

THE CONSTITUTIONAL ASSEMBLY OF SRI LANKA

**The Interim Report of the Steering Committee
[21st September 2017]**



INTERIM REPORT OF THE STEERING COMMITTEE

Introduction

The Constitutional Assembly established by Parliamentary Resolution of 09th March 2016 unanimously appointed a Steering Committee at its first sitting on 05th April 2016.

The Steering Committee identified 12 main subject areas and assigned six of those subjects to Sub-Committees appointed by the Constitutional Assembly on 05th May 2016. The Reports of the said six Sub Committees and another report by an *ad-hoc* Committee appointed by the Steering Committee were tabled before the Constitutional Assembly on 19th November and 10th December 2016 respectively.

This Interim Report of the Steering Committee deals with the remaining six subjects that were not assigned to any Sub-Committee and contains principles and formulations that reflect the deliberations of the Steering Committee of the Constitutional Assembly that met 73 times between April 2016 and September 2017.

Included in this Interim Report are observations and comments by Members of the Steering Committee on the principles and formulations contained in the Report.

Members of the Steering Committee of the Constitutional Assembly

Hon. Ranil Wickremesinghe, Prime Minister (Chairman)	
Hon. Nimal Siripala de Silva	Hon. Rajavaroatham Sampanthan
Hon. Rauff Hakeem	Hon. Dinesh Gunawardena
Hon. Lakshman Kiriella	Hon. Douglas Devananda
Hon. A. D. Susil Premajayantha	Hon. Anura Dissanayake
Hon. Rishad Bathiudeen	Hon. (Dr.)Wijeyadasa Rajapakshe
Hon. Patali Champika Ranawaka	Hon. Bimal Rathnayake
Hon. D. M. Swaminathan	Hon. M. A. Sumanthiran
Hon. Mano Ganesan	Hon. Prasanna Ranatunga
Hon. Malik Samarawickrama	Hon.(Dr.)Jayampathy Wickramaratne
Hon. Dilan Perera	Hon.(Dr.)(Mrs.) Thusitha Wijemanna

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I. MATTERS COVERED BY CHAPTER I AND II OF THE PRESENT CONSTITUTION:

Articles 1 and 2:

- In Sri Lanka, sovereignty will vest with the people and shall be inalienable and indivisible.
- Sri Lanka should remain one undivided and indivisible country.
- There shall be specific provisions included in the Constitution to prevent secession (division of the country).
- Maximum devolution should be granted.
- The Constitution shall be the Supreme Law of Sri Lanka.
- The power to amend the Constitution, or to repeal and replace the Constitution, shall remain with the Parliament and the People of Sri Lanka (where applicable), in the manner set out in the Constitution.

Issues:

The President whilst speaking on the Resolution to set up the Constitutional Assembly, stated that whilst people in the south were fearful of the word “federal”, people in the north were fearful of the word “unitary.” A constitution is not a document that people should fear.

The classical definition of the English term “unitary state” has undergone change. In the United Kingdom, it is now possible for Northern Ireland and Scotland to move away from the union. Therefore, the English term “Unitary State” will not be appropriate for Sri Lanka.

The Sinhala term “aekiya raajyaya” best describes an undivided and indivisible country. The Tamil language equivalent of this is “orumiththa nadu”.

In these circumstances, the following formulation may be considered:

Sri Lanka (Ceylon) is a free, sovereign and independent Republic which is an aekiya rajyaya / orumiththa nadu, consisting of the institutions of the Centre and of the Provinces which shall exercise power as laid down in the Constitution.

In this Article aekiya rajyaya / orumiththa nadu means a State which is undivided and indivisible, and in which the power to amend the Constitution, or to repeal and replace the Constitution, shall remain with the Parliament and the People of Sri Lanka as provided in this Constitution

Article 3:

The following formulation may be considered:

In Sri Lanka sovereignty is in the People and is inalienable, and includes the powers of government, fundamental rights and the franchise.

