Nonetheless, an important and progressive feature was added to Article 22 (1), where, on the basis of the proportion of the linguistic minority to the total population in a Divisional Secretariat (DS) Division, the President may direct that both Sinhala and Tamil languages or a language other than the current language of administration could also be used in that area. Since no percentage has been specified, discretion lies with the President and such a directive would instruct all government institutions within that DS Division to operate bilingually.

As the population census was not carried out completely in the North of the country in 2001, referring to the 1981 census, it is noted that the Tamil-speaking population of the country comprised Sri Lankan Tamils (13 percent), Tamils of recent Indian Origin (6 percent) and Muslims & Moors (7 percent).

The Official Languages Commission has noted that even though Tamil speaking people comprise 26 percent of the total population, only just over 8 percent are in Public Service. Outside of the North and East, less than 10 percent of the State institutions have made any attempt to implement the Official Languages Policy. This leaves an unacceptable gap in the capacity of the State to deal with the needs of the minority population.

### **The Language Audit**

As a precursor to its Language and Governance Programme, the Foundation for Co-Existence (FCE) commissioned a Language Audit in 2006, which was conducted by

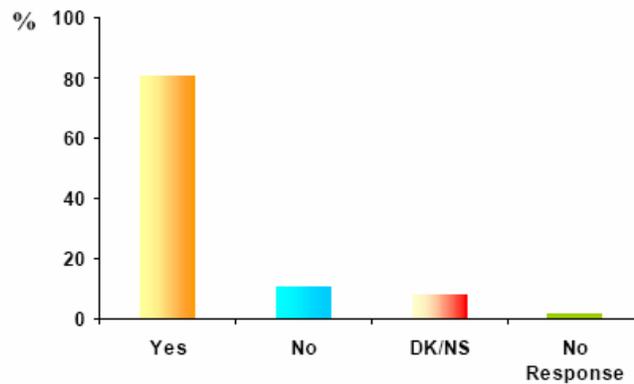
the Social Indicator polling unit. The Language Programme works with Tracks 1, 2 and 3 through a very simple methodology of (i) educating the public of the language rights; (ii) educating public officials of their duty to implement the regulations pertaining to the 13<sup>th</sup> and 16<sup>th</sup> Amendments to the Constitution; and (iii) lobbying the government to fully and fairly implement the Official Languages Policy in all Divisional Secretariat Divisions in the country.

The aforementioned Language Audit was conducted in seven public institutions such as hospitals, schools, law courts, police stations and municipal/urban council offices in the target areas, where there is a relatively high number of Tamil speaking residents - viz. selected areas in the Kandy District, the Municipal Councils of Badulla, Nuwara Eliya and Ratnapura, the Hatton-Dickoya Urban Council, the Municipal Council of Colombo and the Thimbrigasyaya DS Division (Colombo District).

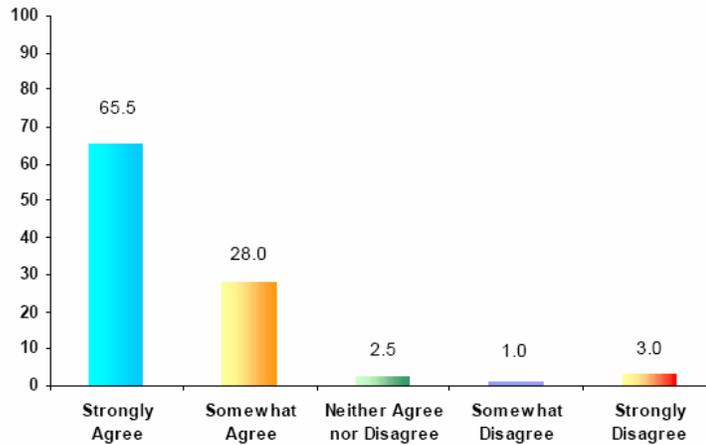
The Audit revealed the serious dearth of Tamil speaking public officials in the surveyed institutions and the gross shortfall of Sinhala officials to handle administrative matters in the Tamil language with regard to Tamil/Muslim people. For example, there was not even one official competent in Tamil in the Ratnapura High Court or in the Kandy Registrar's Office.

Public Institution	Total Staff Population	Number of Tamil Literate Staff (approximately)
Badulla Municipal Council	450	1
Colombo Municipal Council	12,000	100
Hatton Police Station	250	10 – 20
Kandy Registrar's Office	60	0
Nuwara Eliya Base Hospital	450	85
Ratnapura High Court	60	0

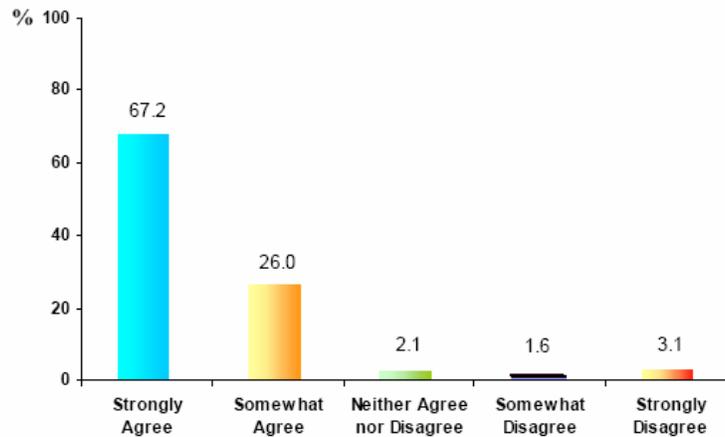
- 80% of those interviewed claimed that they were aware of the Official Languages Policy



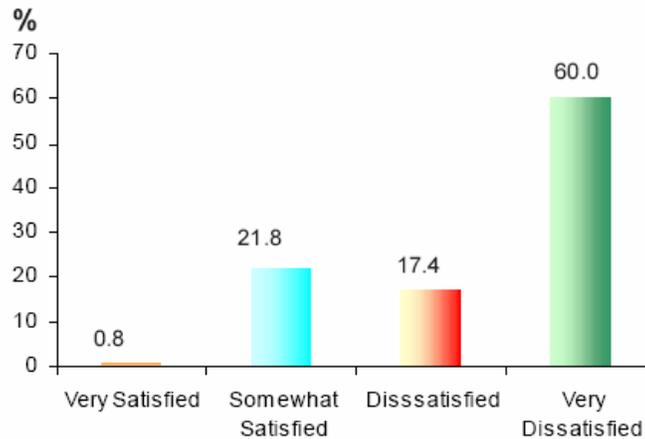
- More than 46 percent of the non-managerial staff in these institutions stated that they face language difficulties when interacting with the Tamil speaking public.
- 65.5% of the non-management staff 'strongly agreed' that people working in State institutions should have a command of both Sinhala and Tamil.



- More than 50 percent of the staff admitted that they had never participated in a language training programme. In any event, the official language training programmes seem to have been designed with no consideration for the needs of the trainees. No basic needs assessments have been undertaken prior to the conducting of such programmes.
- 67.2% of the respondents believed that the OLP should be given higher priority in their organisations



- Although a majority of the officials in these institutions expressed a willingness to employ Tamil translators, the reluctance of Tamil translators to work for low remuneration paid by public institutions remains an impediment.
- With the exception of one institution, there has been no regular contact between the institutions surveyed and the Official Languages Department or the Official Languages Commission.
- The two bi-lingual schools in the Colombo District covered by the Language Audit (i.e. D S Senanayake Vidyalaya and Isipathana Vidyalaya) admitted that the language of administration in their respective schools was Sinhala and not both Sinhala and Tamil, as befitting the label “bi-lingual”.
- Almost 78 percent of the surveyed Tamil-speaking general public expressed their dissatisfaction with the lack of Tamil language skills in the Public Sector.



People interact with the Police for a variety of reasons. The slow implementation of the Official Languages Policy has resulted in the inability of our law enforcement agencies to deal with the Tamil people in their own language. Of the 70,000 police officers in the country, less than 700 are Tamil. In the Colombo Police Division, of a total strength of 4,000, it is understood that there are only about 50 officers who are native Tamil speakers. While there are language classes for police officers, it is unlikely that these could afford the ability required to conduct an interrogation in Tamil or record a statement from a witness. Clearly, without the capacity to deal with the public in the second official language of the country (Tamil), it is doubtful that the Police can carry out their mandate to serve and protect all of the citizens of Sri Lanka in a fair and just manner.

Police regulations require officers to show aptitude in the second national language in order to be eligible for promotion. However, in the few cases where this is

observed, there is little doubt that the benchmark is adequate for efficient communication skills. Obviously, there is a need for a high degree of language competency to obtain information that could be considered useful or even legally binding.

### **Education Sector**

In order to fully implement the Language Policy, the State needs to work through a multi-pronged approach. While building the capacity of public servants to provide a service in both Sinhala and Tamil languages is imperative for good governance and language rights in the short term, educating Sri Lankan children in both languages should be a long term and sustainable process.

Although teaching both languages has been introduced into the curriculum, the quality of delivery has not had any significant impact on the bi-lingual capacity of children and in the long term, it will have no improvement on the communication capabilities between the Sinhala and Tamil speaking communities. This neglected area of reform needs to be revamped and national policy needs to be implemented through adequate budgetary allocations and human resources made available to the education sector.

The Language Audit commissioned by the FCE included findings relating to the implementation of the OLP in the education sector. Two schools in Colombo, DS Senanayake Vidyalaya and Isipathana Vidyalaya, with Sinhala and Tamil media were selected for the study to assess the administration of Tamil medium education in a school of a Sinhala majority. The study focused on the administrative framework within which the Tamil medium section operates and the status of the Tamil medium students and teachers within a Sinhala majority school.

Regarding the issue of the language used in the overall administration, both Principals said that Sinhala was the administrative language and maintained that Tamil translations of circulars and notices etc. were available. However, the teachers who were interviewed presented a contrary opinion stating that they experienced extreme hardships due to the non availability of official circulars and notices in the Tamil language. They were not able to obtain Tamil translations of circulars and notices from either the school, the Department of Education or the Ministry of Education and were dependant on Muslim teachers to translate these documents for them. These delays often resulted in the loss of opportunities such as enrolling in study courses etc. due to deadlines having lapsed.

According to the Language Audit, one Principal observed that since 75% of the students were Sinhalese, it was unreasonable to extend the same facilities to the Tamil medium students. He stated that the Tamil medium had been established not on 'equal' status but on a 'necessary' status. Furthermore, he observed that Tamil translations relating to administrative matters were done only when necessary.

Both Principals were of the opinion that if a bilingual policy (the Sinhalese learning Tamil and the Tamils learning Sinhalese) could be adopted from the beginning at school-level, tensions between the ethnic communities would be mitigated.

Presently, beginning from Grade 6, Sinhala or Tamil language is taught to students as an optional language. However due to the examination oriented system of education, the teaching of these languages as optional languages have become irrelevant to the needs of students. In response to this issue, the students observed that teaching an alternative language would be more effective if it is followed up with a public examination.

### **Transport and Health Sectors**

Another area where the failure of the Public Service is extremely stressful is in the transport and health sectors. Destination boards, notices and instructions should be made available in the Sinhala, Tamil and English languages for the convenience of the public. Similarly, announcements over the public address systems in railway stations, the airport and hospitals need to be in all three languages. Conductors in buses, employees in railway stations, nurses and hospital staff who come into contact with the public need to be conversant in Sinhala and Tamil in order to be able to assist the general public without discrimination. Forms that need to be filled by the public also should be made available to them in Sinhala, Tamil and English or at least in Sinhala and Tamil languages.

The failure to implement the language policy seen in all these areas of Public Service is a constant reminder to minority communities, both Muslim and Tamils, that their mother tongue does not have parity of status with the Sinhala language. This fact alone, which causes immense hardship to Tamil speaking people in Sri Lanka, will continue to be a thorn in the side of any real and sustainable peace, unless urgent reforms are instituted at all levels of Public Service.

### **Current Situation**

Even though the language policy, as enshrined in the Constitution, is meant to address the language rights of the Tamil and Sinhala speaking peoples, the reality that this policy has not been adequately adhered to, not only reflects a failure to address one of the root causes of the so-called ethnic or civil conflict, but also adds to the sense of disenfranchisement of the minority communities. It serves not only as a barrier to the exercise of human rights, justice and reconciliation, but more importantly, to the formation and maintenance of barriers between peoples and communities.

The current situation in the country does not bode well for ethnic harmony. While the rights of people who do not speak Sinhalese are not upheld in many parts of the country, the rights of those who do not speak Tamil are similarly violated in the Northern and Eastern areas. Thus, in both instances, the fundamental rights of people for basic needs, education, health care, the protection of the law, a fair hearing and the right to obtain personal records like national identity cards, birth and even death certificates in one's own language, are more often observed in the breach.

The ability of people to move either to or from the North and the East is circumscribed due to the volatile security situation in the country. The lack of Tamil language capacity in the Police and Law Courts are particularly unacceptable. When a

suspect is apprehended during a search operation, there are few methods to interrogate him in his or her own language. For the many Tamil-speaking people, be they residents, or guests in lodges or boarding houses, filing a complaint is a nightmare experience – especially in light of harassment or threat of abduction or death. If the security forces or the police are adequately equipped with Tamil language skills, this situation could easily be rectified. Perhaps a Translators Service with more Tamil recruits is the answer to many of these problems.

It must be admitted that the State has in many instances taken positive steps to address the language issue and expressed its commitment in various domestic and international forums.

State officials are now required to possess Tamil language skills – both written and spoken in order to qualify for promotion. However, language training does not receive high priority, especially in terms of budgetary allocations. The real correlation between human rights, the ethnic conflict and the language issue is not duly recognised, which is perhaps why, despite an abundance of proclamations and circulars, the Official Languages Policy is yet to be implemented even after twenty years.

One of the more positive steps was the establishment of the Official Languages Commission (OLC) in 1991, to make recommendations on language policy implementation and to monitor compliance with the provisions in Chapter IV of the Constitution.

Since that time, the Commission has, *inter alia*, made several recommendations such as training members of the Public Service and the establishment of a bi-lingual administrative set up island-wide, to be effected under 3 stages during a 15-year period. The OLC also recommended that the Department of Official Languages be transformed into a statutory body in the lines of a National Languages Institution, with a broader mandate and which would remove certain constraints inherent in a government department. The proposed institution would train public servants in the official languages as well as in the link language (English), provide official translations and compile glossaries relating to administration and legislation.

### **Enforcement of Language Rights**

Any attempt to resolve the ethnic conflict in Sri Lanka needs to first address the language rights of the minorities and the full and complete implementation of the 13th and 16th Amendments to the Constitution. Some internal identity conflicts are based on the denial of the linguistic rights of peoples in multi-ethnic societies. Language is not just a tool for communication and the means of acquiring knowledge; it is also the source of ethnic identity of individuals and communities. Therefore, while the responsibility for legislation and implementation of the official languages policy lies with the government of Sri Lanka, the responsibility for ensuring its enforcement lies with the people.

Sri Lankans belonging to the majority community need to understand how the violation of language rights discriminates against and disempowers minority communities; while the Tamils should understand that Sinhala speaking people living in the North and

East face similar issues. Both communities face the same predicament while conducting business with the State and its agencies. Only when this is clearly understood, will the people even attempt to take responsibility for claiming their language rights through the full implementation of the Official Languages Policy.

Dr. Colvin R de Silva's exhortation to Parliament in 1956 has an eerie resonance today: "Do you want two languages and one nation or one language and two nations? Parity, Mr. Speaker, we believe is the road to the freedom of our nation and the unity of its components. Otherwise, two torn little bleeding states may arise of one little state which has compelled a large section of itself to treason, ready for the imperialists to mop that which imperialism only recently disgorged" (*Hansard Vol. 24, col. 1917, 1956*).

#### **Foundation for Co-Existence's Efforts towards a Bi-lingual Country**

On the 16th of December 2007, nearly 5,000 people gathered in Nuwara Eliya in a *sathyagraha* campaign organised by 'Prayathna' the People's Movement. The purpose of this *sathyagraha* was to canvass or petition the government to take immediate steps to resolve the language issue. The people's collective wish was for a Task Force to be set up by Parliament to ensure the creation of a bilingual administration; that the Police, the Law Courts and other public institutions be enabled to deal with the needs of the people in their own language. The people also requested the government to provide access to language learning/teaching services from school age onwards; this is because of the realisation that unless the language issue is resolved, the vision of a durable peace would remain just that - a mirage!

#### **Concerned Citizens Group on Language Rights (CCG)**

The CCG is yet another initiative launched by the Foundation for Co-Existence (FCE) in order to further strengthen and expedite the full implementation of the Official Languages Policy (OLP) in Sri Lanka. The CCG is an independent group, which consists on average of about 10–15 well-known individuals, both at provincial and national levels, who have a desire to see the full implementation of the OLP. These individuals include ex-members of Parliament, heads of commercial corporations, retired senior Police Officers, heads of departments of universities, consultants and senior officials of government departments.

The Colombo CCG was the first to be setup and functions as the national level CCG. In addition to the Colombo Group, steps have already been taken for the formation and establishment of CCGs in districts such as Kandy, Badulla, Nuwara Eliya and Ampara. The role of the CCG is to function as a consultative resource body that not only monitors the implementation of the OLP in their locality but also provides the technical assistance and guidance to institutions, both public and private, in implementing the OLP.

The CCG has been meeting with key members of various political parties and lobbying for the formation of a Parliamentary Standing Committee to oversee the implementation of the OLP. An important achievement of the CCG has been the

agreement reached by Hon. Ministers DEW Gunasekera, Dr. Sarath Amunugama and Dr. Tissa Vitharana on this issue. In addition, through its lobbying activities, the CCG has earned recognition and respect as a leading professional group regarding the implementation of the OLP. The CCG also maintains a close working relationship with the Official Languages Commission (OLC).

### **Signature Campaign Petitioning the Government to Fully Implement the OLP**

In March 2008, the FCE launched a signature campaign to gather one million signatures from Sri Lankans and the Diaspora to petition the government to fully implement the Official Languages Policy as enshrined in the Constitution. These signatures will be handed over to H.E. the President in a bid to lobby with the government to give its urgent attention to this issue.

This process of gathering signatures is a long one, since the public need to be first educated on their language rights and the history that accompanies the language issue in Sri Lanka. It is also a challenge since some members of the majority Sinhala community do not believe that language has been a cause for polarisation of a multi-lingual population and therefore that measures such as the provisions in the 13<sup>th</sup> Amendment are particularly relevant.

The Tamil speaking population in the Eastern Province, who are currently administered to in the Tamil language, also find it difficult to understand the problems faced by Sinhala speaking people living in the East. Thus, advocating with the populace be they Sinhala or Tamil speaking is arduous since they do not necessarily see bilingualism as a key towards conflict transformation and ultimate resolution.

The FCE has been involved in educating government officials from District Secretariats, Divisional Secretariats, Pradeshiya Sabhas, Grama Niladhari, School Principals, Labour Union leaders in the plantations, NGOs and CBOs etc. from the districts of Nuwara Eliya, Ampara, Trincomalee and Kandy. The FCE has also launched a website providing historical and legislative information on the language issue in its efforts towards awareness-raising.

The FCE has also used the print and electronic media to create awareness of the bi-lingual policy in Sri Lanka. We also continue to advocate with the government through the Concerned Citizens Group to establish the Parliamentary Standing Committee and monitor OLP compliance throughout the country.

### **Conclusion**

In conclusion, political will and public cooperation are the cornerstones to effectively implement the Official Languages Policy. The two sets of recommendations submitted by the Official Languages Commission in 2005 and 2006 need to be addressed by the government. Effective policies need to be instituted in order to demonstrate the State's obligation towards reaching a lasting peace in Sri Lanka, by uniting the communities that have become polarised by the divisiveness of language.

The FCE is committed to language parity and will continue to advocate and lobby for full implementation of the Official Languages Policy in all districts of the country through civil society mobilisation.

We welcome other civil society organisations to join us in this national endeavour to win an enduring peace through mutual respect and parity of language – which would contribute towards bridging the divide that has kept our communities apart for half a century.



*Opening the Door to Tamil/s? Linguistic Minority Policy  
and Rights*  
**B. Skanthakumar\***

*“I have never found anything to excite the people in quite the way this language issue does” – SWRD Bandaranaike, Prime Minister of Ceylon (1956)<sup>1</sup>*

*“The Sinhala only policy ... means not merely the elimination of the Tamil language from its due place in the public life of this country but the shutting out of the Tamil-speaking people of this country from the political, economic and cultural life of Ceylon” – A Amirthalingam, Federal Party Parliamentarian (1964)<sup>2</sup>*

### Introduction

Linguistic discrimination has generally been accepted as a key grievance of the North-Eastern Tamil community contributing to their demand for self-determination.<sup>3</sup> For instance, the seminal ‘Vaddukoddai Resolution’ of 1976, that launched the Tamil United Liberation Front and aligned it to the nascent separatist struggle for a ‘Sovereign Socialist State of Tamil Eelam’, singled out the prevailing ‘Sinhala Only’ policy as placing the “stamp of inferiority”<sup>4</sup> on Tamils.

Consequent to the ‘Indo-Lanka Accord’ in 1987 between the Governments of India and Sri Lanka, the Thirteenth Amendment to the Constitution elevated Tamil to an official language on a par with Sinhala,<sup>5</sup>

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\* *Economic, Social and Cultural Rights programme, Law & Society Trust, Colombo, Sri Lanka. I am grateful to Dilbara Pathirana for research assistance and Dr. Devanesan Nesiab for comments on an earlier draft. The views expressed, and responsibility for any errors of fact or interpretation, are mine alone. An earlier and abridged version of this paper appears in Sri Lanka: State of Human Rights 2007, Colombo: Law & Society Trust, 2007.*

<sup>1</sup> Cited in James Manor, *The Expedient Utopian: Bandaranaike and Ceylon*, Durham, N.C.: Duke University Press 1989, p. 256.

<sup>2</sup> Cited in Neil De Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka*, Stanford: Stanford University Press 2004, p. 159.

<sup>3</sup> Robert Kearney, “Language and the Rise of Tamil Separatism in Sri Lanka”, *Asian Survey*, Vol. 18, No. 5 (May 1978), pp. 521-534.

<sup>4</sup> ‘*Vaddukoddai Resolution*’, Jaffna: S. Kathiravelupillai MP 1976, p. 2.

<sup>5</sup> ‘Tamil’ and ‘Sinhala’ are used here to refer to both ethnic and linguistic communities as is current usage.

(while granting English the nebulous status of “link language”). The Amendment conceded too late the formal equality of status between the two national languages which had been demanded since before decolonisation.

Two decades on, this core issue towards any resolution of the national question remains insincerely addressed by government. The self-same state now charged with constitutional protection of Tamil as an official language persists in its daily denial and violation to Tamil speakers, whose numbers include two other minority groups, Muslims<sup>6</sup> and Up-Country (*Malaiyaba*)<sup>7</sup> Tamils. The non-implementation of the official languages policy is perceived in particular by North-Eastern origin Tamils as expressive of state racism towards them aimed at eroding Tamil language and culture, thereby erasing Tamil identity and inexorably assimilating Tamils into the majority Sinhala community.<sup>8</sup>

Within the North and East where Tamil speakers are numerically predominant, Tamil is widely used in official communication and transaction of official business between public institutions and citizens. It is Sinhala speakers constituting a local minority who are often disadvantaged in this regard. The problem arises for Tamil speakers, within and without the North and East, through misfortune of interaction with central government authorities. Some common issues include the:

“receipt of government communications in Sinhala, inability to communicate in writing or verbally in Tamil, inability to fill forms in Tamil, inability to file cases in court in Tamil, untold delays in the conduct of trials due to the dearth of interpreters from Tamil to Sinhala and unavailability of translators, the need to sign

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<sup>6</sup> On Muslim socio-linguistic issues see M. A. Nuhman, *Sri Lankan Muslims: Ethnic Identity within Cultural Diversity*, Colombo: International Centre for Ethnic Studies Colombo 2007, pp. 50-91.

<sup>7</sup> This self-description refers to origin or cultural affinity rather than territorial residence, cf. Daniel Bass, *Landscapes of Malaiyaba Tamil Identity*, (Marga Monograph Series on Ethnic Reconciliation, No. 8), Colombo: Marga Institute 2001.

<sup>8</sup> This anxiety is echoed by no less than a former Supreme Court Justice, see C. V. Wigneswaran, ‘Language – Catalyst for the Present Impasse?’ in A. R. B Amerasinghe and S. S. Wijeratne (eds.), *Human Rights: Theory to Practice – Essays in Honour of Deshamanya R. K. W. Goonesekere*, Colombo: Legal Aid Commission & Human Rights Commission 2005, esp. pp. 320-322. This sentiment among some ethnic Tamils mirrors the “national paranoia” of advocates of the ‘Sinhala Only’ policy decades ago forewarning the imminent disappearance of Sinhala culture and language through South Indian Tamil linguistic imperialism, see K. N. O. Dharmadasa, ‘Language Conflict in Sri Lanka’, *Sri Lanka Journal of Social Sciences*, Vol. 4, No. 2 (December 1981), pp. 47-70 at p. 56.

police entries written in Sinhala without being provided a translation.”<sup>9</sup>

Following enhancement of the constitutional status of Tamil in 1987 there was little discernible change in the attitude of the state bureaucracy towards use of Tamil in official business outside the North and East. Therefore, the Official Languages Commission (OLC) was created in 1991 belatedly honouring the undertaking in the Thirteenth Amendment that “Parliament shall by law provide for the implementation of the provisions”<sup>10</sup> of the Official Languages Policy contained in Chapter IV of the Constitution.<sup>11</sup> The Commission itself, and not without cause, has subsequently been faulted for its lethargy and ineffectiveness and has been characterised as “an embellishment and an impotent agent of the state as far as checking violation of language rights are concerned”.<sup>12</sup>

The OLC’s 2005 ‘Memorandum of Recommendations for the Proper Implementation of the Policy on the Official Languages’ (hereafter ‘Memorandum’) has had some resonance in government leading to the implementation of some of its recommendations as discussed below. However, the framework and perspectives of the Memorandum have been subject to scant attention within civil society, reciprocating the indifference of the Commission to civil society organisations. This is regrettable considering the Memorandum is the first public statement of issues, views and policy prepared by the Commission since its creation in 1991 while the recommendations contained within it towards implementation of the Official Languages Policy are serious and substantial.

This paper begins by sketching the contemporary context of Tamil speakers particularly outside of the North and East; it is followed by a highly condensed presentation of the evolution of the official languages policy from ‘Sinhala Only’ to formal parity of status between Sinhala and Tamil. The next part of the paper briefly discusses the international regime on the rights of linguistic minorities. This is followed by analysis of the scope and functions of the Official Languages Commission and an assessment of its role. The penultimate part

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<sup>9</sup> Kanya Champion, ‘Minority Rights and the Ethnic Conflict’ in *Sri Lanka: State of Human Rights 1994*, Colombo: Law & Society Trust 1995, p. 211.

<sup>10</sup> A. 18 (4), *Constitution of the Democratic Socialist Republic of Sri Lanka* 1978, as amended by s. 2 (b), *Thirteenth Amendment to the Constitution* 1987.

<sup>11</sup> This institutional and legislative advance, modelled on the Canadian Office of the Commissioner of Official Languages, may be attributed to concerted efforts by the late Dr Neelan Tiruchelvam and his colleagues at the non-governmental International Centre for Ethnic Studies – Colombo, including a joint workshop with the Official Languages Department in July 1989, where the creation and contours of the Commission was mooted, see International Centre for Ethnic Studies Colombo, “Language Policy and Bilingualism”, *The Thatched Patio*, Vol. 2, No. 5 (October 1989), p. 9.

<sup>12</sup> M. C. M. Iqbal, “Securing Language Rights – Key Elements in the Peace Process”, *LST Review*, Vol. 12, Issue 176 (June 2002), p. 8.

reviews the 2005 Memorandum prepared by the Official Languages Commission presenting its main recommendations. In conclusion, some observations on changing attitudes towards minority languages and the challenge of de-communalising the state are made.

### **Context**

There are three distinct Tamil speaking communities in Sri Lanka: Tamils originating in the North and East, Muslims, and Up-Country Tamils, albeit with their internal differentiations. The majority of Tamil speakers (some 61 percent or 2 937 558 of the total number) ordinarily live outside of the North and East in areas where Sinhala is the language of administration.

Meanwhile of the public administration cadre of some 900 000 persons, a mere 8.31 percent are Tamil speaking and presumably the majority of them work in the North and East, whereas Tamil speakers form around 25 percent<sup>13</sup> of the total population of the island and the majority reside outside of the North and East.

The non-implementation of the official languages policy denies Tamil speakers, particularly but not exclusively outside of the North and East, access to public services and institutions in their own language. It affects also the quality and treatment of mono-lingual Tamil speakers whose verbal enquiries or written correspondence are unaddressed for want of competent Tamil speaking public officers beginning with the *grama niladhari* (village officer) through local and provincial authorities to central government.

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<sup>13</sup> According to the last all-island census in 1981, North-Eastern Tamils comprised 12.7 percent; Muslims (excluding Malays) 7.0 percent and Up-Country Tamils 5.5 percent of the population.

The gravity of the contemporary situation was underlined by a language audit conducted for the non-governmental Foundation for Co-Existence in 2006.

**TABLE 1: ETHNIC COMPOSITION OF SELECTED MULTI-LINGUAL AREAS<sup>14</sup>**

<i>AREA</i>	<i>SINHALA</i>	<i>% TOTAL</i>	<i>TAMIL</i>	<i>% TOTAL</i>	<i>MUSLIM</i>	<i>% TOTAL</i>	<i>OTHER</i>	<i>% TOTAL</i>
Badulla Municipal Council	29 960	73.2	4 706	11.5	6 025	14.7	229	0.6
Colombo Municipal Council	265 657	41.4	199 640	31.1	164 448	25.6	12 418	1.9
Hatton-Dickoya Urban Council	3 752	26.3	7 991	56.1	2 450	17.2	62	0.4
Kandy District	942 038	74	155 546	12.2	171 239	13.5	3640	0.3
Nuwara Eliya Municipal Council	13 568	54.2	9 033	36	2 220	8.9	228	0.9
Ratnapura District	837 265	86.6	112 916	11.2	21 116	2.1	867	0.1

The areas surveyed above are outside of the North and East but where Tamil speakers form a substantial proportion of the local population, and in some districts such as Colombo and Nuwara Eliya are numerically predominant. However, the table below illustrates the gross under-representation of Tamil speakers within key public institutions in those localities.

<sup>14</sup> This is a slightly modified version of Table No. 2 in Foundation for Co-Existence, *Language Discrimination to Language Equality*, Colombo: Foundation for Co-Existence 2006, p. 10.

**TABLE 2: TAMIL SPEAKERS IN PUBLIC INSTITUTIONS IN MULTI-LINGUAL AREAS<sup>15</sup>**

<i>PUBLIC INSTITUTION</i>	<i>STAFF CADRE</i>	<i>NO OF TAMIL SPEAKERS</i>
Badulla Municipal Council	450	1
Colombo Municipal Council	12 000	100
Hatton Police Station	250	10-20
Kandy Registrar's Office	60	0
Nuwara Eliya Base Hospital	450	85
Ratnapura High Courts	60	0

There is plainly institutionalised and structural discrimination against minorities such that they are not recruited into public sector employment even in districts where they constitute the majority of the local population. Where Tamil speakers are represented in the staff cadre, they are concentrated in non-managerial and largely manual or minor staff categories and are therefore unavailable or unsuited to handle public enquiries and issues.

This bleak situation is aggravated by the ongoing war where ethnic Tamils, particularly those originating from or living in the North and East, are treated with suspicion and are liable under the Prevention of Terrorism Act and emergency regulations to be questioned, searched and detained without charge. The mutual incomprehension between suspect and security forces personnel, and absence of interpreters does not assist in establishing proof of innocence or securing humane treatment and prompt release.<sup>16</sup>

Miscarriages of justice are not uncommon as demonstrated in the *Nallaratnam Singarasa* case. The accused was coerced into placing his thumbprint on a statement written for him in Sinhala, a language he could not understand let alone read, admitting to acts of terrorism.<sup>17</sup> No translation in Tamil was provided to him, nor was he provided with an external interpreter. This statement formed the basis for his conviction and continuing imprisonment.

<sup>15</sup> This table is reproduced from Foundation for Co-Existence, *Language Discrimination to Language Equality*, Colombo: Foundation for Co-Existence 2006, p. 15.

<sup>16</sup> For instance, in a recent audit of a police station in conflict-torn and ethnic Tamil majority Jaffna, the Official Languages Commission discovered that only two officers were conversant in Tamil and statements and complaints were always recorded in Sinhala, see "Tamil an official language only in name", *Sunday Times*, 02 December 2006.

<sup>17</sup> Para 2.5, *Nallaratnam Singarasa v Sri Lanka*, Views of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 1033/2001: Sri Lanka. 23/08/2004. CCPR/C/81/D/1033/2001. (Jurisprudence); reprinted in *LST Review* Vol. 15 Issue 202 (August 2005), pp. 17-30 at p. 19.

Recently, with the resumption of armed hostilities, Tamils living in some areas outside the North and East have once again been required to register themselves with the local police station to legitimise their presence in those parts. However, the official registration form is often available only in Sinhala and English! This is but one among the many instances of insult added to injury experienced by Tamils in the context of conflict.

### Post-Colonial Language Policy

Amidst the *sturm und drang* engendered by controversies over the status of the Tamil language in post-colonial Sri Lanka it is easy to forget that the early preoccupation of (Sinhala) nationalist politicians was in unseating English from its pre-eminent position in state and society.

A State Council Select Committee chaired by JR Jayewardene lamented in 1946, “a Government of the Sinhalese- or Tamil-speaking 6,200,000 by the English-speaking 20,000 Government servants, for the 400,000 English speaking public”<sup>18</sup>, belying Sri Lanka’s passage to freedom from British colonial rule and towards greater democratisation.

Clearly it was neither fair nor desirable that a nation of largely non-English speaking people be governed by a small class of English speakers; that all official documentation was in English; that police entries were written in English and judicial proceedings conducted in that language too.<sup>19</sup> Neither was it tenable that access to higher education and therefore entry into the professions as well as higher echelons of public administration be barred to those who did not speak English, destining monolingual Sinhala and Tamil speakers to be “hewers of wood and drawers of water”.<sup>20</sup>

In fact, the argument for use of both national languages (*swabasha*) in education and government was first raised by anti-colonial Tamil radicals grouped in the Jaffna Youth Congress (JYC) who advocated a multiethnic, secular and social justice imbued Ceylonese nationalism.<sup>21</sup> At its first annual session in 1924,

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<sup>18</sup> *Sinhalese and Tamil as Official Languages* (Sessional Paper XXII, 1946), p. 10 as cited in Robert N. Kearney, *Communalism and language in the politics of Ceylon*, Durham, N.C.: Duke University Press 1967, p. 60.

<sup>19</sup> On English as the ‘language of law’ in colonial Sri Lanka see Vijaya Samaraweera, ‘The Legal System, Language and Elitism: The Colonial Experience in Sri Lanka’ in Lakshman M. Marasinghe and William E. Conklin (eds.), *Law, Language and Development*, Colombo: Lake House Investments 1985, pp. 93-110.

<sup>20</sup> J. R. Jayewardene, *Debates in the State Council of Ceylon (Hansard)*, 1944, p. 747 as cited in Robert N. Kearney, *Communalism and language in the politics of Ceylon* ... p. 60.

<sup>21</sup> Devanesan Nesiiah, ‘The claim to self-determination: a Sri Lankan Tamil perspective’, *Contemporary South Asia*, Vol. 10, No. 1: 55-71 at pp. 59-60. The authoritative account of this socio-political movement is Santasilan Kadigamar’s, ‘The Jaffna Youth Congress’ in *Handy Perinbanayagam – A Memorial Volume: The Jaffna Youth Congress and Selections from his Writings and Speeches*, Chunnakam, Jaffna: Handy Perinbanayagam Commemoration Society

the JYC proposed bilingualism in education through the teaching of Tamil in Sinhala schools and likewise the teaching of Sinhala in Tamil schools.

Unfortunately, the JYC's political influence and ideology were eclipsed from the mid-1930s onwards in the post-Donoughmore Constitution era by the conservative Tamil Congress, while the demand for *swabasha* became associated with Sinhala politicians. In this period “[Tamil political leaders] were content to allow the Sinhalese to initiate the main demands and limited their role to asking for the Tamil language whatever gains were made for the Sinhalese”<sup>22</sup> argued one commentator.

Certainly the Tamil political elite were comfortable with the *status quo* of English as official language. As alien as English was to the majority of Tamil-speakers, official status for English was argued to be preferable to Tamils because “a language foreign to both communities provided a neutral medium of competition”<sup>23</sup> whereas privileging Sinhala would unsurprisingly place Tamils at a disadvantage.

The *swabasha* slogan soon became subverted by the ‘Sinhala Only’ movement.<sup>24</sup> Parity of status for both national languages was shrilly denounced as a harbinger of the impending extinction of the Sinhala language and culture, and therefore people, through linguistic colonisation from across the Palk Straits in South India, where tens of millions of Tamils reside and Tamil language and culture flourish. Social classes excluded from power and economic advancement through Sinhala vernacular education grasped the opportunity to rewrite the rules of the game and place themselves at a competitive advantage to the detriment of English and Tamil speakers. The “shutting out” or exclusion of Tamil speakers

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1980 and in an abridged version his “Jaffna Youth Radicalism: the 1920s and 30s”, paper presented at *Trans/Formations: A Conference on Sri Lankan Tamil Nationalism*, International Centre for Ethnic Studies, Colombo in Colombo on 17-19 December 2004, publication of proceedings edited by R. Cheran forthcoming from Sage India in 2008.

<sup>22</sup> Robert N. Kearney, *Communalism and language in the politics of Ceylon ...* p. 67.

<sup>23</sup> G. G. Ponnambalam in 1944 as cited in Richard W. Bailey, ‘Majority Language, Minority Misery: The Case of Sri Lanka’ in Douglas A. Kibee (ed.), *Language Legislation and Linguistic Rights*, Amsterdam/Philadelphia: John Benjamins Publishing Company 1998, p. 217.

<sup>24</sup> For a range of perspectives see in chronological order, Robert N. Kearney, *Communalism and language in the politics of Ceylon*, Durham, N.C.: Duke University Press 1967; K. M. de Silva, ‘Language Problems: The Politics of Language Policy’ in K. M. De Silva (ed.), *Sri Lanka: Problems of Governance*, Delhi: Konark Publishers 1993; also as “Coming Full Circle: The Politics of Language in Sri Lanka, 1943-1996”, *Ethnic Studies Report*, Vol. XIV, No. 1 (January 1996), pp. 11-48; A. Theva Rajan, *Tamil as official language: Retrospect and prospect*, Colombo: International Centre for Ethnic Studies 1995; Neil De Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka*, Stanford: Stanford University Press 2004 and Aloysius Pieris (ed.), ‘The Politics of Language: a spectrum of perspectives on Fifty Years of Sinhala Only in Sri Lanka 1956-2006’, *Dialogue*, (N.S.) Vol. XXXIV, 2007.

from the mainstream of political, economic and cultural life of state and society gained in vigour.

### **Official Language Act 1956**

The 1956 Official Language Act was enacted to affirm that “the Sinhala language shall be the one official language of Ceylon”.<sup>25</sup> It makes no explicit reference to Tamil or English but indirectly allowed for use of English for official purposes until 31<sup>st</sup> December 1960. This piece of legislation, consisting of a mere three sections, has been of historical importance in inverse proportion to its brevity.<sup>26</sup>

The Official Language Department is a creature of this period. It began as a Commission in 1961, becoming a permanent department of state in 1955. Prime Minister SWRD Bandaranaike assumed control of the Department following the Official Language Act, with whose passage and application he was keen to be identified. The main functions of the Department were to: provide official translations; compile official glossaries; translate books for school education; and conduct Sinhala language training for public servants.<sup>27</sup>

The ‘Sinhala Only’ Act was accompanied by Cabinet memoranda and Treasury circulars that made it compulsory for new entrants to the public service and old entrants under the age of 50 to pass a Sinhala language proficiency test.<sup>28</sup> This had the desired effect of creating an exodus of English-educated Tamils from the public service while Tamil-educated persons were discouraged from applying to the civil service through non-familiarity with Sinhala or refusal to learn it. The table below illustrates the sharp drop in Tamil representation in the public service between 1956 and 1970.

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<sup>25</sup> S. 2, *Official Language Act*, No. 33 of 1956.

<sup>26</sup> For the historical background see, Kingsley M. de Silva, “Ethnicity, Language and Politics: The Making of Sri Lanka’s Official Language Act No. 33 of 1956”, *Ethnic Studies Report*, Vol. XI, No. 1 (January 1993), pp. 1-29; reprinted in K. M. de Silva, *Sri Lanka’s Troubled Inheritance*, Kandy: International Centre for Ethnic Studies 2007, pp. 213-236.

<sup>27</sup> The institutional history of the Official Languages Department is surveyed in S. G. Samarasinghe, ‘Language Policy in Public Administration, 1956-1994: An Implementor’s Perspective’ in K. N. O. Dharmadasa (ed.), *National Language Policy in Sri Lanka 1956 to 1996: Three Studies in its Implementation*, Kandy: International Centre for Ethnic Studies Kandy 1996, esp. pp. 92-102.

<sup>28</sup> On the implementation of the ‘Sinhala Only’ policy see K. N. O. Dharmadasa (ed.), *National Language Policy in Sri Lanka 1956 to 1996: Three Studies in its Implementation*, Kandy: International Centre for Ethnic Studies Kandy 1996.

TABLE 3: PROPORTION OF TAMILS IN PUBLIC SERVICE<sup>29</sup>

YEAR	ADMINISTRATIVE SERVICE	CLERICAL SERVICE	ENGINEERS & DOCTORS	ARMED FORCES
1956	30%	50%	60%	40%
1965	20%	30%	30%	20%
1970	5%	5%	10%	1%

The constitutionality of the 1956 Act was challenged in *Attorney-General vs. C. Kodeswaran* by a Tamil civil servant, whose salary increment had been denied through failure to be present for and pass a Sinhala language proficiency test. The plaintiff argued that the legislation was *ultra vires* as it offended non-discrimination provisions contained in section 29<sup>30</sup> of the 1946 ‘Soulbury’ Constitution that was then in force.

The merits of this submission were never argued because both the Supreme Court<sup>31</sup> and on appeal the Privy Council<sup>32</sup> in London side-stepped this matter, concentrating instead on whether a public servant had the right to sue the government as his employer for his wages. The constitutional question remained in abeyance until it was decisively settled in the realm of politics rather than law through promulgation of the 1972 Constitution that excised s.29 *in toto* and therefore removed the basis for challenge of the ‘Sinhala Only’ enactment.<sup>33</sup>

Engaged in ethnic ‘out-bidding’,<sup>34</sup> Sinhala politicians aimed to out-do each other on the most aggressive anti-minority stance, whether through

<sup>29</sup> Cited in Neil De Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* ... pp. 125-126.

<sup>30</sup> S. 29 (2), *Ceylon (Constitution) Order in Council*, 1946 reads *inter alia*, “... no law passed by Parliament shall (b) Make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or (c) Confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions.” This constitutional clause, dropped from the 1972 and 1978 Constitutions, has acquired totemic significance in Tamil nationalist discourse. However, as Colvin R. De Silva remarked on the unhappy case-law on minority rights, “it has been an extremely frail reed on which to lean for [minority] rights”, failing as it did to safeguard the citizenship and franchise rights of Up-Country Tamils and non-discrimination of Tamil speakers, *Safeguards for the Minorities in the 1972 Constitution*, Colombo: Young Socialist Publication 1987, p. 13.

<sup>31</sup> *Attorney-General v C. Kodeswaran* (1967) 70 NLR 121 at 138-139.

<sup>32</sup> *C. Kodeswaran v Attorney-General* (1969) 72 NLR 337 at 338-339 and 346-347.

<sup>33</sup> For an interesting discussion of the case, see Rajan Hoole, *Sri Lanka: The Arrogance of Power – Myths, Decadence & Murder*, Colombo: University Teachers for Human Rights (Jaffna) 2001, pp. 38-41.

<sup>34</sup> Neil De Votta, ‘From ethnic outbidding to ethnic conflict: the institutional bases for Sri Lanka’s separatist war’, *Nations and Nationalism*, Vol. 11, No. 1 (2005), pp. 141-159, esp. pp. 141-144.

disenfranchisement, deprivation of citizenship and deportation of Up-Country Tamils; stubborn resistance to parity of status for the Tamil language; and undermining successive attempts at limited devolution of power to the North and East. De Votta goes so far as to argue that, "... [Sinhala] linguistic nationalism became the mechanism that precipitated institutional decay"<sup>35</sup> in Sri Lanka, this latter condition being one:

"where the individuals and institutions representing the state function in a corrupt, partial and violent manner whereby they jettison the norms, values and practices that ensure liberal democracy, operate with impunity, engender anomie and undermine citizens' confidence in the state."<sup>36</sup>

### **Tamil Language (Special Provisions) Act 1958**

A wave of non-violent agitation and rising political disorder compelled the government of S. W. R. D. Bandaranaike to assuage Tamil feelings through offering legislation complementary to the 'Sinhala Only' Act, providing for 'reasonable use' of Tamil particularly in the North and East.

The Tamil Language (Special Provisions) Act 1958 allowed for Tamil to be used for "prescribed administrative purposes" in the North and East without prejudice to the use as language of administration of the official language (Sinhala).<sup>37</sup>

The Tamil language may be the medium of instruction for a Tamil pupil in a government or government assisted school.<sup>38</sup> Tamil shall be the medium of instruction in the University of Ceylon for students educated in the Tamil medium.<sup>39</sup> Tamil shall be the medium of examination for admission of Tamil speakers to the public service, subject to the condition of requiring sufficient knowledge of Sinhala or requiring such knowledge within a specified time of admission to public service.<sup>40</sup> Tamil speakers are entitled to correspond with any public official in their own language, and local authorities in the North and East are likewise entitled to communicate with each other in Tamil.<sup>41</sup>

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<sup>35</sup> Neil De Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* ... p. xvii.

<sup>36</sup> Neil De Votta, "From ethnic outbidding to ethnic conflict: the institutional bases for Sri Lanka's separatist war" ... p. 156, fn. 2.

<sup>37</sup> S. 5, *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

<sup>38</sup> S. 2 (1), *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

<sup>39</sup> S. 2 (2), *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

<sup>40</sup> S. 3, *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

<sup>41</sup> S. 4, *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

The Act was bitterly opposed by Sinhala nationalists and became a dead letter as the regulations<sup>42</sup> necessary to give it effect were prevaricated upon if not intentionally stalled.

The election to government of the United National Party in 1965 with parliamentary support from the Federal Party, consequent to an agreement between the leader of the UNP and leader of the Federal Party (‘Senanayake-Chelvanayakam Pact’), provided the impetus for government support for the drafting and legislation of the Tamil Language (Special Provisions) Regulations, 1966.

The text of these regulations was skilfully crafted by Federal Party Senator Murugeysen Tiruchelvam QC who interpreted the provision in the 1958 Act permitting the use of Tamil in the North and East for “prescribed administrative purposes” to mean “all administrative purposes”, such that Tamil would become the *de-facto* language of administration in the North and East.<sup>43</sup>

Under the regulations, all government and public business in the North and East including of public corporations or statutory bodies and all correspondence between persons in regard to official matters, and between local authorities shall be transacted in Tamil.<sup>44</sup> One regulation of island-wide application established that all laws, “the Government Gazette and other official publications, circulars and forms issued or use by government, public corporations or statutory institutions shall be translated and published in the Tamil language also”.<sup>45</sup> Implementation of the Tamil Language (Special Provisions) Regulations was frustrated almost as soon as it began through racist campaigning by the Opposition and abandoned altogether following the United National Party’s defeat in the 1970 general election.