Article 4:

The following formulation may be considered:

The legislative, executive and judicial power of the People shall be exercised as provided for by the Constitution.

Article 5:

The following formulation may be considered:

The territory of Sri Lanka is constituted of its geographical territory as recognized under International Law, including the Provinces as set out in the XXX Schedule of the Constitution, and including its territorial waters and airspace, together with such additional territory as may be acquired in future. Sri Lanka shall have all rights recognized by law, custom and usage, pertaining to its territory.

No Provincial Council or other authority may declare any part of the territory of Sri Lanka to be a separate State or advocate or take steps towards the secession of any Province or part thereof, from Sri Lanka.

Article 6:

The following formulation may be considered:

The National Flag of Sri Lanka shall be the Lion Flag depicted in the Second Schedule.

* The National Flag should be as presently recognized

Article 7:

The following formulation may be considered:

The National Anthem of Sri Lanka shall be “Sri Lanka Matha/ Sri Lanka Thaaye”, the words and music of which are set out in the Third Schedule.

* The National Anthem should be as presently recognized in the Sinhala and Tamil versions of the Constitution

Article 8:

The following formulation may be considered:

The National Day of Sri Lanka shall be the fourth day of February.

Chapter II / Article 9:

The following formulations may be considered:

- *Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Article 10 and 14(1)(e).*

OR

- *Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while treating all religions and beliefs with honour and dignity, and without discrimination, and guaranteeing to all persons the fundamental rights guaranteed by the Constitution.*

II. PRINCIPLES OF DEVOLUTION

1. Principle of Subsidiarity to Apply

This principle of subsidiarity, (i.e. whatever could be handled by the lowest tier should be vested in it) has been generally accepted in submissions made before the Steering Committee, the Sub-Committees, as well as the Public Representations Committee for Constitutional Reforms.

The Report of the Sub-Committee on Centre-Periphery Relations also recommends that more power and authority be devolved to the Local Authorities.

This principle should be a guide in deciding on the allocation of subjects and functions between the three tiers of government.

2. Province to be the Primary Unit of Devolution

This also is a recommendation that had been broadly accepted. Submissions from Chief Ministers, Provincial Councils and various Sub-Committees have also proceeded on this basis. Political Parties have also generally agreed with this principle. The Centre Periphery Relations Sub-Committee Report and Public Representation Committee Report also recommend that the Province be recognized as the primary unit of devolution.

The Steering Committee accepted the proposal that the Province be the primary unit of devolution. It was also suggested that the Constitution (by way of a Schedule) should identify the geographical area / districts included within each Province, as well as the geographical area of the Capital Territory.

Provisions relating to possible merger of Provinces require further consideration. The following options have been discussed:

- The existing provisions of the Constitution [Article.154A (3)] relating to the possibility of two or more Provinces forming a single unit, should be retained, with the additional requirement that a referendum of the people of each of the Provinces concerned should also be required.
- The Constitution should not provide for merger.
- The Constitution recognize the Northern and Eastern Provinces as a single Province.

Community Councils

Constitutional provisions shall be made to ensure that at various levels of government and in different geographical areas, the rights of communities which are minorities within such areas are protected.

2.1 Inter-Provincial Co-operation

It is also recommended that the Constitution provide for the possibility of inter-provincial co-operation with regard to matters falling within the executive competence of such provinces.

2.2 Safeguards against secession

It is recommended that the Constitution include a clause(s) including safeguards against secession.

The Constitution should specifically state that the Sri Lankan State is “*undivided and indivisible*.” It should additionally specify that:

“No Provincial Council or other authority may declare any part of the territory of Sri Lanka to be a separate State or advocate or take steps towards the secession of any Province or part thereof, from Sri Lanka.”

The Constitution shall provide adequate safeguards with regard to Public Security. Suggested principles/formulations are contained at page 26 of this Report.

3. Local Authorities

3.1 Local Authorities as a Third Tier of Government Functioning Under the Provincial Councils

It is recommended that Local Authorities should be recognized as a third tier of government functioning under the Provincial Councils, and that provision should be made to ensure that provisions relating to finance etc. do not undermine the supervisory powers of the Provincial Councils, with regard to the local authorities. While such Local Authorities would not exercise legislative power, they would be an implementing agency for specified subjects both of the Centre and the Provinces as prescribed by law.

3.2 Framework Legislation with regard to Local Authorities

It is also recommended that the Centre should be permitted to prescribe, by way of framework legislation, uniformity with regard to the constitution, election, form, structure and powers of the Local Authorities. However, upgrading of Local Authority institutions in accordance with the national standard / framework

legislation should be within the powers of the Provincial Councils. A law may be enacted providing for criteria of different types of local authorities, and their varying powers and functions.

The types of Local Authorities classified based on population / land area etc should be prescribed by law. The powers and functions of the different types of local authorities (including implementation powers) would vary. The details of such classification / powers would be decided by the framework legislation to be enacted.

4. Division of Powers Between the Several Tiers of Government to be Clear and Unambiguous

4.1 There is general consensus, including among the Chief Ministers who made submissions before the Steering Committee, that powers must be clearly and unambiguously divided and that the present Concurrent List should be abolished. This was also suggested in the Report of the *ad hoc* Sub-Committee on the relationship between Parliament and Provincial Councils.

4.2 The Public Representations Committee for Constitutional Reforms recommends the introduction of two lists, (i.e. a National List and a Provincial Lists) and also a Local Government List.

The Steering Committee is of the view that there should be a National List (Reserved List) and a Provincial List. It was also decided to consider retaining a Concurrent List specifying subject areas which are necessary to be retained in a concurrent list.

National List will include subjects which are necessary to ensure Sovereignty, Territorial Integrity, Defense/National Security and Economic Unity of Sri Lanka.

4.3 Parliament may by law provide for the implementation of functions on selected Subjects in the National List by the Provinces.

4.4 Parliament or Provincial Councils may by law/statute provide for the implementation of specified functions within their purview, to be carried out by the Local Authorities.

5 National Policy, National Standards and Framework Legislation

Two aspects need to be considered:

1. prescribing 'national standards' and enacting 'framework legislation'
2. formulation of 'national policy'

5.1 National Standards / Framework Legislation

In particular areas, there could be a necessity for the Centre to prescribe National Standards (e.g. Healthcare, Education, Environment) or Framework Legislation (e.g. Local Authorities' constitution, powers, functions, elections, and Provincial Councils Elections).

Therefore, the Constitution should identify and include specified items in respect of which the Centre can enact framework legislation or national standards.

With regard to National Standards, such minimum standards may be prescribed where it is necessary to ensure:

- a) the enjoyment by citizens of a reasonable minimum standard of living throughout the country;
- b) the enjoyment by citizens of a reasonable minimum standard of state service delivery throughout the country; or
- c) a reasonable minimum standard of environmental protection throughout the country.

The Centre may also prescribe national standards by way of regulations under authority of law, in the circumstances specified above. Provided that such regulations shall not be valid unless approved by both Houses of Parliament. The substantive and procedural validity of such regulations may be challenged in the Constitutional Court.

* A Constitutional Court has been recommended in the Reports by the Sub-Committees on the Judiciary, Fundamental Rights and Centre-Periphery Relations.

5.2 National Policy

The Steering Committee was of the view that National Policy should be a matter for the Cabinet of Ministers. The following points were also noted:

1. The Constitution should have a substantive separate Article dealing with National Policy. This should not be included in the Reserved List (which deals with legislative powers);

2. In formulating National Policy on matters contained in the Provincial List the Central Government shall adopt a participatory process with the Provincial Council;
3. Formulation of National Policy on a Provincial List matter would not have the effect of the Centre taking over executive or administrative powers with regard to the implementation of the said devolved power;
4. The Province will retain the executive or administrative powers (implementation powers) with regard to the said devolved power;
5. The Constitution should provide circumstances in which the Centre can prescribe National Policy. The following adaptation of Article 72 of the German Constitution is suggested-

The Centre may formulate National Policy on a devolved subject if a need for National Policy arises because:

- i. such matter cannot be effectively dealt with by the legislation or policy of an individual Province; or
 - ii. the maintenance of legal or economic unity, especially the maintenance of equivalent living conditions beyond the territory of a Province, necessitates it.
6. National Policy shall not override statutes enacted by a Provincial Council in respect of matters in the Provincial List.