### 1972 Constitution

Sri Lanka’s first autochthonous Constitution was introduced by the United Front coalition government in 1972 testifying to the intended breach with British interests and therefore influence in politics, law, and the economy. The United Front, led by Sirimavo Bandaranaike was unsurprisingly favourable to SWRD Bandaranaike’s ‘Sinhala Only’ policy and indisposed to the Tamil Language (Special Provisions) Regulations.

The chapter on language (III) consolidated the *status quo* through incorporating the provisions of the Official Language Act of 1956 and the Tamil Language (Special Provisions) Act of 1958.<sup>46</sup> Therefore Sinhala alone was

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<sup>42</sup> S. 6 (1), *Tamil Language (Special Provisions) Act*, No. 28 of 1958.

<sup>43</sup> A. Jeyaratnam Wilson, *S. J. V. Chelvanayakam and the Crisis of Sri Lankan Tamil Nationalism, 1947-1977: A Political Biography*, London: Hurst & Company 1994, pp. 107-108.

<sup>44</sup> Reg. No. 2 (a) & (b), *Tamil Language (Special Provisions) Regulations*, 1966.

<sup>45</sup> Reg. No. 3, *Tamil Language (Special Provisions) Regulations*, 1966.

<sup>46</sup> A. 7 & 8 (1) respectively, *Constitution of Sri Lanka (Ceylon)*, 1972.

constitutionally recognised as the official language of Sri Lanka; while ‘reasonable use’ of Tamil for purposes of administration in the North and East was to be allowed. However, in a reversal of Senator Tiruchelvam’s attempt to expand the use of Tamil, the 1966 regulations were deemed to be “subordinate legislation”,<sup>47</sup> thwarting possibility of progress in that direction.

The language of legislation was to be Sinhala with provision for translation into Tamil.<sup>48</sup> All written laws in force prior to the 1972 Constitution were to be published in the Government Gazette in Sinhala with translation into Tamil “as expeditiously as possible”.<sup>49</sup> Laws published in Sinhala were deemed to be the authoritative version superseding the English original.<sup>50</sup>

Sinhala was enshrined as the language of courts and tribunals and records including pleadings, proceedings, judgements, orders and records were to be maintained in Sinhala.<sup>51</sup> However, the legislature was authorised to allow “otherwise” in the North and East, implicitly permitting the use of Tamil as the language of courts in that region.<sup>52</sup> Tamil was also recognised as a language of judicial and quasi-judicial institutions in the North and East, and island-wide in Muslim personal law proceedings before a *quazi*. In such cases a Sinhala translation must be made for purposes of record.<sup>53</sup>

A person (party, applicant, judge, jury or tribunal member) not conversant with the language of the court be it Sinhala or Tamil is entitled to the services of an interpreter and translator at the expense of the state. Any part of the record of the court may be requested in Sinhala or Tamil. The legal representative of a party or an applicant may use Sinhala or Tamil and is entitled to the services of an interpreter at state expense.<sup>54</sup>

The use of English, indirectly referred to as “a language other than Sinhala or Tamil”, in courts, tribunals and other legal forums is permitted through direction of the Minister of Justice.<sup>55</sup> This provision forms the lawful basis for the continuance of English as the language of the superior courts – that is in the

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<sup>47</sup> A. 8 (2), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>48</sup> A. 9 (1) & (2) respectively, *Constitution of Sri Lanka (Ceylon)*, 1972. “Tamils are destined to live perpetually in translation”, mourned one Tamil legislator in Constituent Assembly debates on this Article, cited in Colvin R. De Silva, *Safeguards for the Minorities ...* p. 20.

<sup>49</sup> A. 10 (1), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>50</sup> A. 10 (3), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>51</sup> A. 11 (1), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>52</sup> A. 11 (1), *Constitution of Sri Lanka (Ceylon)*, 1972. The National State Assembly did so the following year in the form of the *Language of the Courts (Special Provisions) Law*, No. 14 of 1973.

<sup>53</sup> A. 11 (3), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>54</sup> A. 11 (4) & (5) respectively, *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>55</sup> A. 11 (6), *Constitution of Sri Lanka (Ceylon)*, 1972.

Court of Appeal and Supreme Court – notwithstanding the ‘Sinhala Only’ legislation.

The fundamental rights chapter was an innovation of the 1972 Constitution, as no such bill of rights chapter existed in the preceding pre-independence Constitution. Linguistic freedom was not explicitly protected. Constitutional clauses on equality before the law and its equal protection<sup>56</sup> and the right “by himself or in association with others, to enjoy and promote his own culture”<sup>57</sup> were arguably of relevance. Unfortunately, the latter was limited to citizens alone whereas large numbers of Up-Country Tamils had been deprived of their citizenship in the post-colonial era.

Although a Constitutional Court was created, its powers were largely limited to review of Bills referred to it and its judicial status was the subject of protracted and debilitating political controversy.<sup>58</sup>

### 1978 Constitution

The United National Party’s election in 1977 began the process of constitutional revision culminating in the proclamation of the second republican Constitution in 1978. The fundamental rights chapter of this Constitution was a marked improvement on its predecessor through express protection of linguistic rights.

Nevertheless, many of the rights are confined to citizens alone, though a proviso permitted for their temporary enjoyment, for a period of ten years from commencement of the Constitution (that is until 1988), by persons who are stateless but permanently and legally resident in Sri Lanka:<sup>59</sup> an implicit reference to Up-Country Tamils. Further, chapter IV on language was conceived within the framework of the ‘Sinhala Only’ legislation and therefore of no great improvement to Tamil speakers.

The freedom of a citizen or in concert with others, to enjoy and promote her/his culture and to use her/his own language is recognised and protected.<sup>60</sup>

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<sup>56</sup> A. 18 (1) (a), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>57</sup> A. 18 (1) (e), *Constitution of Sri Lanka (Ceylon)*, 1972.

<sup>58</sup> L. J. M. Cooray, *Constitutional Government in Sri Lanka 1796-1977*, 2<sup>nd</sup> ed., Pannipitiya: Stamford Lake 2005, pp. 277-279.

<sup>59</sup> A. 14 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>60</sup> A. 14 (1) (f), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978. The exercise and operation of this fundamental right, similarly to others, is subject to restrictions as per A. 15 (7), “as may be prescribed by law in the interests of national security, public order and the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society”. To date this clause has not been invoked to limit the linguistic rights of Tamil-speakers nonetheless its very existence in its present over-broad form is a matter of extreme concern.

Any person whose fundamental right in this respect is infringed by executive or administrative action or under threat of imminent infringement may apply to the Supreme Court for relief or redress.<sup>61</sup>

The right to equality before the law and its equal protection expressly includes language as among one of the grounds of discrimination that is prohibited.<sup>62</sup> Additionally, no person shall on grounds of *inter alia* language be subject to any disability, liability, restriction or condition regarding access to shops, public restaurants, hotels, place of public entertainment and place of public worship of his own religion.<sup>63</sup> The non-justiciable chapter on 'Directive Principles of State Policy and Fundamental Duties' pledges the State to ensure equality of opportunity to citizens, "so that no citizen shall suffer any disability on the ground of [*inter alia*] ... language."<sup>64</sup>

However, it is lawful to require a person to acquire "sufficient knowledge of any language" and "within a reasonable time" as a qualification for employment or office in the public, judicial or local government service or in the service of any public corporation where such knowledge is reasonably necessary for the discharge of duties of such employment or office. Likewise it is lawful to require a person to have "sufficient knowledge of any language" as prerequisite for any employment or office where no function can be discharged without such knowledge.<sup>65</sup>

In chapter IV (on language) of the 1978 Constitution, Sinhala alone was retained as the Official Language.<sup>66</sup> In addition, a new category of national languages was created with Tamil granted the same status as Sinhala<sup>67</sup> in this regard. The importance of this provision on national languages is limited by its secondary status to the sole official language. Thus Sinhala alone was conferred the status of language of administration throughout Sri Lanka.<sup>68</sup> However, Tamil "shall also be used" as the language of administration in the North and East.<sup>69</sup>

Any person "shall be entitled" to communicate and transact official business in either of the national languages; to obtain a copy of, or extract from an official register, record, publication or other document in either of the national

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<sup>61</sup> A. 17 read with A. 126, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>62</sup> A. 12 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>63</sup> A. 12 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>64</sup> A. 27 (6), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>65</sup> A. 12 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>66</sup> A. 18, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>67</sup> A. 19, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>68</sup> A. 22 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>69</sup> A. 22 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

languages; and to obtain any official document issued to “him” in either of the national languages.<sup>70</sup>

Local authorities in the North and East shall be entitled to communicate with any official in an official capacity in either of the national languages. All orders, proclamations, rules, by-laws, regulations and notifications, the Government Gazette and all other official documents including circulars and forms issued or used by any public institution or local authority shall be published in both national languages.

Any person is entitled to be educated in either of the national languages, excepting in higher education institutions where the medium is a language other than a national language (a circuitous reference to English).<sup>71</sup> State funded universities offering education in one national language are obliged to provide instruction in the other national language too, except where instruction in the other language is available at an alternative campus or university.<sup>72</sup>

Examinations for admission to the public service, judicial service, local government service, a public corporation or statutory institution shall be in the medium of either of the national languages.<sup>73</sup> However, admission may be conditional upon acquiring “sufficient knowledge” of the official language, within a “reasonable time”, where such knowledge is “reasonably necessary” for the discharge of duties. Further such “sufficient knowledge” of the official language may be a condition precedent to admission to public employment “where no function of the office or employment” can be discharged without “sufficient knowledge” of the official language.<sup>74</sup>

All laws and subordinate legislation are to be published in both national languages with translation in English. In the event of inconsistency the Sinhala language version shall prevail.<sup>75</sup> All laws and subordinate legislation in force prior to commencement of the Constitution are to be published in the Gazette in both national languages “as expeditiously as possible”.<sup>76</sup> Laws once published in Sinhala are deemed to be the law and supersede the law published in the English original.<sup>77</sup>

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<sup>70</sup> A. 22 (2), (a-c), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>71</sup> A. 21 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>72</sup> A. 21 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>73</sup> A. 22 (5), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>74</sup> A. 22 (5), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>75</sup> A. 23 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>76</sup> A. 23 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended. Almost twenty years on, at time of writing, this undertaking has been honoured only in the breach.

<sup>77</sup> A. 23 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

Sinhala alone was granted the status of language of the courts and all records and proceedings were to be in the official language too. However, any party or applicant or lawful representative of such party or applicant may initiate proceedings, submit pleadings and other documents, and participate in proceedings in either of the national languages.<sup>78</sup> Additionally, any judge, juror, party or applicant or representative shall be entitled to interpretation and to translation to the appropriate national language at state expense; and to obtain any part of the record or a translation thereof in either of the national languages.<sup>79</sup>

However, the language of courts of original jurisdiction (or first instance) in the North and East and their records and proceedings shall be in Tamil. In the event of an appeal from the lower courts in the North and East to the higher courts in Colombo records are to be prepared in both national languages.<sup>80</sup>

Conformity to the official language policy was maintained through the proviso that the Justice Minister may direct that courts in the North and East also maintain records and conduct proceedings in Sinhala; and that the record of any particular proceeding be maintained in Sinhala where the judge, party, applicant or person concerned is not familiar with Tamil.<sup>81</sup>

The Minister of Justice may also direct the “use of a language other than a National Language” in or in relation to any court.<sup>82</sup> This is a carry-over from the 1972 Constitution permitting the use of English in the superior courts.

The final section in the chapter on language obliges the state to provide “adequate facilities” for the use of the national languages and presumably English.<sup>83</sup> However, the substance and scope of this provision is undefined anywhere, and has not been judicially interpreted either, rendering it of token significance.

In matters of fundamental rights including linguistic minority rights, the 1978 Constitution and the conservative bent of the judiciary has disappointed.

In *K. C. Adiathan vs. Attorney-General*, a Tamil speaker sought to enforce his right to receive a cheque issued by the Central Bank, which he argued to be an official communication from the state, in Tamil rather than in Sinhala as was originally despatched to him. Here was an opportunity for the Supreme Court to recognise and rectify the anomaly of according Tamil the status of ‘national language’ while denying Tamil speakers the facility of transacting official business with the state in their own language as assured to them in A. 22 (2) (a) of the 1978 Constitution (as unamended). Instead, Samarawickrema, J. on behalf of the bench

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<sup>78</sup> A. 24 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>79</sup> A. 24 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>80</sup> A. 24 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>81</sup> A. 24 (1) (a) & (b) respectively, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>82</sup> A. 24 (4), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

<sup>83</sup> A. 25, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as unamended.

confined himself to the nature of a cheque which he held not to be an official communication but rather an enclosure,<sup>84</sup> thereby exempting the matter from the fundamental rights jurisdiction of the Supreme Court and skirting the larger issue.

This case among others underlines how, “Sri Lanka’s higher judiciary has been slow in evolving itself into an institution of (sic) constitutionally defining the public policy framework for pluralism and multi-culturalism ... reluctant to play the role of an assertive arbiter ... when encountering violation of rights on the basis of ethnic discrimination”.<sup>85</sup>

### Thirteenth and Sixteenth Amendments

External pressure from India for satisfaction of Tamil grievances resulted in the Indo-Lanka Accord of 1987<sup>86</sup> committing the Government of Sri Lanka to recognise Tamil (in fact, also English) as an official language in addition to Sinhala.<sup>87</sup> The present official languages policy of Sri Lanka is therefore Chapter IV of the 1978 Constitution as modified by the Thirteenth Amendment in 1987 and Sixteenth Amendment in 1988.

Therefore the Constitution now reads that, “Tamil shall also be an official language.”<sup>88</sup> The awkwardness of the phrasing, albeit inherited from the Indo-Lanka Accord, and the arrangement of the new clause in a distinct hierarchically sub(ordinate) section rather than as part of the same provision<sup>89</sup> declaring Sinhala to be Sri Lanka’s official language is illuminative of official attitudes. A further sub-section states, “English shall be the link language”.<sup>90</sup>

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<sup>84</sup> K. C. Adiapathan *v* Attorney-General, SC Application No. 17 of 1979 in *Fundamental Rights: Decisions of the Supreme Court of Sri Lanka (April 1979 to December 1981)*, Vol. 1, Colombo: Lake House Investments 1984, pp. 59-62 at p. 61.

<sup>85</sup> Jayadeva Uyangoda, *Questions of Sri Lanka’s Minority Rights*, Colombo: International Centre for Ethnic Studies Colombo 2001, pp. 58 & 66.

<sup>86</sup> See generally, Shelton U. Kodikara (ed.), *Indo-Sri Lanka Agreement of July 1987*, Colombo: International Relations Programme, University of Colombo 1989.

<sup>87</sup> Para. 2.18: “The official language of Sri Lanka shall be Sinhala. Tamil and English will also be official languages”, ‘Indo-Sri Lanka Agreement to establish Peace and Normalcy in Sri Lanka’, 26 *International Legal Materials* 1175 (1987) at 1181.

<sup>88</sup> A. 18 (2), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 2 (b), *Thirteenth Amendment to the Constitution*, 1987.

<sup>89</sup> A. 18 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 2 (a), *Thirteenth Amendment to the Constitution*, 1987.

<sup>90</sup> A. 18 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 2 (b), *Thirteenth Amendment to the Constitution*, 1987. For some reflections on the ambiguities of English as “link language”, undefined as it is by the Constitution or in statute or case law, see International Centre for Ethnic Studies Colombo, “Language Policy and Bilingualism”, *The Thatched Patio*, Vol. 2, No. 5 (October 1989), pp. 4-6.

The Constitutional provisions on language are deemed to prevail over any law in the event of inconsistency.<sup>91</sup> On this basis, the Official Language Act of 1956, though curiously neither amended nor repealed by the Thirteenth Amendment and therefore still on the statute books, is no longer in force.

The original architecture of the 1978 Constitution exerts its influence through retention of the distinction between official and national languages such that Sinhala and Tamil alone are “national languages”.<sup>92</sup> Members of the national legislature, provincial councils and local authorities are entitled to perform their duties and discharge their functions in either of the national languages.<sup>93</sup>

Tamil is raised to the language of administration throughout the island in addition to Sinhala whereas earlier it was confined to the North and East.<sup>94</sup> However that same unwieldy sub-section retains Sinhala alone as language of record and medium for transaction of business by public institutions outside the North and East and therefore withdraws in practice what has been promised in principle.

The pacifier to Tamil speakers is the proviso that the President may authorise both national languages to be used in an administrative (assistant government agent) division having regard to the proportion of the linguistic minority in that area. However, this is wholly within the discretion of the executive and this power has only been exercised on three occasions and by the same incumbent as discussed below. No objective criterion, for example a specified proportion of the local population, exists to automatically trigger such a directive.

Where Sinhala alone is the language of administration, any person (except “an official acting in his official capacity”) is entitled to receive communication from and to communicate with any official in his official capacity, in either Tamil or English; obtain a copy or an extract from any official register, record or other publication in either Tamil or English; and obtain an official document issued to her/him or a translation thereof in either English or Tamil.<sup>95</sup>

Provincial councils or local authorities are entitled to receive and send communications with any official acting in an official capacity in the language of administration that they use, that is either Tamil or Sinhala. Additionally where the provincial council, local authority, public institution or official transacts business

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<sup>91</sup> A. 25A, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 5, *Sixteenth Amendment to the Constitution*, 1988.

<sup>92</sup> A. 19, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>93</sup> A. 20, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 2, *Sixteenth Amendment to the Constitution*, 1988.

<sup>94</sup> A. 22 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

<sup>95</sup> A. 22 (2) (a-c), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

with similar institutions where a different language of administration is used, English may be used as the common language.<sup>96</sup> This proviso recognises the difficulty of say Sinhala language authorities finding Tamil translators and vice-versa and the reality that English is often the common language across the linguistic divide.

The medium of examination for selection to the public service, judicial service, provincial public service, local government service or any public institution may be Tamil or Sinhala or a “language of [the person’s] choice” (presumably English). However admission may be conditional on that person acquiring “a sufficient knowledge of Tamil or Sinhala, as the case may be, within a reasonable time ... where such knowledge is reasonably necessary for the discharge of his duties”. It is also lawful for “sufficient knowledge of Sinhala or Tamil” to be a prerequisite for employment in any public service or institution where “no function of the office or employment for which he is recruited can be discharged otherwise than with a sufficient knowledge of such language”.<sup>97</sup>

All laws and subordinate legislation are to be enacted and published in Tamil in addition to Sinhala together with an English translation.<sup>98</sup> Parliament is to determine which text is authentic in the event of inconsistency. In fact, the language so deemed to be authoritative within the text of legislative enactments is always Sinhala, such that the final section in all statutes reads, “[i]n the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail”, thereby discrediting the official status of Tamil.

Provincial councils and local authorities are permitted to issue orders, proclamations, rules, by-laws, regulations and notifications and issue circulars and forms in the language of administration with a translation in English.<sup>99</sup> Thus Tamil speakers with no knowledge of English are disadvantaged in dealings with these institutions in Sinhala majority areas.

Tamil is also raised to the language of the courts throughout Sri Lanka in addition to Sinhala;<sup>100</sup> although once again there is immediate back-tracking because Sinhala is asserted to be the language of the court in areas where Sinhala is the language of administration. The record and proceedings shall be in the

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<sup>96</sup> A. 22 (4), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

<sup>97</sup> A. 22 (5), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

<sup>98</sup> A. 23 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988. In practice, legislation is generally drafted in English and subsequently translated to Sinhala and Tamil.

<sup>99</sup> A. 23 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

<sup>100</sup> A. 24 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 4 (1), *Sixteenth Amendment to the Constitution*, 1988.

language of the court. The Minister of Justice is empowered to direct that the record and proceedings of any court shall also be maintained “in a language other than the language of the court”, in an oblique reference to English thereby allowing for bilingualism in that court.

Any party or applicant or legal representative may initiate proceedings, submit pleadings and other documents, and participate in court proceedings in either Tamil or Sinhala.<sup>101</sup> Any judge, juror, party or applicant or legal representative is entitled to interpretation and translation at state expense, and to obtain any part of the record or translation thereof, in Sinhala or Tamil.<sup>102</sup>

A discrete sub-section allows the Minister of Justice to direct that English, which is expressly named on a rare occasion, be used in records and proceedings of any court,<sup>103</sup> confirming its longstanding use in the Court of Appeal and Supreme Court

As discussed below, the Official Languages Commission in its 2005 Memorandum has found that the official languages policy exists in rhetoric rather than reality, to the ongoing frustration and detriment of Tamil speakers outside of the Tamil majority North and East and to Sinhala speakers within the North and East.

### International Standards

This section briefly presents international standards on the rights of internal linguistic minorities by way of evaluating Sri Lanka’s conformity with international norms.<sup>104</sup> It is sobering at the outset to reflect on Mälksoo’s observation as below:

“Language rights have become a part of international human rights law but the content of these rights is currently at a relatively primitive stage of development. Although there have recently been some progressive developments in Europe, the notion of ‘language rights’ has not found its place in international instruments of law. As of today, one has to conclude that from the international legal perspective, language is

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<sup>101</sup> A. 24 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 4 (2), *Sixteenth Amendment to the Constitution*, 1988.

<sup>102</sup> A. 24 (3), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 4 (3), *Sixteenth Amendment to the Constitution*, 1988.

<sup>103</sup> A. 24 (4), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 4 (4), *Sixteenth Amendment to the Constitution*, 1988.

<sup>104</sup> For an extensive discussion see Catherine Wood, “Language Rights: Rhetoric and Reality – Sri Lanka and International Law”, *LST Review*, Vol. 10, Issue 145 (November 1999), pp. 24-43.

still to large extent a political battlefield and not the object of universally applicable legal standards.”<sup>105</sup>

Thus discussions on language rights are framed by the broader concerns of minority rights as the linguistic rights of regional minorities and non-territorial minorities.

### **International Covenant on Civil and Political Rights 1966**

The Government of Sri Lanka’s binding obligation under international human rights law in respect of the rights of linguistic minorities is contained in Article 27 of the International Covenant on Civil and Political Rights 1966 which Sri Lanka ratified in 1980.

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

As is evident from the wording of the article, the nature of the right that is owed to Tamil speakers is *inter alia*, the right of non-discrimination. The corresponding obligation on the state is at minimal level, which is “to respect”, therefore not to interfere in the right of Tamil speakers to use, propagate and develop their language through their own means for example community or privately owned Tamil medium educational and cultural institutions.

Although the wording of the article is admitted to be negative, the expert United Nations Human Rights Committee in its authoritative interpretation of the provisions finds that “[p]ositive measures of protection are ... required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party”.<sup>106</sup>

In fact no measures have been taken by the Government of Sri Lanka to ensure respect for non-discrimination of Tamil speakers by “other persons” such as the private sector in for example, the provision of educational and health services or access to employment opportunities through appropriate equal opportunity legislation or scrutiny of non-state actors.

However, even prior to the conferment of official language status on Tamil, the Government of Sri Lanka has publicly funded Tamil medium

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<sup>105</sup> Lauri Mälksoo, “Language Rights in International Law: Why the Phoenix is Still in the Ashes”, *Florida Journal of International Law*, Vol. 12, No. 3 (1998-2000), pp. 431-465 at p. 465.

<sup>106</sup> Para 6.1, United Nations Human Rights Committee, *General Comment No. 23: The rights of minorities (Art. 27)*: CCPR/C/Rev.1/Add.5, 08/04/94.

education from pre-school through to university; Tamil language television and radio programmes; Tamil language daily and weekly newspapers; and cultural activities of Tamil speakers. These measures exceed its obligations under the Covenant.

In its most recent periodic state report to the Human Rights Committee, the Government of Sri Lanka seeks to satisfy its obligations under the Covenant by rehearsing the *de jure* equality of status between Sinhala and Tamil following the Thirteenth and Sixteenth Amendments to the Constitution; drawing attention to the existence and mandate of the Official Languages Commission; the public awareness programme of the Official Languages Department and language training of public servants.<sup>107</sup>

Nonetheless *de facto* equality between Sinhala and Tamil is denied.<sup>108</sup> The lived experience of Tamil speakers is one of discrimination, marginalisation and exclusion. For example, Tamil speaking residents in the estate sector continue to experience poor access to Tamil medium schools, neglected infrastructure for schools including recruitment of teachers; lack of Tamil speaking midwives and nurses in hospitals and health centres; lack of Tamil speaking *grama niladharis* (village officers) to transact official business; and inability to obtain official documentation such as birth, marriage and death certificates in Tamil.

Secondly, the fundamental rights protection afforded to Tamil speakers by both the 1972 and later 1978 Constitution of Sri Lanka is extended only to citizens of the country. Through discriminatory legislation and government policy hundreds of thousands of Up-Country Tamils born and ordinarily resident in Sri Lanka were deemed for decades to be Indian nationals or stateless<sup>109</sup> and therefore excluded from the protection of the fundamental rights chapter.

This is contrary to the Covenant that confers rights under article 27 to “all individuals within the territory of the State party and subject to its jurisdiction”.<sup>110</sup> The haphazard reversal of deprivation of citizenship through progressive passage of legislation<sup>111</sup> eliminating statelessness and granting Sri Lankan citizenship to so-called Indian nationals does not negate this obnoxiousness.

Sri Lanka acceded to the First Optional Protocol in 1997, thereby recognising the procedural right of individual petition to the Human Rights

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<sup>107</sup> Para 523-536, *Consideration of Reports submitted under Article 40 of the Covenant: Sri Lankan Fourth Periodic Report*, CCPR/C/LKA/2002/4, 18 September 2002.

<sup>108</sup> This was unaddressed by the Human Rights Committee in its comments on the state report, *Concluding observations of the Human Rights Committee: Sri Lanka*, CCPR/CO/79/LKA, 1 December 2003.

<sup>109</sup> Amita Shastri, “Estate Tamils, the Ceylon Citizenship Act of 1948 and Sri Lankan Politics”, *Contemporary South Asia*, Vol. 8, No. 1 (1999), pp. 65-86.

<sup>110</sup> Para 5.1, *General Comment No. 23: The rights of minorities (Art. 27)* ...

<sup>111</sup> Most recently, the *Citizenship (Amendment) Act*, No. 16 of 2003.

Committee where an individual claims to have suffered the violation of any right under the Covenant and when all domestic remedies have been exhausted. However, no written communication relating specifically to Article 27 has been submitted from Sri Lanka.

In the Supreme Court's recent judgement in the *Singarasa* case, it was held that Sri Lanka's accession to the Protocol through declaration by the President is *ultra vires* Constitutional provisions vesting such authority in Parliament and not the Executive. Therefore Sarath Silva, CJ in his judgement concluded that accession to the Protocol is not binding on Sri Lanka and has no legal effect domestically.<sup>112</sup> The present situation therefore is that while the Government of Sri Lanka has not denounced the Optional Protocol, and therefore claims to uphold the right of individual petition, the Supreme Court of Sri Lanka has determined that the views of the Human Rights Committee in Geneva have no force within the national legal system, rendering recourse to it of limited value.<sup>113</sup>

### **United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992**

The duty to take positive measures for promotion of linguistic minority rights is imposed on states in the non-binding 1992 United Nations (UN) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>114</sup>

States shall adopt "appropriate legislative and other measures" to "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories" and to "encourage conditions for the promotion of that identity."<sup>115</sup>

This article has been interpreted by the UN Working Group on Minorities to impose a duty on states to integrate minorities in the process by which "appropriate measures" are determined, the appropriate measures are

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<sup>112</sup> *Nallaratnam Singarasa v Attorney-General*, SCM 15.09.2006, *LST Review*, Vol. 17, Issue Nos. 227 & 228 (September & October 2006), pp. 9-18 at p. 17.

<sup>113</sup> The Government of Sri Lanka has made no effort since to remedy this defect, including in the recent International Covenant on Civil and Political Rights Act, No. 56 of 2007, suggesting that it is comfortable with the *status quo*.

<sup>114</sup> The Declaration was adopted without vote at the 92<sup>nd</sup> plenary meeting of the General Assembly on 18 December 1992. Sri Lanka, after some hesitation, was among the sponsors of the resolution, see Catherine Wood, "Language Rights: Rhetoric and Reality – Sri Lanka and International Law" ... p. 32.

<sup>115</sup> A. 1 (1) & (2) combined, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* 1992.

deemed to include but not be limited to legislative, judicial, administrative, promotional and educational measures.<sup>116</sup>

States are further obliged to “take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their [inter alia] ... language”.<sup>117</sup> This article requires more than mere tolerance of minorities but imposes the duty of active measures by the state to create such “favourable conditions”. The measures “may require economic resources from the State. In the same way as the State provides funding for the development of the culture and language of the majority, it shall provide resources for similar activities of the minority.”<sup>118</sup>

While the 1992 UN Declaration does not create enforceable obligations on the Government of Sri Lanka, its adoption by consensus is indicative of its influence and acceptability among UN member states and therefore ought at the very least to be of persuasive importance in state policy and domestic jurisprudence.

In any case, it ought to be emphasised that Tamil is more than the language of a single linguistic minority group. It is the mother tongue of three ethnic minority communities comprising over 25 percent of the total population. Since 1978 it has been a national language in Sri Lanka and since 1987 one of the two official languages. At least one of the three Tamil speaking groups, North-Eastern Tamils, must also now be regarded as a national minority with a corresponding level of rights to the preservation and development of its national identity including language rights. This has ratcheted up the level of obligation on the Government of Sri Lanka.

#### **Official Languages Commission**

An Official Languages Commission (hereafter “Commission”) was established in 1991 by virtue of the *Official Languages Commission Act* No. 18 of 1991. The Commission is composed of six members appointed by the President, who is also empowered to nominate one among their number as Chairman.<sup>119</sup> The large number of Commissioners is apparently to allow for multi-ethnic representation – presently there is one Tamil and one Muslim Commissioner – although there is no express statutory stipulation as to ethnic diversity. It may also

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<sup>116</sup> Para 30 & 31, *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, E/CN.4/Sub.2/AC.5/2005/2, 4 April 2005, p. 8.

<sup>117</sup> A. 4 (2), *Declaration on the Rights of Persons ...*

<sup>118</sup> Para 56, *Commentary of the Working Group on Minorities ...* p. 13.

<sup>119</sup> S. 5 (1) & (2), *Official Languages Commission Act*, No. 18 of 1991. Regrettably the Official Languages Commission was not among those statutory institutions whose independence from executive control was sought to be achieved through the Seventeenth Amendment to the Constitution in 2001.

be to compensate for the fact that only the Chair of the Commission presently serves in a full-time capacity. The term of office is three years with eligibility for indefinite reappointment.<sup>120</sup> An institutional link with the Official Languages Department is maintained through ex-officio appointment of the Commissioner of the Department as Secretary to the Commission. The Commission is obliged to meet at least once each month and may meet as often as necessary, the quorum for a meeting being four members.<sup>121</sup>

### Objectives and powers

The objectives<sup>122</sup> of the Commission are: to recommend principles of policy, relating to the use of the Official Languages; and to monitor and supervise compliance with the provisions contained in Chapter IV (on language) of the Constitution; take all such action and measures as are necessary to ensure the use of Sinhala, Tamil and English; promote the appreciation of the Official Languages and the acceptance, maintenance, and continuance of their status, equality and right of use; conduct investigations, both on its own initiative, and in response to any complaints received; and to take remedial action in accordance with the provisions of the Act.

The powers<sup>123</sup> vested in the Commission are to initiate reviews of any regulations, directives, or administrative practices which affect, or may affect, the status or use of the relevant languages as it may deem necessary or desirable; issue or commission such studies or policy papers on the status or use of the relevant languages as it may deem necessary or desirable; undertake such public educational activities, including, sponsoring or initiating publications or other media presentations on the status and use of the relevant languages as it may consider desirable; do all such other things as are necessary for, or incidental to, the attainment of the objects of the Commission or necessary for or incidental to, the exercise of any powers of the Commission; and appoint Committees as may be necessary to assist the Commission in its duties.

In summary, the functions of the Official Languages Commission are to advise government on matters of language policy; to monitor the compliance especially of public authorities in compliance with the constitutional provisions on language; to educate state officials, private sector and the general public on the status and use of Sinhala, Tamil and English and finally, to investigate complaints arising from alleged violation of the official languages law.

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<sup>120</sup> S. 9 (1), *Official Languages Commission Act*, No. 18 of 1991.

<sup>121</sup> S. 12 (2) and (1) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>122</sup> S. 6 (a)-(d) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>123</sup> S. 7 (a)-(c), (e) and s. 8 (1) respectively, *Official Languages Commission Act*, No. 18 of 1991.

### Investigation of complaints

The scope and procedure for investigation of complaints is as follows: the Commission is obliged to (“shall”) act upon every complaint arising from acts or omissions of public institutions<sup>124</sup> relating to the status and use of relevant languages (that is Sinhala, Tamil and English) where such status or use is or was not recognised; where the right to or duty of use is or was not being recognised or complied with; where any law (statute, regulation, rule, order, notification, by-law) relating to status and use as contained in Constitutional provisions on language policy (Chapter IV) is not complied with; and where the objectives and intent of Chapter IV is or was not being respected or complied with.<sup>125</sup>

It should be repeated that persons whose language rights are alleged to be infringed or about to be infringed by executive or administrative action, are not obliged to utilise the Commission or exhaust its statutory investigative and complaints procedure, but may directly petition the Supreme Court for relief or redress.<sup>126</sup> However, the Commission may with the court’s permission intervene in such proceedings in the public interest.<sup>127</sup>

Complaints may be made by an affected person or persons (group) or parties acting *bona fide* (therefore in the public interest) in bringing such acts or omissions to the notice of the Commission. Complaints must be treated as confidential communications. While the head of the public institution against whom the complaint is made shall be informed of the Commission’s intention to investigate, the identity of the complainant shall not be divulged without the complainant’s prior consent.<sup>128</sup>

Complaints may be refused or investigation may be discontinued where the subject matter is trivial; complaints are frivolous, vexatious or *mala fide*; the subject matter is outside the mandate of the Commission; or where initiation or continuation is “unnecessary”.<sup>129</sup> This sweeping discretionary authority to decline complaints or terminate investigations, particularly in the catch-all final subsection, is quite remarkable. The Commission is obliged to inform the complainant of the decision and its reasons, in writing within fourteen days of making the decision.<sup>130</sup> The complainant has the right to petition the Supreme Court against this decision within thirty days of its receipt, where leave to proceed

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<sup>124</sup> Defined in s. 39 as any ministry, department, public corporation, statutory body, provincial council, local authority (municipal council, urban council, *pradeshiya sabha*) or wholly government owned business undertaking.

<sup>125</sup> S. 18 (a)-(d), *Official Languages Commission*, Act No. 18 of 1991.

<sup>126</sup> A. 126, *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978.

<sup>127</sup> S. 29 (1) & (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>128</sup> S. 20 (3) & (4), *Official Languages Commission Act*, No. 18 of 1991.

<sup>129</sup> S. 19 (1) (a)-(d) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>130</sup> S. 19 (2), *Official Languages Commission Act*, No. 18 of 1991.

is granted by the Court,<sup>131</sup> and apply for relief or redress as the Court considers “just and equitable or appropriate”.<sup>132</sup>

In its conduct of an investigation or review, the Commission is empowered to summon witnesses and compel production of documents; administer oaths and compel witnesses to give oral or written evidence under oath; receive, accept and consider any other form of information or evidence as it sees fit; and conduct such investigation in the premises of any public institution as it may deem fit.<sup>133</sup>

Any person who fails without cause to appear before the Commission; or refuses to be sworn or refuses to answer questions; or refuses to produce documentation requested by the Commission in its investigation of a complaint; or who publishes defamatory statements of the Commission or member relating to an investigation; or interferes with the process of the Commission; or restricts or obstructs the Commission in its exercise of powers, shall upon conviction before a magistrate be guilty of an offence with the penalty of a fine not exceeding Rs10 000 or imprisonment for a term not exceeding three years or both.<sup>134</sup>

The Commission is not required to hold public hearings during an investigation or review, nor is any individual or public institution entitled to be heard as a matter of right.<sup>135</sup> This is wholly unsatisfactory. However, any individual or institution likely to be the subject of criticism in a report or recommendation shall be afforded the opportunity of response before the investigation ends.<sup>136</sup>

Where the Commission following its investigation is not satisfied of the merits of the complaint, it is still obliged to report that decision to the complainant and set out its reasons.<sup>137</sup> The complainant is afforded the avenue of petitioning the Supreme Court, where leave to proceed is granted by the Court,<sup>138</sup> within thirty days of receipt of the report for relief or redress as the Court considers “just and equitable or appropriate”.<sup>139</sup>

The Commission is obliged to make a report, and therefore to conclude any investigation or review, within sixty days of receipt of complaint, where it is unable to do so it is still required to issue an interim report within that period explaining the reasons for delay.<sup>140</sup> The final report must be issued within 120

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<sup>131</sup> S. 24 (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>132</sup> S. 24 (1) (b), *Official Languages Commission Act*, No. 18 of 1991.

<sup>133</sup> S. 21 (a)-(d) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>134</sup> S. 37 (d), (i-iii) and (a)-(c) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>135</sup> S. 22 (1), *Official Languages Commission Act*, No. 18 of 1991.

<sup>136</sup> S. 22 (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>137</sup> S. 23 (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>138</sup> S. 24 (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>139</sup> S. 24 (1) (c), *Official Languages Commission Act*, No. 18 of 1991.

<sup>140</sup> S. 23 (3), *Official Languages Commission Act*, No. 18 of 1991.

days of the making of the complaint.<sup>141</sup> If the Commission fails to do so then the complainant is entitled to petition the Supreme Court, where leave to proceed is granted by the Court,<sup>142</sup> within thirty days from the expiry of the 120 day period for relief or redress as the Court considers “just and equitable or appropriate”.<sup>143</sup>

Subsequent to investigation and preceding the report, the Commission may communicate with the head of the relevant public institution regarding acts or omissions for consideration and action; or for reconsideration, alteration or discontinuation of any directive or practice contravening the official languages policy.<sup>144</sup> In such a report the Commission may make directions to the head of the public institution concerned requiring notification, within a specified time, of action taken to give effect to its recommendations.<sup>145</sup>

Where the head of the public institution concerned fails to implement the recommendations within ninety days of receipt of the report, the Commissioner of the Official Languages Department (not Commission) may, following written notification to the Attorney-General and within a further ninety days, apply to the Provincial High Court nearest to the residence of the complainant for an order directing the respondent to give effect to the recommendations in the report.<sup>146</sup>

The Attorney-General or the Official Languages Commission may, “where the public interest so requires”, apply to the Supreme Court to transfer any application before the High Court to the Supreme Court for its determination.<sup>147</sup> Where the Supreme Court determines that a public institution has failed to comply with the language provisions in Chapter IV of the Constitution or any law implementing those provisions, the Court may grant “such relief or make such directions as it considers just and equitable or appropriate in all the circumstances of the case”.<sup>148</sup>

A public servant who “wilfully fails or neglects” to transact business, receive or make communication, issue any copy or extract from any register, record, publication or other document in any relevant language shall be guilty of an offence upon conviction in a magistrate’s court and liable to a fine not exceeding Rs1 000<sup>149</sup> or to imprisonment not exceeding three months or to both

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<sup>141</sup> S. 23 (4), *Official Languages Commission Act*, No. 18 of 1991.

<sup>142</sup> S. 24 (2), *Official Languages Commission Act*, No. 18 of 1991.

<sup>143</sup> S. 24 (1) (a), *Official Languages Commission Act*, No. 18 of 1991.

<sup>144</sup> S. 23 (1), *Official Languages Commission Act*, No. 18 of 1991.

<sup>145</sup> S. 23 (5), *Official Languages Commission Act*, No. 18 of 1991.

<sup>146</sup> S. 25 (1) read with s. 27 (b), *Official Languages Commission Act*, No. 18 of 1991.

<sup>147</sup> S. 26, *Official Languages Commission Act*, No. 18 of 1991.

<sup>148</sup> S. 27 (a), *Official Languages Commission Act*, No. 18 of 1991.

<sup>149</sup> The quantum has not been increased since 1991, when it was already a modest amount, and is therefore not in itself of deterrence.

fine and imprisonment. However, the permission of the Attorney-General must be obtained prior to any prosecution.<sup>150</sup>

### Critique

The Commission is statutorily obliged to furnish an annual report<sup>151</sup> containing its recommendations to public institutions but failed to do so from its inception in 1991 until 2002. This was a serious dereliction of duty and strictures made elsewhere bear repeating:

“The absence of any publicly available reports on the Commission’s work made it impossible to obtain the necessary information for a proper evaluation of its work. There is no public record of the number or nature of complaints that the Commission has received, or of its findings in investigations. There is no record of the recommendations it may have made to policy makers or to public institutions – or indeed, of whether it has even made any such recommendations formally. It is essential for the Commission to institute efficient and effective systems of recording and reporting on its work, for without these there can be no proper public accountability.”<sup>152</sup>

The Official Languages Commission appeared in its infancy to have succumbed to the very “inertia, indifference or prejudice within the executive”<sup>153</sup> that its birth was intended to overcome.<sup>154</sup>

Following the change of government in 1994, the Official Languages Commission received a second wind and prioritised some issues for immediate action: “sign-boards and name-boards in all government departments; government circulars containing important information; and facilities for

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<sup>150</sup> S. 28 (1) & (2) respectively, *Official Languages Commission Act*, No. 18 of 1991.

<sup>151</sup> S. 32, *Official Languages Commission Act*, No. 18 of 1991.

<sup>152</sup> Ambika Satkunanathan, ‘Official Languages Commission’ in *Sri Lanka: State of Human Rights 2000*, Colombo: Law & Society Trust 2000, pp. 323-324.

<sup>153</sup> Regi Siriwardena, “Bilingualism in Sri Lanka”, *The Thatched Patio*, Vol. 3, No. 3 (May/June 1990), p. 11; reprinted in Canagaratna, A. J. (ed.), *Selected Writings of Regi Siriwardena: Politics and Society Volume II*, Colombo: International Centre for Ethnic Studies 2006, p. 495.

<sup>154</sup> Since 2002 under the leadership of its present Chairman, former Communist Party legislator Raja Collure, five annual reports have been prepared.

translation in all government departments”.<sup>155</sup> However, progress in these areas has been haphazard and unsatisfactory.

The Commission lacks visibility and authority. Its existence and mandate is little known to the general public. According to a recent poll, 66.5 percent of respondents were unaware of the official languages policy and 71.6 percent were unaware of the Official Languages Commission.<sup>156</sup> This is despite government claims to have conducted through the Official Languages Department island-wide public advocacy programmes between 1994 and 2000 to educate public servants and the general public on the language law, “using poster campaigns, distribution of handouts and brochures, seminars, workshops, book exhibitions, public meetings and publication of newspaper articles.”<sup>157</sup>

The Commission receives only a handful of complaints each year, whether in writing or over the telephone. In 2005 a mere six written complaints were made, while an unspecified number were received by telephone as well as on the basis of media reports.<sup>158</sup> No details are presented in the annual report as to the substance of these complaints nor are there statistics as to their disposal or recommendations for redress. The small number of complaints is attributed by the Commission itself to “insufficient awareness among the public of its existence and powers”.<sup>159</sup>

The number of written complaints received in 2006 is reported to have risen to 14.<sup>160</sup> Regrettably there is no information in the Annual Report of the nature of the complaints, nor their disposal nor action, if any, taken by relevant public authorities following the Commission’s intervention.

Direct inquiries established that some of the issues included the absence of Tamil translators at the Mount Lavinia magistrates court; unavailability of the electoral register in Tamil; difficulty of making complaints to the police in Tamil; absence of Tamil speaking *grama niladharis* in Badulla district; provision of birth certificates in Sinhala only; and lack of hospital signage in all three languages.<sup>161</sup>

It is only from the report of the Auditor-General’s Department of the Official Languages Commission in its survey of 40 complaints received between

<sup>155</sup> Kanya Champion, ‘Minority Rights’ in *Sri Lanka: State of Human Rights 1995*, Colombo: Law & Society Trust 1996, p. 155.

<sup>156</sup> Foundation for Co-Existence, *Language Discrimination to Language Equality*, Colombo: Foundation for Co-Existence 2006, p. 30.

<sup>157</sup> Para. 30, *Ninth Periodic Report of Sri Lanka to the Committee on the Elimination of Racial Discrimination*, CERD/C/357/Add.3, 20 November 2000, p. 10.

<sup>158</sup> Official Languages Commission, *Annual Report 2005*, Rajagiriya: Official Languages Commission 2006, p. 21.

<sup>159</sup> Official Languages Commission, *Annual Report 2005* ... p. 21.

<sup>160</sup> Official Languages Commission, *Annual Report 2006*, Rajagiriya: Official Languages Commission 2007, p. 10.

<sup>161</sup> Interview with the OLC’s Language Officer by Dilhara Pathirana on July 5 2007.

2003 and 2006 that we are able to assess the performance of the Official Languages Commission in its investigation of complaints of linguistic discrimination.

In seven cases where the Commission ruled out investigation of the complaint, the complainant had not been informed within the mandatory 14 days. In 28 cases, presentation of the final report into complaints had exceeded the mandatory 120 days. On 12 occasions, observations requested from heads of department into alleged violations of the official languages law had not been received for periods ranging from 117 to 1 418 days. The Auditor-General also observed the Commission has never followed-up to confirm whether recommendations it had made to heads of institutions had been implemented.<sup>162</sup> In discharge of its other functions, the Commission has conducted language audits, some 26 in 2006, including of divisional secretariats designated as bilingual or where more than 12.5 percent of the population speak the second official language, Colombo police stations, and the Department of Motor Traffic. Its findings include a “severe dearth” of officials with Tamil language speaking ability; that more than 50 percent of public officers were unaware of the official languages policy; and that name boards, sign boards, direction boards, laws, regulations and official forms were in Sinhala only.<sup>163</sup> The Commission draws attention to the fact that Tamil speakers when possible will write official communications in Sinhala, fearing that use of Tamil will delay or deny them a response. This has reduced the pressure on public officers to provide a bilingual service.

Remedial action taken by the Commission has been in the form of awareness creation programmes among public officers to inform them of the official languages policy. For instance in 2006, 17 workshops were conducted among 1913 officials, mostly funded by an international non-governmental organisation as there was no Treasury allocation for these activities;<sup>164</sup> and almost trebling the number organised the previous year.<sup>165</sup>

Language training especially of police officers has been promoted by the Commission in recent years. It is estimated that over 95 percent of the police force lack Tamil speaking skills. Thus island-wide training workshops were conducted excepting in Northern districts. In 2006, 22 police officers received basic training and 783 received advanced Tamil language training.<sup>166</sup> Tamil

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<sup>162</sup> Report of the Auditor-General on the Financial Statements of the Official Languages Commission for the year ended 31 December 2006 in terms of Section 14(2)(c) of the Finance Act No. 38 of 1971, 11 October 2007, reprinted in Official Languages Commission, *Annual Report 2006*, p. 23.

<sup>163</sup> Official Languages Commission, *Annual Report 2006* ... p. 4.

<sup>164</sup> Official Languages Commission, *Annual Report 2006* ... p. 6.

<sup>165</sup> Official Languages Commission, *Annual Report 2005* ... p. 12-13.

<sup>166</sup> Official Languages Commission, *Annual Report 2006* ... p. 8-9.

language training has been extended since 2005 to health workers particularly nurses. Thus in 2006, 496 health workers in multi-lingual areas received basic instruction in Tamil language and 150 health workers in Batticaloa district in basic Sinhala language.<sup>167</sup>

The Commission has also been engaged in the preparation of trilingual phrase-books for police officers, health workers and officers in front-line positions at government institutions. As the present curricula and textbooks for teaching of Sinhala and Tamil to public officers is outdated, two sub-committees comprising linguists and experts were appointed by the Commission with the objective firstly, of evaluating the current syllabus and resource materials and secondly, developing aids to training including through use of modern technology for the teaching and learning of both official languages.<sup>168</sup>

The Commission is subject to severe budgetary constraints such that funding in 2007 (Rs10.4 million) was lower than the allocation in the previous year (Rs10.8 million) and significantly lower than its request for a modest Rs13 million.<sup>169</sup> Until 2000 budgetary allocations only provided for the institutional costs of the Commission and wages of its staff. There was no financial provision until 2001 onwards for policy implementation. Therefore the Commission has sought funds from international donors such as the Canadian International Development Agency (CIDA) and The Asia Foundation (TAF). The Treasury's attitude highlights the low priority given to the Commission and its important work, despite the statutory duty on the government to make available "adequate funds for the purpose of enabling the Commission to exercise its powers and discharge its functions ..."<sup>170</sup>

Chronic under-funding has been the Commission's justification in the past for not taking a pro-active role in soliciting complaints, while freely admitting its unwillingness to increase its caseload in the absence of increased financial, human and infrastructure resources. For instance in 2006, whereas approved staff cadre was 28, the actual number of staff was only 14. Of this number, the only Language cum Research Officer was employed on a contract basis, supported by only 1 Research Assistant (2 posts being vacant) and no Co-ordinating Assistants (5 posts being vacant).<sup>171</sup>

The Commission has been unwilling to exercise its powers to litigate. It has never referred a complaint to the High Court or the Supreme Court. It has never sought to prosecute a public official citing the high standard of proof required. More recently, it has argued that it is unfair to prosecute public officials when the necessary infrastructure for implementation of the official languages

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<sup>167</sup> Official Languages Commission, *Annual Report 2006* ... p. 9-10.

<sup>168</sup> Official Languages Commission, *Annual Report 2006* ... p. 8.

<sup>169</sup> "Collure hits out at Treasury officials for slashing funds", *Daily Mirror*, January 30 2007.

<sup>170</sup> S. 16, *Official Languages Commission Act*, No. 18 of 1991.

<sup>171</sup> Official Languages Commission, *Annual Report 2006* ... p. 3.

policy is denied to them.<sup>172</sup> The overlap with the Official Languages Department is illustrated by the role of its Commissioner in initiating prosecutions whereas this power is more rationally vested in the Official Languages Commission.

Although the Commission may only receive complaints relating to public institutions, it is empowered to make recommendations on adherence to the official languages policy on the part of private institutions.<sup>173</sup> Regrettably it has never exercised this power although Tamil speakers are routinely discriminated against by private sector establishments through lack of Tamil speaking staff to transact business while signage and employment application forms are in Sinhala and/or English alone and the like.

The Commission's remonstrations on the official languages policy are barely heeded by government and the enforcement of its directives is contingent upon the support of individual ministers and sympathetic senior officials.

Although conceived as an independent statutory institution, it was initially an appendage of the Ministry of Public Administration and since November 2005, of the Ministry of Constitutional Affairs and National Integration. From the perspective of disaffected groups and individuals, it is "another agent of the State rendered impotent by legal provisions ... enacted by the State"<sup>174</sup> questioning its *bona fides* and discouraging recourse to it.

#### **Memorandum of Recommendations for the Proper Implementation of the Policy on Official Languages 2005**

The official launch of the 'Memorandum of Recommendations for the Proper Implementation of the Policy on Official Languages' (hereafter 'Memorandum') by the Official Languages Commission on November 21 2005 was a significant step for the Commission itself being the first public presentation of its views and recommendations since inception in 1991. (It was subsequently re-submitted on April 24 2007 to President Mahinda Rajapakse.)

The Memorandum was prepared in accordance with the statutory authority conferred on the Commission to issue policy papers "on any matter relating to the status and use of either [Sinhala or Tamil] and making recommendations "on any matter relating to Chapter IV of the Constitution".<sup>175</sup>

The Chairman of the Commission, Mr. Raja Collure, slammed the state's failure to implement its own official languages policy as a violation of the fundamental rights of affected citizens; and observed that "faithful

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<sup>172</sup> Official Languages Commission, *Annual Report 2005* ... p. 21.

<sup>173</sup> S. 31, *Official Languages Commission Act*, No. 18 of 1991.

<sup>174</sup> M. C. M. Iqbal, "The Beginning of the Ethnic Problem in Sri Lanka – Violation of Language Rights", *LST Review*, Vol. 11, Issue No. 154 (August 2000), p. 26.

<sup>175</sup> S. 31, *Official Languages Commission Act*, No. 18 of 1991.

implementation of the Official Languages policy is an important aspect touching on the solution of the National Question ...<sup>176</sup>

The Memorandum comprises six parts accompanied by five appendices. Its four planks are a statement of current law and policy; an evaluation of its implementation; a discussion of constraints encountered; and finally the recommendations of the Commission.

The review of the law is a bald restatement of the constitutional provisions on language as modified by the Thirteenth and Sixteenth Amendments. There is neither critical comment on the legal framework or recognition of lacuna nor proposals for reform. As the law on official languages has been rehearsed above, this section is confined to the last three themes of the Memorandum.

The Commission's view is that there are no defects in the constitutional and statutory provisions on official languages and therefore the problem is ascribed entirely to the implementation of the law. Incidentally, this perspective is also shared by many civil society critics of state discrimination against Tamil speakers, who believe the law to be satisfactory and its ineffectiveness to be a matter of provision of "necessary resources and political support".<sup>177</sup> The Commission is forthright in blaming successive governments for non-implementation. However, no reasons for this neglect or unwillingness are indicated, although resource constraints on the government budget are recognised at several points. (It is irresistible to note that such constraints evaporate in matters of military expenditure and the maintenance of government ministers.)

The solution according to the Commission is for the public administrative service throughout the country to be bilingual (Sinhala and Tamil). Therefore the thrust of the recommendations contained in the Memorandum is to achieve Tamil language proficiency among a sufficient number of Sinhala public servants (38 percent) while also accelerating the recruitment of Tamil speaking persons to the public service to a level representative of their proportion of the population as a whole.

The Official Languages Department is rightly regarded as incapable of executing the scale of language training envisaged in the Memorandum and therefore the Commission proposes its conversion into a National Languages Institution with district-level branches across the island.

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<sup>176</sup> Official Languages Commission, *Memorandum of Recommendations for the Proper Implementation of the Policy on the Official Languages*, Rajagiriya: Official Languages Commission 2005, p. i.

<sup>177</sup> M. C. M. Iqbal, "Securing Language Rights – Key Elements in the Peace Process", *LST Review*, Vol. 12, Issue 176 (June 2002), p. 7.

### Compliance

The section on implementation in the Memorandum begins by admitting the “enormous gap between constitutional provisions and their application”.<sup>178</sup> It notes that Tamil speaking citizens have minimal means of communicating in their own language with central government. Even provincial administrations as the tier of government nearer to people than central government have failed miserably in serving residents not proficient in the language of administration, particularly for Tamil speakers outside the North and East, despite Tamil’s official language status.

To improve this dismal situation then President Chandrika Kumaratunga became the first (and to date only) incumbent to exercise Constitutional powers<sup>179</sup> declaring Tamil as an additional language of administration in certain areas outside of the North and East. Through three gazette notifications,<sup>180</sup> 29 divisional secretariats in six districts were designated as bilingual administrative divisions. These include areas where the Tamil speaking population is as high as over 70 percent (Nuwara Eliya and Ambagamuwa in Nuwara Eliya district and Kalpitiya and Puttalam in Puttalam district).

There is no objective criterion by which the decision is reached nor is a minimum threshold of Tamil speakers discernible from the selection that has been made. For example, two divisions in Badulla district with fewer than 15 percent Tamil speakers are designated as bilingual administrations, whereas several divisions where the Tamil speaking population average 30 percent (including Matale, Rattota and Ukuwela in Matale district; Kuliyaipitiya in Kurunegala district; and Lankapura and Welikanda in Polonnaruwa district) are omitted.<sup>181</sup> It may be that political lobbying by Up-Country Tamil and Muslim parties, crucial to parliamentary support for the government, was influential in the selection of divisions. The Official Languages Commission has recommended that bilingual designation be based upon a minimum 20 percent linguistic minority proportion of the local population.<sup>182</sup>

However, even where divisions are officially bilingual, Tamil speakers are no better off than before. As the Commission remarks, “mere direction [on

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<sup>178</sup> Para 2.1, *Memorandum of Recommendations* ..., p. 4.

<sup>179</sup> A. 22 (1), *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 as amended by s. 3, *Sixteenth Amendment to the Constitution*, 1988.

<sup>180</sup> *Government Gazette* Nos. 1105/25 of 12.11.1999; 1171/18 of 14.02.2001 and 1283/3 of 07.04.2003 respectively, cf. *Appendix II, Memorandum of Recommendations* ..., p. 41.

<sup>181</sup> Para 2.3, *Memorandum of Recommendations* ..., p. 4.

<sup>182</sup> Para 2.3, *Memorandum of Recommendations* ..., p. 5. The 1998 language audit conducted by Marga Institute for the Official Languages Commission (but ignored in the OLC’s Memorandum) recommended a lower proportion of 12½ percent, extracts reprinted as Annex V, Foundation for Co-Existence, *Language Discrimination to Language Equality* ..., p. 53.

bilingual administration] ... is useless unless facilities for its implementation are provided.<sup>183</sup> The predicament of Tamil speakers in bilingual divisions is identical to that of Tamil speakers in mono-lingual Sinhala divisions: inability to communicate and transact official business in Tamil; inability to obtain copies or extracts from official records in Tamil; and inability to obtain official translations in Tamil of documents issued to them.<sup>184</sup> The Commission also points to Sinhala speakers in the North and East where Tamil is the language of administration experiencing similar difficulties.

Simultaneous interpretation, particularly into and from Tamil, at ministerial meetings is not available.<sup>185</sup> Tamil speaking members of provincial councils and local authorities outside of the North and East are unable to conduct official business in their own language, nor offered simultaneous interpretation, with the exception of the Western Provincial Council and Colombo Municipal Council. Minutes of meetings and proceedings are generally unavailable in both national and official languages.<sup>186</sup> Whereas provincial councils and local authorities are entitled to receive communications and transact business in their language of administration, communications are in Sinhala and to a lesser extent in English.<sup>187</sup>

Provincial councils and local authorities continue to publish orders, proclamations, rules, by-laws and regulation as well as circulars and forms solely in the language of administration and without translation into English as required. While recognising that there is no legal compulsion for publication in both official languages, the Commission recommends such measures as “preferable”. The Commission points particularly to non-compliance in this regard by bilingual divisional secretariats. Provincial councils in general and some central government departments have failed to display signage in both official languages and English. Local authorities have persistently failed to display street signs in all three languages despite reminder by the Commission in 2003.<sup>188</sup>

Poor compliance with the provision on use of official languages in the courts is blamed on the scarcity of competent Sinhala to Tamil and Tamil to Sinhala interpreters and translators as well as Sinhala or Tamil to English and English to Sinhala or Tamil. The translation of documents including court records where the language of the court differs is subject to enormous delay and difficulty. The Commission recommends that “a fair number” of judges at all levels of the

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<sup>183</sup> Para 2.5, *Memorandum of Recommendations* ..., p. 5.

<sup>184</sup> Para 2.6, *Memorandum of Recommendations* ..., p. 5.

<sup>185</sup> Para 2.7, *Memorandum of Recommendations* ..., p. 5.

<sup>186</sup> Para 2.8, *Memorandum of Recommendations* ..., pp. 5-6.

<sup>187</sup> Para 2.9, *Memorandum of Recommendations* ..., p. 6.

<sup>188</sup> Para 2.10, *Memorandum of Recommendations* ..., p. 6.

judiciary be conversant in all three languages to reduce their reliance on interpreters and translators.<sup>189</sup>

The Commission highlights in the Memorandum a letter by then President Chandrika Bandaranaike Kumaratunga on June 30 1997 to her cabinet of ministers and senior public officials regarding non-compliance with the official languages policy with prescriptions on implementation within two months.

Six specific directions were issued and the relevant cabinet minister charged with their personal supervision and requested to report on action taken within one month.<sup>190</sup>

- All regulations, legal provisions and information to be available in all three languages;
- All forms to be printed in all three languages;
- All letters from the public to be replied in the language in which it is received or at least with an English translation.
- All name-boards of public institutions and other signage to be displayed in all three languages;
- All vacancies for Sinhala to Tamil translators and Tamil typists to be filled and temporary staff recruited for this purpose where permanent cadre do not exist;
- A senior official in each institution to be charged with responsibility for implementation of the official languages policy.

Ten years on, at time of writing, these directives remain ignored. Even these instructions are as the Commission itself notes, "... of a minimal nature as far as the implementation of the language policy is concerned".<sup>191</sup>

### Constraints

According to the Memorandum, the root of difficulties in non-implementation of the official languages policy is asserted to be in the public sector and its incapacity to offer bilingual service to citizens. The Commission estimates that Tamil speakers constitute 8.31 percent of all public servants whereas they comprise 26 percent of the population.<sup>192</sup>

The table below is illustrative of the distribution of Tamil speakers across the state sector such that the largest single proportion appears to be employed in provincial councils. It also highlights ethnic disparities within the Tamil linguistic minority as all three minority communities are under-represented in relation to their representation in the general population. Muslims are poorly represented, while Up-Country Tamils are worst represented and one suspects

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<sup>189</sup> Para 2.11, *Memorandum of Recommendations ...*, p. 6-7.

<sup>190</sup> Para 2.13, *Memorandum of Recommendations ...*, p. 7, and in full as Appendix III.

<sup>191</sup> Para 2.14, *Memorandum of Recommendations ...*, p. 8.

<sup>192</sup> Para 3.4, *Memorandum of Recommendations ...* p. 10.

concentrated in bottom-end jobs. Unfortunately these statistics are not disaggregated by province or district and gender to arrive at a fuller picture.

**TABLE 4: TAMIL SPEAKING PUBLIC SERVANTS BY SECTOR AND ETHNICITY<sup>193</sup>**

SECTOR	TOTAL NUMBER OF EMPLOYEES	MUSLIMS	SRI LANKA TAMILS	TAMILS OF RECENT INDIAN ORIGIN	TAMIL SPEAKING EMPLOYEES (TOTAL)
State	259,734	3.09%	5.06%	0.25%	8.40%
Provincial Council	292,072	5.75%	12.3%	1.76%	19.81%
Semi-government	247,845	3.20%	5.48%	0.37%	9%

Of the total number of public servants, of which there are varying estimates across official statistical indices, the Commission believes that around 40 percent would require proficiency in a second official language to perform their duties consistently with the official languages law.<sup>194</sup> The methodology and reasoning behind the computation of this figure is not unveiled. In the long term the Commission envisions a bilingual (Sinhala and Tamil) if not trilingual (official languages and English) public service.

Considering the scale of the undertaking to achieve bilingual proficiency – over 90 percent of public employees are mono-lingual Sinhala speakers – the Commission suggests a calibrated approach such that the degree of proficiency required varies according to tasks and roles, and that public servants with greater contact with minority language users be the initial focus for language training. Thus three categories of bilingual proficiency are identified: basic conversational skills with minimal reading and writing ability particularly for government officers directly dealing with public enquiries as well as the police and health services; higher level of conversation and ability to correspond (reading and writing skills); and finally, sufficient ability to read, analyse and draft reports in that second official language.<sup>195</sup>

The Commission observes that language training programmes are conducted by a number of public institutions principally the Official Languages

<sup>193</sup> Department of Census and Statistics (2002 provisional estimate) as cited in the *Memorandum of Recommendations* ... p. 10.

<sup>194</sup> Para 3.2, *Memorandum of Recommendations* ... p. 9.

<sup>195</sup> Para 3.5, *Memorandum of Recommendations* ... pp. 10-11.

Department, Sri Lanka Institute of Development Administration and Sri Lanka Foundation Institute.

The Official Languages Department began language training in 1992 and up to 2003 had trained 7290 public servants in elementary Tamil and 527 in higher Tamil as well as 1183 in elementary Sinhala and 95 in higher Sinhala.<sup>196</sup> This is under one percent of the total number of government officers and many of those trained are likely to no longer be in public service. Therefore the Memorandum proposes an accelerated programme, aiming to train at least one-third of all public servants in each of the above three categories within a period of five years.

As of June 2005 there were only 166 translators in all-island government service. Of this number, 108 could translate from Sinhala to English; 44 from Sinhala to Tamil and 14 from Tamil to English. Whereas 400 posts of ‘apprentice translator’ were created in 2000, only 240 persons accepted appointments and of this number only 150 remain.<sup>197</sup> Thus at both junior and senior levels there is a serious dearth of skilled personnel. Here too, the Memorandum proposes an accelerated training programme.

The scarcity of competent interpreters is even greater than that of translators and exacerbated by the lack of technical equipment even at ministry level. The Memorandum proposes recruitment of university graduates, qualified in one of the three languages, to be trained as interpreters for a further two years.<sup>198</sup> It emphasises the government’s responsibility to provide the necessary equipment for transcription and simultaneous interpretation. However, the Memorandum does not propose any specific targets or timelines for training and recruitment of interpreters and translators.

English, as the Memorandum notes, has declined in use among public servants who are now overwhelmingly educated in Sinhala or Tamil medium and are not comfortable with the use of English in conversation or written communication. Proficiency in English is recommended, particularly for higher and executive grades, as a means of improving their quality and enabling them to access “the outside world ... to break with the insular character embedded in them.”<sup>199</sup> Between 1992 and 2003 the Official Languages Department has trained 9114 persons in elementary English and 909 persons in higher English.<sup>200</sup>

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<sup>196</sup> Para 3.9, *Memorandum of Recommendations* ... p. 12. This figure is more credible than the government’s claim in 2000 that “[a]nnually about 10,000 public servants undergo language training provided by the [Official Languages] Department”, Para 32, *Ninth Periodic Report of Sri Lanka to the Committee on the Elimination of Racial Discrimination*, CERD/C/357/Add.3, 20 November 2000, p. 10.

<sup>197</sup> Para 3.13, *Memorandum of Recommendations* ... p. 13.

<sup>198</sup> Para 3.18, *Memorandum of Recommendations* ... p. 14.

<sup>199</sup> Para 3.20, *Memorandum of Recommendations* ... p. 14.

<sup>200</sup> Para 3.25, *Memorandum of Recommendations* ... p. 15.

It is noted that the Official Languages Department had discontinued its early role in the production of glossaries of technical terms for use by public servants and that the existing dictionaries and phrasebooks were hopelessly out of date through new developments in science, technology and communication in the intervening decades. The Memorandum determines, without explanation, that the OLD is not the appropriate institution for compilation of glossaries in all fields of knowledge but ought instead to be confined to those for public administration and the law alone.<sup>201</sup>

The Commission recognises that public duty and national interest are inadequate motivators of public servants when it comes to bilingual language training.<sup>202</sup> Therefore it proposes a scheme of material incentives and benefits including additional allowances and improved promotion prospects. The present range of cash incentives<sup>203</sup> ranging from Rs150 to Rs500 a month plus a single lump sum payment (dependent on level of qualification) is of risible value. The Commission has urged its enhancement as an “investment towards promoting national unity and building national integration which are pre-requisites for economic development”.<sup>204</sup>

### Recommendations

The Commission envisages the implementation of the official languages policy over 15 years and in three stages of five years each. One-third of public servants would be bilingual at the end of the first phase; two-thirds by the end of the second; and by the end of the third stage, the entire public administrative service would be bilingual.

It is observed that every five years some 20 percent of all public servants vacate their posts through retirement, resignation, illness and the like and therefore at the end of the envisaged fifteen years only 40 percent of the original cadre will remain. Under these circumstances, the Commission believes it to be imperative that the recruitment of future public servants be on the basis of existing proficiency in the second official language or expectation that such proficiency will be acquired once in employment and within a specified period of time.<sup>205</sup>

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<sup>201</sup> Para 3.28 and 3.29, *Memorandum of Recommendations* ... p. 16.

<sup>202</sup> For a candid appraisal of the shortcomings of language training programmes for public officers, see the reflections of the Commissioner of the Official Languages Department in Senarath Gunasena, ‘Language Policy: An Overview of the Sri Lankan Experience’ in Amal Jayawardane (ed.), *Perspectives on National Integration in Sri Lanka*, Colombo: National Integration Programme Unit 2006, p. 250.

<sup>203</sup> Cf. *Public Administration Circular 28/98* (30 December 1998), reproduced as Appendix V in the *Memorandum of Recommendations* ... pp. 18-25.

<sup>204</sup> Para 3.37, *Memorandum of Recommendations* ... p. 17.

<sup>205</sup> Para 4.4, *Memorandum of Recommendations* ... p. 18.

Within the first stage of implementation, the Commission proposes an increase in the intake of Tamil speaking public officers so as to satisfactorily reflect their number in the population.<sup>206</sup> Further, it recommends that both Sinhala and Tamil be compulsory subjects in the school curriculum<sup>207</sup> to inculcate bilingualism among young people; at present students do study Tamil or Sinhala as a second language but the standard is low and a pass is not required for academic promotion.

The Commission recommends restructuring the Official Languages Department so as to perform the role of primary institution for accelerated language training of public officers. It recommends that the Department henceforth have four main tasks: mainly, language training in Sinhala, Tamil and English; training in languages of smaller linguistic minorities such as Malay and Malayalam, and languages useful for employment inside and outside of Sri Lanka; official translations; and compilation of glossaries directly related to law and public administration.<sup>208</sup>

It is proposed that the Department become a statutory institution enjoying a degree of autonomy from government and be recast as a national languages institution.<sup>209</sup> This institution is suggested to be appropriate for the production of glossaries, dictionaries and standardisation of terminology in different branches of knowledge. The Memorandum observes that the national languages require constant updating of their vocabularies to keep pace with new developments.

The Memorandum notes that government has hitherto concentrated on the translation of documents from English into the official languages and vice-versa but not between the official languages. The Commission proposes that universities assume the training of translators and interpreters for the public sector, with the aim of graduating at least 200 translators and 200 interpreters each year, prioritising translation and interpretation between official languages. In addition to diploma and postgraduate courses, it is recommended that degree level courses be initiated emphasising vocational rather than academic skills.<sup>210</sup>

Training in English (the “link language”) should be prioritised among public officers who require functional competence in English in departments of Foreign Affairs, Trade and Commerce, Industry and Technology, Health Services, Customs, Emigration and Immigration among others; followed by those in the higher managerial, administrative and executive echelons in all government departments; professionals on a needs basis as determined by their respective

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<sup>206</sup> Para (f), First Schedule, *Memorandum of Recommendations* ... p. 26

<sup>207</sup> Para (k), First Schedule, *Memorandum of Recommendations* ... p. 27.

<sup>208</sup> Para 4.15, *Memorandum of Recommendations* ... p. 21.

<sup>209</sup> Para 4.17, *Memorandum of Recommendations* ... p. 22.

<sup>210</sup> Para 4.19, *Memorandum of Recommendations* ... p. 22.

Ministry; and finally all other government employees with an interest in attaining fluency in English.<sup>211</sup>

The Commission had initially proposed the abolition of the present Translators Service and its replacement by two separate institutions: the Government Translators Service and Government Interpreters Service.<sup>212</sup> It recognised that their staff should receive remuneration appropriate to their qualifications, training and nature of work, presumably an admission of low pay and status contributing to under-recruitment of cadre and high turnover.

Subsequently, in a 2006 Memorandum of Recommendations solely on this matter, the Commission revised its view and suggested the creation of a single 'National Translation Centre' modelled on the Canadian Bureau of Translations for provision of both translation and interpretation. Additional functions are to include the compilation of glossaries including development of new terminologies and the development of a database of useful words and terms for translations. The Centre is initially mooted to be a unit within the Official Languages Department and subsequently a separate institution.<sup>213</sup>

Financial incentives for public servants who acquire proficiency in the second official language and/or link language are recommended for increase – on a sliding scale of Rs500 to Rs1000 to Rs2000 per month – depending on level of qualification. It is also suggested that language proficiency in more than one official language become a criterion for promotion including through creation of special grades for public employees with higher and advanced levels of proficiency in both the second official language and the link language.<sup>214</sup>

Following from the Commission's recommendation that any divisional secretariat with a minimum linguistic proportion of 20 percent be deemed to be bilingual such that both Sinhala and Tamil are recognised as languages of administration, some 43 divisional secretariats in Ampara, Anuradhapura, Colombo, Gampaha, Kandy, Kegalle, Kurunegala, Matale, Matara, Polonnaruwa, Ratnapura, Trincomalee and Vavuniya districts are identified for action by the Executive in this regard.<sup>215</sup>

Although overall responsibility for ensuring compliance with the official languages law in Chapter IV of the Constitution rests with the Official Languages Commission as stipulated in the 1991 Official Languages Commission Act, the Commission recommends that supervision and monitoring of the implementation

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<sup>211</sup> Para 3.21 & 3.24 and 4.20, *Memorandum of Recommendations* ... p. 15 and pp. 22-23 respectively.

<sup>212</sup> Para 4.25, *Memorandum of Recommendations* ... p. 25.

<sup>213</sup> *Memorandum of Recommendations of the Official Languages Commission – for the Implementation of the Official Languages Policy – 2006*, reprinted in Official Languages Commission, *Annual Report 2006* ... [no page numbers].

<sup>214</sup> Para 4.26 & 4.27, *Memorandum of Recommendations* ... p. 25.

<sup>215</sup> Para 4.24, *Memorandum of Recommendations* ... pp. 23-24.

of the languages policy and the recommendations contained in the Memorandum be devolved to relevant subject ministries such as Public Administration, Home Affairs, Provincial Councils and Local Government; Police; Health Service, and Justice among others. It further recommends that these Ministries receive bi-annual and annual reports on implementation of the languages policy from departments, services and institutions within their portfolio.<sup>216</sup>

### Implementation

The government, undoubtedly through the exertions of Minister of Constitutional Affairs and National Integration and Communist Party leader, D. E. W. Gunasekera, has acted on some of the recommendations in the Official Languages Commission 2005 Memorandum.

As of July 1 2007 all officers recruited to the public and provincial public service after that date must acquire proficiency in the second official language within five years of entering into service.<sup>217</sup> Three levels of proficiency are identified as required by the functions of the post. Increments of officers who do not attain the level of proficiency stipulated will be deferred until satisfaction of this requirement.

Financial incentives for public officers who acquire or demonstrate language proficiency in a second official language were also raised with effect from February 1 2007.<sup>218</sup> Henceforth, one lump sum payment of either Rs15 000 or Rs20 000 or Rs25 000 will be paid dependent on level of proficiency gained in addition to a monthly allowance equivalent to an increment. The training may be conducted by the Official Languages Department (OLD) or other state or private or non-governmental institution but based upon syllabi prepared by the OLD and the examination will also be conducted by the OLD. The incentives for learning of English are not raised to the level of the new circular but remain as provided in the previous 1998 circular (discussed above).

In November 2006, cabinet approval was received for establishment of the National Institute of Language Education and Training (NILET). The NILET has the functions of *inter alia*: conducting language training in Sinhala, Tamil and English to produce competent instructors in those languages; conducting research and studies on language training; awarding certificates and diplomas to successful candidates of training and education courses provided by the Institute; creating a documentation centre on languages; conducting specifically designed language courses for interpreters, translators and stenographers; undertaking, assisting and promoting linguistic research in Sinhala, Tamil and English and other languages

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<sup>216</sup> Para 4.28 - 4.30, *Memorandum of Recommendations* ... p. 25.

<sup>217</sup> *Public Administration Circular* 07/2007, E/2/3/2/70, 28 May 2007.

<sup>218</sup> *Public Administration Circular* 03/2007, E/9/6/91, 09 February 2007.

and, when necessary, recommending changes to the vocabularies of the official and link languages.<sup>219</sup>

The administration of the Institute is vested in a Board of Management consisting of nine members appointed by the Minister in charge of the subject of National Integration.<sup>220</sup> Four of the members serve on an ex-officio basis: Secretary to the Ministry of Education; Secretary to the Ministry of Public Administration; Secretary to the Ministry of Finance and Secretary to the Ministry of Constitutional Affairs and National Integration and five members are to be selected among persons with experience and capacity in languages, literature, education and management. The Chairman of the Board is nominated by the Minister from among their number. The term of office is three years and may be renewed indefinitely barring death, resignation or removal.<sup>221</sup> The quorum for any meeting of the Board is three.<sup>222</sup>

The Minister is authorised to offer general or special directions in writing to the Board as to the exercise and discharge of its functions which the latter is duty bound to implement.<sup>223</sup> The Board is obliged to publish an annual Report on its activities at the end of each financial year.<sup>224</sup> This report is to be submitted to Parliament following approval from the Minister.

The chief executive officer of the Institute is the Director-General, to be selected among eminent management professionals, and appointed by the Minister in consultation with the Board of Management.<sup>225</sup> The Director-General is entitled to seat with voice but no vote in meetings of the Board of Management.

An Academic Board is created responsible to the Board of Management and with the powers of: provision of advice relating to academic activities of the NILET; conducting examinations and award of diplomas and certificates; submission of recommendations and reports to the Institute on academic matters; recommendations on admissions requirement for students; rule-making on academic programmes of the Institutes; recommendations for appointment of examiners; recommendations relating to appointment, dismissal, disciplining and terms of employment of academic staff; recommendations on award of scholarships, bursaries, prizes and so on as well as of persons eligible for the

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<sup>219</sup> S. 5, (a) – (c) and (e) – (g) respectively, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>220</sup> S. 3, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>221</sup> S. 2, Schedule, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>222</sup> S. 8 (2), Schedule, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>223</sup> S. 17, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>224</sup> S. 23, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>225</sup> S. 9, *National Institute of Language Education and Training Act*, No. 26 of 2007.

same; appointment of committees comprising representatives of the Academic Board; and rule-making on meetings and procedures of the Academic Board.<sup>226</sup>

An Advisory Council is also created to provide advice to the Institute on its effectiveness and as a forum for discussion of issues relating to the Institute and its development. The Council shall be appointed by the Minister in charge of the subject of National Integration and consist of five eminent persons in the field of languages, literature and education.<sup>227</sup>

The National Institute of Language Education and Training will be based at Agalawatte and had not begun functioning at time of writing. Although the Official Languages Commission had recommended the disbandment of the Official Languages Department (OLD), it now appears that the OLD will continue to exist independently of the new Institute.

### **Critique of the OLC Memorandum**

The Memorandum of Recommendations is inspired by good intentions: to achieve through progressive measures the implementation of the official languages policy within public administration. Nevertheless some questions persist.

Will material (monetary, confirmation of employment, promotion) incentives to encourage bilingualism among public officers be sufficient to encourage uptake of language training courses in the absence of political leadership by government or moral sanction by society? Will mid-career officers make the effort? Will there be a backlash from public officers causing government to back-pedal? Does the unwillingness of the Official Languages Commission to countenance prosecution of public officers confirm them in their impunity for either passive or wilful non-implementation of the official languages law? Will government reverse decades of discrimination against Tamil-speakers in the public service by actively recruiting them, when it is politically more advantageous to reward their own (Sinhala) supporters?

The larger critique is that the Memorandum is flawed by its bureaucratic-administrative perspective on language policy. The avowed purpose of the Memorandum is the reform of the administrative service for the purpose of better serving linguistic minorities through implementation of the official languages law. However, the Official Languages Commission has eschewed altogether a rights-based approach to the issue of ... language rights!

Using a rights-based-approach, the Commission would have begun from the subject position of Tamil speakers themselves. Instead of presenting Tamil speakers merely as beneficiaries or users of public services with needs to be

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<sup>226</sup> S. 8, *National Institute of Language Education and Training Act*, No. 26 of 2007.

<sup>227</sup> S. 15, *National Institute of Language Education and Training Act*, No. 26 of 2007.

serviced, minorities are empowered where they are viewed and view themselves as rights-holders with claims on state and society.

These claims are founded upon universal human rights, some of which are in the fundamental rights chapter of the Constitution and others that are contained in international human rights instruments to which Sri Lanka has acceded or is obliged under customary international law and which are the inalienable right of all humans.

This vocabulary of rights and duties is accompanied by concepts of accountability, culpability and responsibility. These allow us to identify the duties that are imposed on different actors and institutions; the contribution of their actions and omissions to rights violations; and the assignation of responsibility therefore creating remedies and alerting us to the need for and nature of processes and institutions to secure them.

Instead of only demanding more resources and being indifferent to their distribution, the rights based approach would alert us to those who are most vulnerable, whose needs are ignored or suppressed by dominant groups within their own communities, and direct the substance and allocation of resources accordingly.

A human rights approach to the issue of language policy would have centred on informing linguistic minorities of their rights and educating public officers, companies, non-governmental organisations and social associations of their duties. It would have identified existing institutions and mechanisms for accountability and redress as well as areas for reform and innovation. It would have balanced the obligations imposed on the state with resource constraints, without allowing the latter to defer the satisfaction of the former indefinitely.

### **Conclusion**

In contrast to the passions unleashed in the 'Sinhala Only' movement and in its defence in subsequent decades, its reversal in law through concession of equality of status to Tamil has been received with calmness on the part of the Sinhala polity. There is currently no political party or social movement that has rejected this element in the Thirteenth Amendment.

Perhaps it is the very success of the 'Sinhala Only' policy in communalising the state, such that the Sinhala community is over-represented in public sector employment and the Sinhala language is the *lingua franca* of administration and politics, that has reduced earlier insecurities. Perhaps too, the armed rebellion of Tamil youth had the salutary effect on the Southern polity of conceding equality of status to dilute arguments and support for Tamil separatism.

The changing political economy of Sri Lanka post-liberalisation in 1977 certainly created countervailing pressures to 'Sinhala Only'. State control of the economy has been reduced and with it the prestige of monolingual public sector employment. The private sector and skilled migration abroad now command

greater interest and it is fluency in English and not Sinhala that is preferred. Once disparaged as the language of the coloniser and the ‘brown sahibs’, and still the language of social privilege,<sup>228</sup> English is ascendant across ethnicity and class.

Still, it is difficult to see how decades of Sinhala majoritarianism may be reversed through policy papers and government circulars and even legal reform and constitutional change. The application of the official languages policy offering linguistic equality to Tamil speakers is a chimera in the absence of radical reform (de-communalisation) of the state and one constant amidst instability in Sri Lanka is the “reform-resistant”<sup>229</sup> character of the state.

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<sup>228</sup> See the thoughtful reflections in Darini Rajasingham-Senanayake’s, “The Sinhala *Kaduma*: Language as a Double Edged Sword and Ethnic Conflict”, *Pravada*, Vol. 5, No. 2 (1997), pp. 15-19.

<sup>229</sup> I am borrowing here from Jayadeva Uyangoda’s, ‘A State of Desire? Some Reflections on the Unreformability of Sri Lanka’s Post-Colonial Polity’ in S. T. Hettige and M. Mayer (eds.), *Sri Lanka at Crossroads: Dilemmas and Prospects after 50 Years of Independence*, New Delhi: Macmillan India 2000.

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***Ceylon (Constitution) Order-in-Council of 1946****[Order made on 15<sup>th</sup> day of May, 1946]*

- 29 (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.
- (2) No such law shall –
- (a) prohibit or restrict the free exercise of any religion; or
  - (b) make persons or any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or
  - (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or
  - (d) alter the constitution of any religious body except with the consent of the governing authority of that body:

Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.

- (3) Any law made in contravention of subsection (2) of this section shall, to the extent of such contravention, be void.
- (4) In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island:

Provided that no Bill for the amendment or repeal of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of the House (including those not present).

Every certificate of the Speaker under this subsection shall be conclusive for all purposes and shall not be questioned in any court of law.

***Official Language Act, No 33 of 1956***

*An Act to prescribe the Sinhala Language as the One Official Language of Ceylon and to enable certain transitory provisions to be made.*

*(Date of Assent: July 7, 1956)*

Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows: –

## Short Title

1. This Act may be cited as the Official Language Act, No. 33 of 1956. Sinhala Language to be the one official language
2. The Sinhala language shall be the one official language of Ceylon:

Provided that where the Minister considers it impracticable to commence the use of only the Sinhala language for any official purpose immediately on the coming into force of this Act, the languages hitherto used for that purpose may be continued to be so used until the necessary change is effected as early as possible before the expiry of the thirty-first of December, 1960, and, if such change cannot be effected by administrative order, regulations may be made under this Act to effect such change.

## Regulations

- 3
  - (1) The Minister may make regulations in respect of all matters for which regulations are authorized by this Act to be made and generally for the purpose of giving effect to the principles and provisions of this Act.
  - (2) No regulation made under sub-section (1) shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

***Bandaranaike-Chelvanayakam Pact***  
***July 26, 1957***

*Text of Joint Statements by Prime Minister SWRD Bandaranaike and Representatives of the Federal Party led by Mr SJV Chelvanayakam*

Statement on the general principles of the Agreement between the Prime Minister and the Federal Party on July 26:

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

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

The Prime Minister stated that from the point of view of the government he was not in a position to discuss the setting up of a federal constitution or regional autonomy or any step which would abrogate the Official Language Act. The question then arose whether it was possible to explore the possibility of an adjustment without the Federal Party abandoning or surrendering any of its fundamental principles and objectives.

At this stage the Prime Minister suggested an examination of the Government's draft Regional Councils Bill to see whether provisions can be made under it to meet reasonably some of the matters in this regard which the Federal Party had in view.

The agreements so reached are embodied in a separate document.

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

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

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

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

The Prime Minister indicated that this problem would receive early consideration.

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

***Tamil Language (Special Provisions) Act, No. 28 of 1958***

*An Act to make provision for the use of the Tamil language and to provide for matters connected therewith or incidental thereto.  
(Date of Assent: September 4, 1958)*

Whereas the Sinhala language has been declared by the Official Language Act, No 33 of 1956, to be the one official language of Ceylon:

And whereas it is expedient to make provision for the use of the Tamil language without conflicting with the provisions of the aforesaid Act:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:

Short Title

1. This act may be cited as the Tamil Language (Special Provisions) Act, No. 28 of 1958.

Tamil language as a medium of instruction.

- 2 (1) A Tamil pupil in a Government school or an Assisted school shall be entitled to be instructed through the medium of the Tamil language in accordance with such regulations under the Education Ordinance, No. 31 of 1939, relating to the medium of instruction as are in force or may hereafter be brought into force.
- (2) When the Sinhala language is made a medium of instruction in the University of Ceylon, the Tamil language shall, in accordance with the provisions of the Ceylon University Ordinance, No. 20 of 1942, and of the Statutes, Acts and Regulations made thereunder, be made a medium of instruction in such University for students who prior to their admission to such University have been educated through the medium of the Tamil Language.

Tamil Language as a medium of examination for admission to the Public Service.

- (3) A person educated through the medium of the Tamil Language shall be entitled to be examined through such medium at any examination for the admission of

persons to the Public Service, subject to the condition that he shall, according as regulations made under this act on that behalf may require, --

- (a) have a sufficient knowledge of the official language of Ceylon, or
- (b) acquire such knowledge within a specified time after admission to the Public Service:

Provided that, when the Government is satisfied that there are sufficient facilities for the teaching of the Sinhala language in schools in which the Tamil language is the medium of instruction and that the annulment of clause (b) of the preceding provisions of this section will not cause undue hardship, provision maybe made by regulation, made under this Act that such clause shall cease to be in force.

#### Use of Tamil language for correspondence

- (4) Correspondence between persons, other than officials in their official capacity, educated through the medium of the Tamil language and any official in his official capacity or between any local authority in the Northern or Eastern Province and any official in his official capacity may, as prescribed, be in the Tamil language.

#### Use of the Tamil language for prescribed administrative purposes in the Northern and Eastern Provinces.

- (5) In the Northern and Eastern Provinces the Tamil language may be used for prescribed administrative purposes, in addition to the purposes for which that language may be used in accordance with other provisions of this Act, without prejudice to the use of the official language of Ceylon in respect of those prescribed administrative purposes.

#### Regulations

- (6) (1) The Minister may make regulations to give effect to the principles and provisions of this Act.
- (2) No regulation made under sub-section (1) shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

This Act to be subject to measures adopted or to be adopted under the proviso to section 2 of Act No. 33 of 1956.

- (7) This Act shall have effect subject to such measures as may have been or may be adopted under the proviso to section 2 of the Official Language Act, No. 33, of 1956, during the period ending on the thirty-first day of December 1960.

## Interpretation

- (8) In this Act unless the context otherwise requires “Assisted school” and “Government school” shall have the same meaning as in the Education Ordinance, No. 31 of 1939:

“local authority” means any Municipal Council, Urban Council, Town Council or Village Committee;

“official” means the Governor General, or any Minister, Parliamentary Secretary or officer of the Public Service; and “prescribed” means prescribed by regulation made under this Act.

***Senanayake - Chelvanayakam Pact***  
***March 24, 1965***

*An Agreement reached between Mr Dudley Senanayake (on behalf of the United National Party) and Mr SJV Chelvanayakam (on behalf of the Federal Party) in March 1965*

Mr Dudley Senanayake and Mr SJV Chelvanayakam met on 24.3.1965 and discussed matters relating to some problems over which the Tamil-speaking people were concerned, and Mr Senanayake agreed that action on the following lines would be taken by him to ensure a stable Government:

1. Action will be taken early under the Tamil Language Special Provisions Act to make provision for the use of Tamil as the language of administration and of record in the Northern and Eastern Provinces.  
Mr. Senanayake also explained that it was the policy of the Party that a Tamil-speaking person should be entitled to transact business in Tamil throughout the Island.
2. Mr Senanayake stated that it was the policy of his party to amend the Language of the Courts Act to provide for legal proceedings in the Northern and Eastern Provinces to be conducted and recorded in Tamil.
3. Action will be taken to establish District Councils in Ceylon vested with powers over subjects to be mutually agreed between the two leaders.  
It was agreed, however, that the Government should have power under the law to give directions to such Councils in the national interest.
4. The Land Development Ordinance will be amended to provide that citizens of Ceylon be entitled to allotment of land under the Ordinance.  
Mr Senanayake further agreed that in the granting of land under the colonisation schemes, the following priorities be observed in the Northern and Eastern Provinces:
  - (a) Land in the Northern and Eastern Provinces should in the first instance be granted to landless persons in the District.
  - (b) Secondly – to Tamil speaking persons resident in the Northern and Eastern Provinces, and
  - (c) Thirdly, to other citizens in Ceylon, preference being given to Tamil citizens in the rest of the Island.

*Tamil Language (Special Provisions) Regulations of 1966*

1. These regulations may be cited as the Tamil Language (Special Provisions) Regulations, 1966.
2. Without prejudice to the operation of the Official Language Act No. 33 of 1956, which declared the Sinhala Language to be the official language of Ceylon the Tamil Language will be used:
  - (a) In the Northern and Eastern Provinces for the transaction of all the Government and public business and the maintenance of public records whether such business is conducted in or by a department or institution of Government, public corporation or a statutory institution; and
  - (b) for all correspondence between persons other than officials in their official capacity, educated through the medium of Tamil language and any official in his official capacity, or between any local authority in the Northern and Eastern Provinces which conducts its business in the Tamil Language and any official in his official capacity.
3. For the purpose of giving full force and effect to the principles and provisions of the Tamil Language (Special Provisions) Act No. 28 of 1958, and these regulations all Ordinances and Acts, and all Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law, the Government Gazette and all other official publications, circulars and forms issued used by the Government, public corporations or statutory institutions, shall be translated and published in the Tamil language also.

***Constitution of Sri Lanka (Ceylon) of 1972***

*[Adopted and Enacted on the 22<sup>nd</sup> day of May, 1972]*

**Chapter III**

**LANGUAGE**

**Official Language**

7. The Official Language of Sri Lanka shall be Sinhala as provided by the Official Language Act, No. 33 of 1956.
8. (1) The use of the Tamil language shall be in accordance with the Tamil Language (Special Provisions) Act, of No. 28 of 1958.
- (2) Any regulation for the use of the Tamil language made under the Tamil Languages (Special Provisions) Act, No. 28 of 1958 and in force immediately before the commencement of the Constitution shall not in any manner be interpreted as being a provision of the Constitution but shall be deemed to be subordinate legislation continuing in force as existing written law under the provisions of section 12.

**Language of Legislation**

9. (1) All laws shall be enacted or made in Sinhala.
- (2) There shall be a Tamil translation of every law so enacted or made.
10. (1) All written laws, including subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the *Gazette* in Sinhala and Tamil translation as expeditiously as possible under the authority of the Minister in charge of the subject of Justice.
- (2) The laws so published shall be laid before the National State Assembly at the meeting next following the date of such publication.
- (3) Unless the National State Assembly otherwise provides, the law published in Sinhala under the provisions of subsection (1) of this section shall as from the date of such publication, be deemed to be the law and supersede the corresponding law in English.

### Language of the Courts

11. (1) The language of the courts and tribunals empowered by law to administer justice and of courts, tribunals and other institutions established under the Industrial Disputes Act and the Conciliation Boards established under the Conciliation Boards Act No. 10 of 1958, shall be Sinhala throughout Sri Lanka and accordingly their records, including pleadings, proceedings, judgments, orders and records of all judicial and ministerial acts, shall be in Sinhala:

Provided that the National State Assembly may, by or under its law, provide otherwise in the case of institutions exercising original jurisdiction in the Northern and Eastern Provinces and also of courts, tribunals and other institutions established under the Industrial Disputes Act and of the Conciliation Boards established under the Conciliation Boards Act, No. 10 of 1958, in the Northern and Eastern Provinces.

- (2) The provisions of subsection (1) of this section shall apply to any institution which under any future law shall have a jurisdiction or function corresponding or substantially similar to the jurisdiction or function of any institution referred to in that subsection.
- (3) In the Northern and Eastern Provinces and in proceeding before the Quazis under the Muslim Marriage and Divorce Act, parties, applicants and persons legally entitled to represent such parties or applicants before any court, tribunal or other institution referred to in subsection (1) or subsection (2) of this section may -
- (a) Submit their pleadings, applications, motions and petitions in Tamil; and
  - (b) Participate in the proceedings in Tamil.

In all such cases a Sinhala translation shall be caused to be made by such court, tribunal or other institution referred to in subsection (1) or subsection (2) of this section for the purposes of the record.

- (4) Every party, applicant, judge, juryman or member of a tribunal not conversant with the language used in a court, tribunal or other institution referred to in subsection (1) or subsection (2) of this section, shall have the right to interpretation, and to translation into Sinhala or Tamil, provided by the State to enable him to understand and participate in the proceedings before the court, tribunal or other

institution referred to in subsection (1) or subsection (2) of this section.

Such person shall also have the right to obtain, in Sinhala or Tamil, any such part of the record as he may be entitled to obtain according to law.

- (5) Any person legally entitled to represent a party or an applicant may participate in the proceedings in any court, tribunal or other institution referred to in subsection (1) or subsection (2) of this section, in Sinhala or Tamil, and shall be entitled for that purpose, to interpretation, in Sinhala or Tamil provided by the State.
- (6) Subject to the provisions contained in the preceding subsections of this section, the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers, issue Orders, Directions and Instructions permitting the use of a language other than Sinhala or Tamil by a judge or other state officer administering justice or by a pleader appearing before a court, tribunal or other institution referred to in subsection (1) or subsection (2) of this section. Every judge and other state officer administering justice shall be bound to implement the Orders, Directions and Instructions issued under this subsection.

*Constitution of the Democratic Socialist Republic of Sri Lanka of 1978**[Certified on August 31 1978]***Chapter III****FUNDAMENTAL RIGHTS**

12. (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) No citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds:

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public or any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:

Provided further that it shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

- (3) No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.
14. (1) Every citizen is entitled to—
- (f) the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language.

## Chapter IV

### LANGUAGE

18. The Official Language of Sri Lanka shall be Sinhala.
19. The National Languages of Sri Lanka shall be Sinhala and Tamil
20. A Member of Parliament or a member of a local authority shall be entitled to perform his duties and discharge his functions in Parliament or in such local authority in either of the National Languages.
- 21 (1) A person shall be entitled to be educated through the medium of either of the National Languages :

Provided that the provisions of this paragraph shall not apply to an institution of higher education where the medium of instruction is a language other than a National Language.

- (2) Where one National Language is a medium of instruction for or in any course, department or faculty of any University directly or indirectly financed by the State, the other National Language shall also be made a medium of instruction for or in such course, department or faculty for students who prior to their admission to such University, were educated through the medium of such other National Language:

Provided that compliance with the preceding provisions of this paragraph shall not be obligatory if such other National Language is the medium of instruction for or in any like course, department or faculty either at any other campus or branch of such University or of any other like University.

- (3) In this Article "University" includes any institution of higher education.

22. (1) The Official Languages shall be the language of administration throughout Sri Lanka :

Provided that the Tamil Language shall also be used as the language of administration for the maintenance of public records and the transaction of all business by public institutions in the Northern and Eastern Provinces

- (2) A person, other than an official acting in his official capacity, shall be entitled –
- (a) to receive communication from, and to communicate and transact business with any official in his official capacity, in either of the National Languages ;
  - (b) if the law recognizes his right to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document or a transaction thereof, as the case may be, in either of the National Languages ; and
  - (c) where a document is executed by any official for the purpose of being issued to him, to obtain such document or a translation thereof, in either of the National Languages.
- (3) A local authority in the Northern or Eastern Province which conducts its business in either of the National Languages shall be entitled to receive communications from and to communicate and transact business with, any official in his official capacity, in such National Language.
- (4) All Orders, Proclamations, Rules, By-laws, Regulations and Notifications made or issued under any written law, the Gazette, and all other official documents including circulars and forms issued or used by any public institution or local authority, shall be published in both National Languages.
- (5) A person shall be entitled to be examined through the medium of either of the National Languages at any examination for the admission of persons to the Public Service, Judicial Service, Local Government Service, a public corporation or statutory institution, subject to the condition that he may be required to acquire a sufficient knowledge of the Official Language within reasonable time after admission to any such service, public corporation or statutory institution where such knowledge is reasonably necessary for the discharge of his duties :

Provided that a person may be required to have a sufficient knowledge of the Official Language as a condition for admission to any such Service, public corporation or statutory institution where no function of the office or employment for which he is recruited can be discharged otherwise than with a sufficient knowledge of the Official Language.

- (6) In this Article—  
 “official” means the President, any Minister, Deputy Minister, or any other officer of a public institution or local authority ; and  
 “public institution” means a department or institution of the Government, public corporation or a statutory institution.
23. (1) All laws and subordinate legislation shall be enacted or made, and published, in both National Languages together with a translation in the English Language. In the event of any inconsistency between any two texts, the text in the Official Language shall prevail.
- (2) All laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the *Gazette* in both National Languages as expeditiously as possible.
- (3) The law published in Sinhala under the provisions of paragraph (2) of this Article, shall, as from the date of such publication, be deemed to be the law and supersede the corresponding law in English.
24. (1) The Official Language shall be the language of the courts throughout Sri Lanka and accordingly their records and proceedings shall be in the Official Language :

Provided that the language of the courts exercising original jurisdiction in the Northern and Eastern Provinces shall also be Tamil and their records and proceedings shall be in the Tamil Language. In the event of an appeal from any such court, records in both National Languages shall be prepared for the use of the court hearing such appeal :

Provided further that—

- (a) the Minister in charge of the subject of Justice may with the concurrence of the Cabinet of Ministers, direct that the record of any such court shall also be maintained and proceedings conducted in the Official Language ; and
- (b) the record of any particular proceedings in such court shall also be maintained in the Official Language if so required by the judge of such court, or by any party or applicant or any person legally entitled to represent such party or applicant in such proceeding where such judge, party, applicant or person is not conversant with the Tamil Language.
- (2) Any person or applicant or any person legally entitled to represent such party or applicant may initiate proceedings and submit to court

pleadings and other documents, and participate in the proceedings in court, in either of the National Languages.

- (3) Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the language used in the court, shall be entitled to interpretation and to translation into the appropriate National Language, provided by the State, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in either of the National Languages any such part of the record or a translation thereof, as the case maybe, as he may be entitled to obtain according to law.
- (4) The Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers issue directions permitting the use of a language other than a National Language in or in relation to the records and proceedings in any court for all purposes as maybe specified therein. Every judge shall be bound to implement such directions.
- (5) In this Article—

“court” means any court or tribunal created and established for the administration of justice including the adjudication and settlement of industrial and other disputes, or any other tribunal or institution exercising judicial or quasi-judicial functions or any tribunal or institution created and established for the conciliation and settlement of disputes ;

“judge” includes the President, Chairman, presiding officer and member of any court ; and

“record” includes pleadings, judgments, orders and other judicial and ministerial acts.

25. The State shall provide adequate facilities for the use of the languages provided for in this chapter

***Thirteenth Amendment to the Constitution of the Democratic Socialist  
Republic of Sri Lanka of 1987***

*[Certified on 14<sup>th</sup> November, 1987]*

*An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*

2. Article 18 of the Constitution of Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the “Constitution”) is hereby amended as follows: –
- (a) by the renumbering of that Article as paragraph (1) of that Article ;
  - (b) by the addition immediately after paragraph (1) of that Article of the following paragraphs : –
    - “ (2) Tamil shall also be an official language.
    - (3) English shall be the link language.
    - (4) Parliament shall by law provide for the implementation of the provisions of this Chapter. ”

***Sixteenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka of 1988***

*[Certified on 17<sup>th</sup> December, 1988]*

*An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: —

2. Article 20 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Constitution) is hereby amended as follows: —
  - (1) by the substitution, for the words “or a member of a local authority,” of the words “or a member of a Provincial Council or a local authority” ; and
  - (2) by the substitution, for the words “or in such local authority,” of the words “or in such Provincial Council or local authority”.
  
3. Articles 22 and 23 of the Constitution are hereby repealed and the following Articles substituted therefor : —
  - 22 (1) Sinhala and Tamil shall be the languages of administration throughout Sri Lanka and Sinhala shall be the language of administration and be used for the maintenance of public records and the transaction of all business by public institutions of all the provinces of Sri Lanka other than the Northern and Eastern Provinces where Tamil shall be so used :

Provided that the President may, having regard to the proportion which the Sinhala or Tamil linguistic minority population in any unit comprising a division of an Assistant Government Agent, bears to the total of population of that area, direct that both Sinhala and Tamil or a language other than the language used as the language of administration in the province in which such area maybe situate, be used as the language of administration for such area.

- (2) in any area where Sinhala is used as the language of administration a person other than the official acting in his official capacity, shall be entitled—
- (a) to receive communications from and to communicate and transact business with, any official in his official capacity, in either Tamil or English;
  - (b) If the law recognizes his right to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document, or a transaction thereof, as the case may be, in either Tamil or English;
  - (c) Where a document is executed by an official for the purpose of being issued to him, to obtain such document or a translation thereof, in either Tamil or English.
- (3) In any area where Tamil is used as the language of administration, a person other than an official acting in his official capacity, shall be entitled to exercise the rights and to obtain the services, referred to in subparagraphs (a), (b) and (c) of paragraph (2) of this Article, in Sinhala or English.
- (4) A Provincial Council or a local authority which conducts its business in Sinhala shall be entitled to receive communications from and to communicate and transact business with, any official in his official capacity, in Sinhala, and a Provincial Council or a local authority which conducts its business in Tamil shall be entitled to receive communications from and to communicate and transact business with, any official in his capacity, in Tamil:

Provided, however, that a Provincial Council, local authority, public institution or any official receiving communications from or transacting business with

any other Provincial Council, local authority, public institution or an official functioning in an area in which a different language is used as the language of administration shall be entitled to receive communications from and to communicate and transact business in English.

- (5) A person shall be entitled to be examined through the medium of either Sinhala or Tamil or a language of his choice at any examination for the admission of persons to the Public Service, Judicial Service, Provincial Public Service, Local Government Service or any public institution, subject to the condition that he may be required to acquire sufficient knowledge of Tamil or Sinhala as the case maybe, within a reasonable time after admission to such service or public institution where such knowledge is reasonably necessary for the discharge of his duties :

Provided that a person may be required to have sufficient knowledge of Sinhala or Tamil as condition for admission to any such service or public institution where no function of the office or employment for which he is recruited can be discharged otherwise than with a sufficient knowledge of such language.

- (6) In this Article—

“official” means the President, any Minister, Deputy Minister, Governor, Chief Minister or Minister of the Board of Ministers of a Province, or any officer of a public institution, local authority or Provincial Council; and

“public institution” means a department or institution of the Government, a public corporation or statutory institution.

- 23 (1) All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English:

Provided that Parliament shall, at the stage of enactment of any law determine which text shall prevail in the event of any inconsistency between texts;

Provided further that in respect of all other written laws the text in which such written laws were enacted or adopted or made, shall prevail in the event of any inconsistency between such texts.

- (2) All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law other than by a Provincial Council or a local authority and the Gazette shall be published in Sinhala and Tamil together with a translation thereof in English.
- (3) All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law by Provincial Council or local authority; and all documents including circulars and forms issued or used by such body or any public institution shall be published in the language used in the administration in the respective areas in which they function, together with a translation thereof in English.
- (4) All laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the *Gazette* in the Sinhala and Tamil languages as expeditiously as possible.

4. Article 24 of the Constitution is hereby amended as follows: —

- (1) by the repeal of paragraph (1) of that Article, and the substitution of the following paragraph thereof:-

“(1) Sinhala and Tamil shall be the languages of the courts throughout Sri Lanka and Sinhala shall be used as the language of the court situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the court. In the event of an appeal from any court

records shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred:

Provided that the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers direct that the record of any court shall also be maintained and the proceedings conducted in a language other than the language of the court”;

- (2) in paragraph (2) of that Article by the substitution for the words “in either of the National Languages”, of the words “in either Sinhala or Tamil” :
  - (3) in paragraph (3) of that Article—
    - (a) by the substitution, for the words “the appropriate National Language”, of the words “Sinhala or Tamil”, and
    - (b) by the substitution, for the words “either of the National Languages,” of the words “such language”;
  - (4) in paragraph (4) of that Article by the substitution for the words “the use of a language other than a National Language”, of the words “the use of English”.
5. The following Article is hereby inserted immediately after Article 25, and shall have effect as Article 25A of the Constitution—
- 25A. In the event of any inconsistency between the provisions of any law and the provisions of this Chapter, the provisions of this Chapter shall prevail”.

*Official Languages Commission Act, No. 18 of 1991*

*[Certified on 26<sup>th</sup>, March 1991]*

*AN ACT TO ESTABLISH THE OFFICIAL LANGUAGES COMMISSION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.*

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: –

1. This Act may be cited as the Official Languages Commission Act, No. 18 of 1991 and shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may appoint by Order published in the Gazette.

**PART I**

**ESTABLISHMENT OF THE OFFICIAL LANGUAGES COMMISSION**

2. There shall be established an Official Languages Commission (hereinafter referred to as the “Commission”) which shall consist of the persons who are for the time being members of the Commission under subsection (1) of section 5.
3. The Commission shall by the name assigned to it by section 2, be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.
4. The seal of the Commission may be determined and devised by the Commission, and may be altered in such manner as may be determined by the Commission.
5. (1) The Commission shall consist of six members to be appointed by the President, one of whom shall be nominated by the President to be the Chairman of the Commission (hereinafter referred to as the “Chairman”).

- (2) The Commissioner of the Official Language Department, shall be the Secretary to the Commission.
6. The general objects of the Commission shall be—
- (a) to recommend principles of policy, relating to the use of the Official Languages, and to monitor and supervise compliance with the provisions contained in Chapter IV of the Constitution;
  - (b) to take all such actions and measures as are necessary to ensure the use of the languages referred to in Article 18 of the Constitution (hereinafter referred to as “the relevant languages”) in accordance with the spirit and intent of Chapter IV of the Constitution;
  - (c) to promote the appreciation of the Official Languages and the acceptance, maintenance, and continuance of their status, equality and right of use;
  - (d) to conduct investigations, both on its own initiative, and in response to any complaints received, and to take remedial action as provided for, by the provisions of this Act.
7. The Commission shall have the power to—
- (a) initiate reviews of any regulations, directives, or administrative practices, which affect, or may affect the status or use of any of the relevant languages;
  - (b) issue or commission such studies or policy papers on the status or use of the relevant languages as it may deem necessary or desirable;
  - (c) undertake such public educational activities, including, sponsoring or initiating publications or other media presentations, on the status or use of the relevant languages as it may consider desirable;
  - (d) acquire, by way of purchase or otherwise, and to hold, take or give on lease or hire, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property; and

- (e) do all such other things as are necessary for, or incidental to, the attainment of the objects of the Commission or necessary for or incidental to, the exercise of any powers of the Commission.
8. (1) The Commission may, from time to time, appoint such Committees as may be necessary to assist the Commission in the performance of its duties consisting of such number of members as may be determined by the Commission, provided that the Chairman of any such Committee shall be a member of the Commission.
- (2) The Commission may delegate to a Committee appointed under subsection (1) such of its powers (other than the power conferred on it by this subsection) as it may deem fit, but may notwithstanding such delegation, exercise any such power.
9. (1) Every member of the Commission including the Chairman shall unless he vacates office earlier, by death or resignation hold office for a term of three years from the date of his appointment, and shall be eligible for reappointment:

Provided, that a member appointed in place of a member who had vacated office by death or resignation, shall hold office for the unexpired term of office of the member whom he succeeds.

10. (1) A member of the Commission may at any time resign from his office by letter under his hand to that effect addressed to the President, and such resignation shall take effect upon it being accepted by the President in writing.
- (2) If the Chairman, or any other member of the Commission, is, by reason of illness, infirmity or absence from Sri Lanka or other cause is temporarily unable to perform the duties of his office it shall be the duty of such member to inform the President in writing of such inability. The President may thereupon appoint another member to act for such Chairman, or a fit person to act in the place of such other member, as the case may be.
- 11 The Chairman and other members of the Commission may be paid such remuneration and allowances as the Minister, in consultation with the Minister in charge of the subject of Finance, shall determine.

12. (1) The Chairman, if present shall preside at all meetings of the Commission. In the absence of the Chairman from any such meeting, the members present shall elect one of the members present, to preside at such meeting.
- (2) The quorum for a meeting of the Commission shall be four members.
- (3) The Commission shall meet as often as necessary, and in any case, at least once in each month, at such time and place as the Commission may determine, and shall, subject to the provisions of this section, regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

## PART II

### STAFF OF THE COMMISSION

13. (1) The Chairman shall be the Chief Executive officer of the Commission.
- (2) The Commission may by resolution, delegate to the Chairman any of the powers, conferred, on it by this Act other than the power conferred on it by this subsection, and in the exercise of such powers delegated to him, the Chairman shall be subject to the general or special direction of the Commission.
- (3) The Chairman shall, notwithstanding that he is the chief executive officer of the Commission, be deemed not to be a member of the staff of the Commission.
- (4) The Chairman may designate a member or any officer of the Commission to be in control of the day to day administration of the affairs of the Commission.
14. (1) The Commission may appoint such officers and servants as the Commission may deem necessary for the proper and efficient conduct of its business.
- (2) Subject to the other provisions of this Act, the Commission may—
- (a) exercise disciplinary control over or dismiss, any officer or servant of the Commission ;

- (b) fix the wages or salaries or other remuneration of such officers and servants in consultation with the Director of Establishments and the Director (Budget) of the General Treasury;
  - (c) determine the terms and conditions of service of such officers and servants; and
  - (d) establish and regulate a provident fund and any other welfare schemes for the benefit of the officers and servants of the Commission and may make, contributions to any such fund or scheme.
15. (1) At the request of the Commission, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry by or under which that officer is employed and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration be temporarily appointed to the staff of the Commission for such period as may be determined by the Commission with like consent, or be permanently appointed to such staff.
- (2) Where any officer in the public service is temporarily appointed to the staff of the Commission, the provisions of subsection (2) of section 13 of the Transport Board Law, No. 19 of 1978, shall, *mutatis mutandis*, apply to, and in relation to, such officer.
- (3) Where any officer in the public service is permanently appointed, to the staff of the Commission, the provisions of subsection (3) of section 13 of the Transport Board Law, No. 19 of 1978, shall, *mutatis mutandis*, apply to, and in relation to, such officer.
- (4) Where the Commission employs any person who has entered into any contract with the Government by which he has agreed to serve the Government for a specified period, any period of service to the Commission by that person shall be regarded as service to the Government for the purpose of discharging his obligations under such contract.
16. The Government shall make available to the Commission, adequate funds for the purpose of enabling the Commission to exercise its powers and discharge its functions under this Act.

17. (1) The financial year of the Commission shall be the same as the financial year of the Government.
- (2) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission.
- (3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

### PART III

#### INVESTIGATION OF COMPLAINTS BY THE COMMISSION

18. Subject to provisions contained in this Act, the Commission shall investigate every complaint submitted to it, arising from any act done omitted to be done in the administration of the affairs of any public institution, relating to the status and use of any of the relevant languages and in particular, where such complaint discloses that—
- (a) the status of an official language is not, or was not being recognized; or
- (b) a right to the use of, or a duty to use, any of the relevant language in the manner set out in Articles 20 to 24 (both inclusive) of the Constitution, is or was not, being recognized or complied with; or
- (c) any provision of any Act of Parliament or any regulation, rule, order, notification or by-law made thereunder, relating to the status or use of any of the relevant languages or any directive given by a public institution or any administrative practice thereof, in compliance with Chapter IV of the Constitution; is not, or was not being, complied with; or
- (d) the objectives and intent of Chapter IV of the Constitution, is, or was not being, respected or complied with.
19. (1) The Commission in the exercise of its discretion, may refuse to investigate or cease to investigate any complaint if it is satisfied that—
- (a) the subject matter of the complaint is trivial;

- (b) the complaint is frivolous or vexatious, or its not made in good faith ;
  - (c) the subject matter of the complaint does not, for any reason fall within its powers; or
  - (d) the initiation of an investigation, or its continuation would for any reason, be unnecessary.
- (2) In the event that the Commission decides to refuse to investigate or to cease investigating any complaint, the Commission shall within fourteen days of the making of such decision inform the complainant of the decision and provide a written copy of the reasons therefor.
20. (1) Subject to the provisions of this section, the Commission may determine the procedures to be followed in carrying out any investigation under this Act.
- (2) A complaint may be made to the Commission by any person or groups of person, who may be directly affected by the act or omission to which the complaint relates or who may be parties acting *bona fide* in bringing to the attention of the Commission, an act or omission which in his or their opinion, requires investigation by the Commission.
- (3) The complaint shall be treated as a confidential communication and the investigation shall endeavour to protect the privacy of the individuals concerned.
- (4) Before investigating a complaint under this Act, the Commission shall notify the head of the public institution to which, the complaint relates of its intention to conduct such an investigation and the Commission shall not divulge to any person, the identity of the complainant, unless the Commission has the complainant's prior consent therefor.
- (5) The Commission may delegate the conduct of an investigation of an individual complaint, to the Secretary to the Commission.
21. In relation to the conduct of an investigation or review under this Act, the Commission shall have the power to—
- (a) summon witnesses and compel the production of all documents that it may deem necessary;

- (b) administer oaths, and compel witnesses to give oral or written evidence under oath;
  - (c) receive, accept and consider any other form of information or evidence, as the Commission may in its discretion see fit regardless of the evidentiary value of such information or evidence in a court of law;
  - (d) conduct such investigations in the premises of any public institution as it may deem fit.
22. (1) In the conduct of an investigation or review or study under this Act, the Commission shall not be required to hold any hearings and no individual or public institution shall be entitled to be heard as a matter of right.
- (2) If, during the course of any investigation or review the Commission finds that sufficient grounds exist to make a report or recommendation which may adversely reflect upon, or adversely affect, any individual or public institution, the Commission shall, before completing the investigation, take all reasonable measures as may be necessary to afford such individual and institution an opportunity to respond effectively to any comments on, and criticisms of, such individual or public institution.
23. (1) If after carrying out an investigation under this Act, the Commission is of the opinion that—
- (a) the act or omission which was the subject matter of an investigation should be referred to the public institution concerned for consideration and action; or
  - (b) any directive of a public institution should be reconsidered or any practice that leads or is likely to lead to a contravention of Chapter IV of the Constitution should be altered or discontinued; or
  - (c) any other action should be taken,
- the Commission shall report that opinion and the reasons therefor to the head of such public institution.
- (2) If after carrying out an investigation under this Act the Commission is satisfied that the complaint is not made out it shall report that opinion, and the reasons therefor, to the complainant.

- (3) The Commission shall make its report within sixty days of the making of the complaint, and if the investigation cannot be concluded for reasons beyond the control of the Commission, the Commission shall file an interim report within sixty days outlining the reasons for the delay.
- (4) Notwithstanding the provisions of subsection (3) the final report shall be available within one hundred and twenty days of the making of the complaint, and the Commission shall make available forthwith, a copy of such report to the complainant.
- (5) The Commission may in the report to be filed under subsection (3), make such recommendations as the Commission thinks fit, and direct the head of the public institution concerned, to notify the Commission within a specified time of the Action, if any that the institution proposes to take, to give effect to, those recommendations.
24. (1) Where any person has made a complaint to the Commission under this Act and the Commission has—
- (a) not informed him of the results of the investigation within one hundred and twenty days of the making of the complaint; or
- (b) informed him of its decision to refuse to investigate, or ceasing to investigate, under subsection (2) of section 19; or
- (c) informed him, under subsection (2) of section 23 that the complaint is not made out to the satisfaction of the Commission,
- he may apply to the Supreme Court within thirty days of the expiry of the period referred to in paragraph (a) or after the receipt of the communication referred to in paragraphs (b) or (c), as the case may be, for relief or redress under section 27.
- (2) Every such application shall be made by petition in writing addressed to the Supreme Court, in accordance with such rules as may be in force, praying for relief or redress. Such petition may be proceeded with only with leave to proceed first had and obtained from the Supreme Court.
25. (1) Where a person has made a complaint to the Commission

under this Act and the Commission has in a report made recommendations under subsection (5) of section 23 in relation to such complaint and the head of the public institution concerned has not given effect to such recommendations within a period of ninety days on receipt by him of such report, then such person or the Commissioner of the Official Languages Department, after informing the Attorney-General in writing, may apply within ninety days of the expiry of the period within which the recommendations were required to be given effect to, for a direction, under section 27, to the High Court established under Article 154P of the Constitution for the Province in which the person making the complaint resides.

- (2) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down in Chapter XXIV of the Civil Procedure Code.
26. The Supreme Court, on the application of the Attorney-General or the Commission, may, where the public interest so requires, direct any High Court established for a Province to transfer to the Supreme Court, any application, which has been made to such High Court under this Act and which is pending before it. The application shall, upon such direction, be transferred to the Supreme Court which shall thereupon hear and determine such application.
27. Where in proceedings instituted—
- (a) in the Supreme Court under section 24 or 26, the Supreme Court determines that a public institution has failed to comply with Chapter IV of the Constitution or the provisions of any law implementing the provisions of Chapter IV of the Constitution, the Supreme Court may grant such relief or make such directions as it considers just and equitable or appropriate in all the circumstances of the case; or
- (b) in the High Court under section 25 and the High Court determines that the head of a public institution has not given effect to the recommendations of the Commission, the High Court shall direct the implementation of the recommendations contained in the report of the Commission.
28. (1) Where a public officer who is required in the performance of his official duties to transact business relating to such duties, or to receive or make any communication, issue any copy or extract from any register, record, publication or other document, in any particular relevant language, wilfully fails or neglects to transact such business,

receive or make such communication, or issue such copy or extracts in such relevant language, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

- (2) No prosecution under subsection (1) shall be instituted except with the prior sanction of the Attorney-General,

#### **PART IV MISCELLANEOUS PROVISIONS**

29. (1) Nothing contained in this Act, shall prejudice, or derogate from, any other right of action a person may have, in any court of law or any other forum, in relation to any act or omission in respect which a complaint may be made to the Commission under this Act.
- (2) The Commission, with the permission of the court, may appear in any judicial or similar hearing relating to the status or use of any relevant language in any public institution as an independent body, if the Commission considers that such an appearance would serve the public interest.
30. (1) The Commission shall have the power on its own initiative to undertake periodic investigations or reviews to monitor the compliance by public institutions with the provisions of Chapter IV of the Constitution and may further undertake follow up investigations or reviews to monitor the implementation of its recommendations made in relation to such earlier investigation.
- (2) The conclusions and recommendations made under the provisions of Part III of this Act may be included either in the annual reports of the Commission, or in its special reports, or issued in special publications whichever form the Commission considers most appropriate.
31. Nothing in this Act shall be read or construed as restricting the Commission from preparing, or commissioning or issuing policy papers or studies on any matter relating to the status or use of either of the official languages which it may consider necessary or desirable, and in particular nothing in this Act shall be read or construed as restricting the Commission, where the public interest so requires, from addressing, and making recommendations on, any matter relating to Chapter IV of the Constitution and its application or extension to institutions which do not fall within the definition of public institution.

32. The Commission shall, at the end of each financial year submit a report containing, *inter alia*, the recommendations made by such Commission under subsection (5) of section 23 during that year to the Minister who shall cause such report to be laid before Parliament.
33. All members, officers and servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.
34. The Commission shall be deemed to be a Scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.
35. (1) No suit or prosecution shall lie against the Commission or any member of the Commission or any officer or servant thereof for any act which in good faith is done by him under this Act or on the direction of the Commission.
- (2) Any expense incurred by the Commission in any suit or prosecution brought by, or against, the Commission before any court shall be paid by the Commission, and any costs paid to, or recovered by, the Commission in any such suit or prosecution shall be credited to the Consolidated Fund.
- (3) Any expense incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court, in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission, shall, if the court holds that the act was done in good faith, be paid by the Commission, unless such expense is recovered by him in such suit or prosecution.
36. No writ against person or property shall be issued against a member of the Commission in action brought against the Commission.
37. (1) Any person who—
- (a) without sufficient reason, publishes any statement or does any thing that brings the Commission or any member thereof into disrepute, during the progress or after the conclusion, of an investigation or review under this Act;
- (b) interferes with the process of the Commission;

- (c) resists or obstructs a member, officer or servant of the Commission in the exercise by such member, officer or servant, of any power conferred on him by this Act;
  - (d) in the course of any investigation or review under this Act—
    - (i) fails without cause, which in the opinion of the Commission is reasonable, to appear before the Commission at the place and time mentioned in any summons issued by the Commission;
    - (ii) refuses to be sworn, or having been duly sworn, refuses or fails without cause, which in the opinion of the Commission is reasonable, to answer question put to him touching the matters being investigated by the Commission;
    - (iii) refuses or fails without cause which in the opinion of the Commission is reasonable, to produce and show to the Commission any document or other thing which is in his possession or power and which is in the opinion of the Commission necessary for arriving at the truth of the matters being investigated by the Commission, shall be guilty of an offence under this Act and shall on conviction, after summary trial before a Magistrate, to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.
- (2) In any prosecution for an offence under this Act, a certificate under the hand of the Secretary to the Commission, setting out the facts alleged to constitute such offence shall be received in evidence and deemed to be such certificate without further proof, unless the contrary is proved, and shall be *prima facie* proof of the facts stated therein
38. In the case of any offence under this Act committed by a body of persons—
- (a) where such body of persons is a body corporate, every director, secretary and officer of that body corporate shall each be deemed to be guilty of that offence;
  - (b) where that body of persons is a firm, every partner of that firm shall be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the commission of the offence.

39. In this Act unless the context otherwise requires—

“local authority” means any Municipal Council, Urban Council, or Pradeshiya Sabha and includes any authority created or established by, or under, any law to exercise, perform and discharge, powers, duties and functions corresponding to, or similar to, the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

“public institution” means—

- (a) any Ministry and any department under such Ministry;
- (b) any public corporation, or statutory institution ;
- (c) any Provincial Council or local authority ; and
- (d) any business undertaking, firm, company or other institution vested in the Government or owned wholly by, or on behalf, of the Government.

40. In the event of any inconsistency between the Sinhala and Tamil texts of this Act the Sinhala text shall prevail.

***Public Administration Circular No. 03/2007***

My No: E/9/6/91 (Ob)  
Ministry of Public Administration & Home Affairs, Independence Square,  
Colombo 7

09 February, 2007

To All Secretaries  
Chief Secretaries of Provincial Councils and Heads of Departments

**Payment of Incentive Allowances to Public officers who acquire proficiency in more than one Official Language.**

01. Your attention is drawn to Public Administration Circular No 29/98 dated 30.12.1998. The Government has decided to grant incentives to enhance productivity in the Public Service through the proficiency acquired by the Public Servants for the discharge of duties in both official languages and to minimize the problems relating to the use of the official languages.
02. Incentives for the Official Languages
  - 02.01 Proficiency in both languages should be acquired by an officer for him to be entitled for the incentive payment which will be paid on reaching the minimum standard of proficiency depending on the nature of duties in the relevant post.
  - 02.02 However, the officers recruited to the posts indicated in the scheme of recruitment where it is a requirement of passing a specific examination in Sinhala and Tamil as an educational qualification will not be entitled to the incentive payment.
03. Qualifications required to be entitled to the incentive payment
  - 03.01 The Public officers will be grouped into three categories according to the standard of language proficiency acquired in order to receive the incentive payment. Several services identified for incentive payments have been mentioned in Annexure No 01.
  - 03.02

	Language proficiency to be acquired	Allowance granted
Category 1	Pass in Sinhala/Tamil at the GCE O/L Examination as a main subject (Not as second language or optional subject) and pass in oral test conducted by the Department of Official Languages or pass in the special competence examination conducted by the Department of Official Languages for this category.	Rs.25,000/- and a monthly non pensionable allowance equivalent to an increment
Category II	Pass in the test for the language course at Secondary Level examination conducted by the Department of Official Languages	Rs.20,000 and a monthly non pensionable allowance equivalent to an increment
Category III	Pass in test for the language course at Preliminary Level examination conducted by the Department of Official Languages.	Rs.15,000/- and a monthly non pensionable allowance equivalent to an increment.

04. Other Conditions

- 04.01 Syllabi for language training for each category will be prepared by the Department of Official Languages. Language Training Courses may be conducted by the Department of Official Languages or other Government/Non-Governmental/Private institutions. The officers in the first category should pass the GCE (O/L) examination or special competency examination conducted by the Department of Official Languages. The officers in the second and third categories should pass respectively the test for the language

course at secondary competence level and the test at preliminary level.

- 04.02 Cost of the training received from a Government institution will be incurred by the Government and the officers should enter into an agreement with the Government for this purpose. Cost incurred by the Government will be recovered from the officers who do not obtain specific certificate of competence. Charges or part thereof paid by the officers who receive language training from private institutions and pass general tests will be reimbursed and the amount reimbursed will be decided in future.
- 04.03 This additional increment will be further paid on a recommendation issued after holding a test by the Department of Official Languages regarding the language proficiency of the officers once in 5 years.
- 04.04 If an officer is already drawing any allowance for the proficiency in official languages under P.A. Circular No 29/98, payment of allowance under P.A.C. 29/98 should be discontinued in the instances where allowance is granted for the official languages under this Circular and lump sum payment already made under the provisions in that circular should be deducted from the lump sum payable which is paid only once in terms of the provisions of this Circular.
- 04.05 The officers who have been recruited to the public service through English medium may obtain allowances only for one of the official languages under this new scheme if they acquire proficiency in both official languages
- 04.06 If an officer is required to acquire language proficiency of a category higher than the category to which he belongs depending on the responsibilities assigned to him, present payment of allowance for official language should be suspended until he acquires relevant official language proficiency. Incentives should be paid in terms of the provisions in this Circular from the date language proficiency is acquired for the category relating to the new post. Payment of lump sum already made as amount should be deducted from the lump sum payable under this Circular.

- 04.07 Provisions for the payment of allowances for the official languages under P.A. Circular No 29/98 will be cancelled from the effective date of this circular without any prejudice to the officers who are already drawing allowances for the official languages in terms of the provisions in that circular.
- 04.08 Incentives for English as link language should be further paid in terms of the provisions in P.A. Circular No 29/98.
- 04.09 Provisions in this circular issued with the concurrence of the treasury will take effect from 01.02.2007.
- 04.10 Categorization of officers under each category or further clarification regarding this circular if any, should be referred to the Director General of Establishments.

Sgd/ D. Dissanayake  
Secretary  
Ministry of Public Administration and Home Affairs

## Annexure 01

	Services/Posts	Standard of Proficiency to be acquired		
		Category I	Category II	Category III
1	Sri Lanka Administrative Service	√		
2	Sri Lanka Accountants Service	√		
3	Sri Lanka Planning Service	√		
4	Sri Lanka Educational Administrative Service	√		
5	Sri Lanka Agricultural Service	√		
6	Sri Lanka Revenue Service	√		
7	Sri Lanka Valuers' Service	√		
8	Sri Lanka Audit Service	√		
9	Judicial Officers	√		
10	Assistant Superintendent of Police & above ranks in the Sri Lanka Police Service	√		
11	Law Officers	√		
12	Sri Lanka Overseas Service	√		
13	Sri Lanka Customs Service	√		
14	Sri Lanka Scientific Service	√		
	1. Officers engaged in administrative activities			
	2. Other officers			√
15	Sri Lanka Engineering Service	√		
	1. Officers engaged in administrative activities			
	2. Other officers			√

16	Government Medical Officers & Dental Officers 1. Officers engaged in administrative activities		√	
	2. Other officers			√
17	Sri Lanka Animal Production & Health Service 1. Officers engaged in administrative activities	√		
	2. Other officers			√
18	Staff Grade Officers who do not belong to Island wide service but engaged in departmental services	√		
19	Sri Lanka Surveyors' Service 1. Officers engaged in administrative activities	√		
	2. Other officers		√	
20	Sri Lanka Architects' Service 1. Officers engaged in administrative activities	√		
	2. Other officers		√	
21	Public Management Assistants Service and similar departmental services		√	
22	Officers below the rank of Assistant Superintendent of Police in the Police Service		√	
23	Grama Niladhari		√	
24	All field officers engaged in extension services (services such as Technological Service)		√	
25	Public Health Inspectors		√	

26	Receptionist		√	
27	Sri Lanka Audit Examiners Service		√	
28	Graduates recruited to the Public Service for the performance of special activities under the various schemes (Graduates recruited to the public service in 1999 and 2004 Development Assistants, Research Assistants etc (Priority activities and graduate trainees)		√	
29	Nursing Service	√		
	1. Officers engaged in administrative activities			√
	2. Other officers			√
30	Family Health Service		√	
31	Librarians' Service	√		
	1. Officers engaged in administrative activities			√
	2. Other officers			√
32	Principal's Service	√		
33	Minor staff			√

***Public Administration Circular No. 07/2007***

My No. E/2/3/2/70  
Ministry of Public Administration and Home Affairs  
Independence Square  
Colombo 07  
28 May 2007

All Secretaries to Ministries  
Chief Secretaries of Provincial Councils and  
Heads of Departments

**Implementation of Official Language Policy**

The Government has decided to implement the following provisions to enable the Public Servants to carry out their functions and duties both in Sinhala and Tamil since the two languages are official languages in terms of the Constitution of the Democratic Socialist Republic of Sri Lanka.

- (a) All officers recruited to the Public/Provincial Public Service with effect from 01.07.2007 should acquire proficiency in the other official language within a period of 5 years in addition to the official language through which they enter the service.
- (b) Proficiency in the official language required by the functions assigned to the respective posts consists of 3 levels as follows. Several services identified accordingly are indicated in the Annexure.
  - (I) Pass in Sinhala/Tamil at the G.C.E. (O/L) examination as a main subject (not as a second language or optional language) and speech test conducted by the Department of Official Languages or pass in the special competitive examination conducted by the Department of Official Languages. This provision is applicable to the category 1 in the Annexure.
  - (II) Pass in the test of the language course at secondary level examination conducted by the Department of Official Languages. This provision is applicable to the category 2 in the annexure

(III) Pass in the test of the language course at preliminary level examination conducted by the Department of official languages.

This provision is applicable to the category 3 in the annexure.

(c) If the appointing authority considers that a section of officers who belong to a post/service specified in Annex, due to the nature of duties assigned to them, should acquire a higher level of language proficiency than the level stipulated for such post/service, a determination should be obtained on the requisite level of language proficiency by a recommendation made to the Director General of Establishments through the Secretary of the relevant Ministry. The Director General of Establishments shall seek recommendation of the Commission of Official Languages on such determination.

e. g. (If the proficiency level in category 3 is not sufficient for a certain post in the Sri Lanka Scientific Service mentioned under No. 14 in the annexure 1, the proficiency level may be changed to category 1 or 2 adducing the reasons in this regard.)

(d) The categories applicable to the services/posts which are not listed in the Annexure will be determined by the Director General of Establishments. For such determination the Director General of Establishments shall consult the Secretary to the Ministry, under which such post has been created and the Commission of Official Languages.

02. Increments of the officers who do not acquire the specified proficiency in the official language mentioned in para (a) above within a period of 5 years from the date of their appointments will be deferred until they obtain qualifications.

03. All Service Minutes and Schemes of Recruitment should be amended accordingly and these provisions should be incorporated in the notices calling applications for the recruitments made from 01.07.2007 and in the letters of appointments.

04. The provisions herein will be applicable only to the recruitments made to the Public/Provincial Public Service on or after 01.07.2007 and such provisions will not be applicable to the recruitments made such as graded promotions and on limited/merit promotions confined only to the Public Servants.

05. Provisions stipulated in the Public Administration Circular No 03/2007 will not apply to the officers recruited after 01.07.2007.

06. This Circular is issued with the concurrence of the Ministry of Constitutional Affairs and National Integration.

Sgd/D Dissanayake  
Secretary  
Ministry of Public Administration and Home Affairs

## Annexure

	Service/Posts	Standard of Proficiency to be acquired		
		Category 1	Category 2	Category 3
1	Sri Lanka Administrative Service	√		
2	Sri Lanka Accountants' Service	√		
3	Sri Lanka Planning Service	√		
4	Sri Lanka Educational Administrative Service	√		
5	Sri Lanka Agricultural Service	√		
6	Inland Revenue Service	√		
7	Sri Lanka's Valuers' Service	√		
8	Sri Lanka Audit Service	√		
9	Judicial Officers	√		
10	Assistant Superintendent of Police and above ranks in the Sri Lanka Police Service	√		
11	Law Officers	√		
12	Sri Lanka Overseas Service	√		
13	Sri Lanka Customs Service	√		
14	Sri Lanka Scientific Service			√
15	Sri Lanka Engineering Service			√
16	Government Medical Officers and Dental Medical Officers			√
17	Sri Lanka Animal Production and Health Service			
18	Staff Grade officers who do not belong to Island-wide services but engaged in departmental services	√		
19	Sri Lanka Surveyors' Service	√		
20	Sri Lanka Architects' Service	√	√	
21	Public Management Assistants Service and similar departmental service			
22	Officers below the rank of Assistant Superintendent of Police in the Police Service		√	
23	Grama Niladhari		√	
24	All field officers engaged in extension services (Services such as Technological Services)		√	
25	Public Health Inspector			
26	Receptionist			
27	Sri Lanka Audit Examiners			

28	Nursing Service			
29	Family Health Service			
30	Librarians' Service			
31	Principal's Service	√		
32	Minor Staff			√

***International Covenant on Civil and Political Rights (ICCPR) of 1966***

*(Adopted by UN General Assembly Resolution 2200 A (XXI) of December 16 1966,  
Acceded by Sri Lanka on 11 June 1980)*

**Article 2**

- (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

**Article 14**

- (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him ;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

**Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

***Declaration on the Rights of Persons Belonging to National or Ethnic,  
Religious and Linguistic Minorities of 1992***

*(Adopted by General Assembly Resolution 47/135 of 18 December 1992)*

*The General Assembly,*

*Reaffirming* that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Reaffirming* faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

*Desiring* to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

*Inspired* by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities,

*Considering* that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

*Emphasizing* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

*Considering* that the United Nations has an important role to play regarding the protection of minorities,

*Bearing in mind* the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Taking into account* the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Recognizing* the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Proclaims* this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

#### **Article 1**

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### **Article 2**

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the

minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

### **Article 3**

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

### **Article 4**

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

#### **Article 5**

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

#### **Article 6**

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

#### **Article 7**

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

#### **Article 8**

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

**Article 9**

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

***European Charter for Regional or Minority Languages of 1992***

*[Opened for signature of member states of the Council of Europe on 5 November 1992 and entered into force on 1 March 1998]*

**Preamble**

The member States of the Council of Europe signatory hereto,

*Considering* that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

*Considering* that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

*Considering* that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;

*Having regard* to the work carried out within the CSCE and in particular to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990;

*Stressing* the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;

*Realising* that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;

*Taking into consideration* the specific conditions and historical traditions in the different regions of the European States,

*Have agreed* as follows:

## **PART I – GENERAL PROVISIONS**

### **Article 1 – Definitions**

For the purposes of this Charter:

- (a) ‘regional or minority languages’ means languages that are:
  - (i) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and
  - (ii) different from the official language(s) of that State;

it does not include either dialects of the official language(s) of the State or the languages of migrants;
- (b) ‘territory in which the regional or minority language is used’ means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

- (c) 'non-territorial languages' means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

#### **Article 2 – Undertakings**

1. Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.
2. In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

#### **Article 3 – Practical arrangements**

1. Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
2. Any Party may, at any subsequent time, notify the Secretary General that it accepts the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval, or that it will apply paragraph 1 of the present article to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory.
3. The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the ratification, acceptance or approval and will have the same effect as from their date of notification.

#### **Article 4 – Existing regimes of protection**

1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.

2. The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.

#### **Article 5 – Existing obligations**

Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.

#### **Article 6 – Information**

The Parties undertake to see to it that the authorities, organisations and persons concerned are informed of the rights and duties established by this Charter.

### **PART II – OBJECTIVES AND PRINCIPLES PURSUED IN ACCORDANCE WITH ARTICLE 2, PARAGRAPH I**

#### **Article 7 – Objectives and principles**

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:
  - (a) the recognition of the regional or minority languages as an expression of cultural wealth;
  - (b) the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
  - (c) the need for resolute action to promote regional or minority languages in order to safeguard them;
  - (d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

- (e) the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
  - (f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;
  - (g) the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;
  - (h) the promotion of study and research on regional or minority languages at universities or equivalent institutions;
  - (i) the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.
2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.
3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.
4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.

5. The Parties undertake to apply, *mutatis mutandis*, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

**PART III – MEASURES TO PROMOTE THE USE OF REGIONAL OR  
MINORITY LANGUAGES IN PUBLIC LIFE IN ACCORDANCE WITH THE  
UNDERTAKINGS ENTERED INTO UNDER ARTICLE 2, PARAGRAPH 2**

**Article 8 – Education**

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:
- (a)
    - (i) to make available pre-school education in the relevant regional or minority languages; or
    - (ii) to make available a substantial part of pre-school education in the relevant regional or minority languages; or
    - (iii) to apply one of the measures provided for under (i) and (ii) above at least to those pupils whose families so request and whose number is considered sufficient; or
    - (iv) the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under (i) to (iii) above;
  - (b)
    - (i) to make available primary education in the relevant regional or minority languages; or
    - (ii) to make available a substantial part of primary education in the relevant regional or minority languages; or
    - (iii) to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

- (iv) to apply one of the measures provided for under (i) to (iii) above at least to those pupils whose families so request and whose number is considered sufficient;
- (c)
    - (i) to make available secondary education in the relevant regional or minority languages; or
    - (ii) to make available a substantial part of secondary education in the relevant regional or minority languages; or
    - (iii) to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
    - (iv) to apply one of the measures provided for under (i) to (iii) above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;
  - (d)
    - (i) to make available technical and vocational education in the relevant regional or minority languages; or
    - (ii) to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or
    - (iii) to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
    - (iv) to apply one of the measures provided for under (i) to (iii) above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;
  - (e)
    - (i) to make available university and other higher education in regional or minority languages; or
    - (ii) to provide facilities for the study of these languages as university and higher education subjects; or
    - (iii) if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or

- minority languages or of facilities for the study of these languages as university or higher education subjects;
- (f)
    - (i) to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or
    - (ii) to offer such languages as subjects of adult and continuing education; or
    - (iii) if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;
  - (g) to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;
  - (h) to provide the basic and further training of the teachers required to implement those of paragraphs (a) to (g) accepted by the Party;
  - (i) to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.
2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

#### **Article 9 – Judicial authorities**

1. The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:
- (a) in criminal proceedings:

- (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
- (ii) to guarantee the accused the right to use his/her regional or minority language; and/or
- (iii) to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or
- (iv) to produce, on request, documents connected with legal proceedings in the relevant regional or minority language,

if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

(b) in civil proceedings:

- (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
- (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
- (iii) to allow documents and evidence to be produced in the regional or minority languages,

if necessary by the use of interpreters and translations;

(c) in proceedings before courts concerning administrative matters:

- (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
- (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

- (iii) to allow documents and evidence to be produced in the regional or minority languages,
- I
- if necessary by the use of interpreters and translations;
- (d) to take steps to ensure that the application of sub-paragraphs (i) and (iii) of paragraphs (b) and (c) above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned.
2. The Parties undertake:
- (a) not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or
  - (b) not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or
  - (c) not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.
3. The Parties undertake to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.

#### **Article 10 – Administrative authorities and public services**

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:
- (a)
    - (i) to ensure that the administrative authorities use the regional or minority languages; or
    - (ii) to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

- (iii) to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or
    - (iv) to ensure that users of regional or minority languages may submit oral or written applications in these languages; or
    - (v) to ensure that users of regional or minority languages may validly submit a document in these languages;
  - (b) to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;
  - (c) to allow the administrative authorities to draft documents in a regional or minority language.
2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:
- (a) the use of regional or minority languages within the framework of the regional or local authority;
  - (b) the possibility for users of regional or minority languages to submit oral or written applications in these languages;
  - (c) the publication by regional authorities of their official documents also in the relevant regional or minority languages;
  - (d) the publication by local authorities of their official documents also in the relevant regional or minority languages;
  - (e) the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
  - (f) the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
  - (g) the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.

3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:
  - (a) to ensure that the regional or minority languages are used in the provision of the service; or
  - (b) to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
  - (c) to allow users of regional or minority languages to submit a request in these languages.
4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:
  - (a) translation or interpretation as may be required;
  - (b) recruitment and, where necessary, training of the officials and other public service employees required;
  - (c) compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.
5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

#### **Article 11 – Media**

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:
  - (a) to the extent that radio and television carry out a public service mission:
    - (i) to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or

- (ii) to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
  - (iii) to make adequate provision so that broadcasters offer programmes in the regional or minority languages;
- (b)
  - (i) to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or
  - (ii) to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;
- (c)
  - (i) to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or
  - (ii) to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;
- (d) to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;
- (e)
  - (i) to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or
  - (ii) to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;
- (f)
  - (i) to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or
  - (ii) to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;
- (g) to support the training of journalists and other staff for media using regional or minority languages.

2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

#### **Article 12 – Cultural activities and facilities**

1. With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including *inter alia* the use of new technologies – the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:
  - (a) to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;
  - (b) to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;
  - (c) to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

- (d) to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;
  - (e) to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;
  - ] (f) to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;
  - (g) to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;
  - (h) if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.
2. In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.
  3. The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.

#### **Article 13 – Economic and social life**

1. With regard to economic and social activities, the Parties undertake, within the whole country:
  - (a) to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;

- (b) to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
  - (c) to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
  - (d) to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.
2. With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:
- (a) to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;
  - (b) in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
  - (c) to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
  - (d) to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;
  - (e) to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

#### **Article 14 – Transfrontier exchanges**

The Parties undertake:

- (a) to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in

such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;

- (b) for the benefit of regional or minority languages, to facilitate and/ or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.





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