Provided that in the event that the Central Government enacts legislation (to give effect to such national policy) in accordance with the Constitutional provisions relating to the enactment of legislation on devolved subjects, the relevant Provincial statutes shall be read subject to such national legislation.

6. Local Government – Implementation of Specified Functions

The Centre Periphery Relations Sub-Committee recommends that the Local Authorities should be constitutionally empowered to handle some of the agency functions or to act as an implementing agency with regard to specified functions in specified laws of the Centre and Provincial Councils. E.g. Environmental laws, Coast Conservation, Samurdhi programmes, Preschools etc.

The Steering Committee was of the view that, as with the delegation of administrative powers by the Centre, the Provinces should be authorized to delegate administrative powers to the Local Authorities, where the Provinces deem same to be necessary.

7. Governor

Several of the Chief Ministers who made submissions before the Steering Committee were of the view that executive power should be vested in the Board of Ministers, with the Governor playing a largely ceremonial role, while one Chief Minister called for the complete abolition of the position of Governor.

The Steering Committee was of the view that the Governor should act on the advice of the Board of Ministers other than where he/she is specifically authorized by the Constitution.

The Steering Committee was of the view that the Governor should be appointed by the President.

7.1 Governor to be Apolitical

The Steering Committee was of the view that Constitutional provision should be made to prohibit the Governor, while holding office, from engaging in party politics.

8. Constitutionality of Provincial Statutes to be determined only by the Constitutional Court

The Steering Committee was of the view that:

The Governor should be granted a specified period of time (e.g. two weeks) within which he/she should either assent to a Statute or return same for re-consideration. If neither is done within the specified period, the Statute shall be deemed to have been assented to.

In the event that the Provincial Council enacts the Statute, either with or without incorporating such recommendations, the Governor shall assent to same within the specified period of time given (e.g. two weeks) within which he/she should either assent to a Statute, or refer same to the Constitutional Court for a consideration of constitutionality. If neither is done within the specified period, the Statute shall be deemed to have been assented to.

The Steering Committee was also of the view that Provincial Statutes be subject to judicial review.

It is also recommended that once enacted, the Governor should be required to forward copies of such Provincial Statutes to Parliament, in order to ensure that there is a central database of all Acts and Statutes, which is publicly accessible.

9. Independent Provincial Public Service Commissions to be set up. Appointments to such Commissions are to be subject to the approval of the Constitutional Council

9.1 Provincial Public Service Commission (PPSC)

- (a) The members of the PPSCs should be of high integrity with required knowledge and experience to handle the disciplinary and human resources matters of Provincial Public Service.
- (b) The Chief Minister and the Leader of the Opposition of the Provincial Council should jointly nominate persons to be appointed as members of the Provincial Public Service Commission. The Constitutional Council shall approve such nominations. The Governor shall make such appointments once they are approved by the Constitutional Council.
- (c) In the event the Chief Minister and the Leader of the Opposition of the Provincial Council cannot agree, appointments could be made on the recommendation of the Constitutional Council, out of the nominations made by the Chief Minister and the Leader of the Opposition of the Provincial Council.
- (d) In the event that the Constitutional Council is of the view that there are insufficient persons suitable to be appointed, out of those nominated by the Chief Minister and the Leader of the Opposition of the Provincial Council, it may request them to resubmit names for consideration.
- (e) The Constitutional Council shall then make the recommendations out of the nominations made by the Chief Minister and the Leader of the Opposition of the Provincial Council, or if it is of the view that the persons are not suitable for appointment, it shall then recommend alternate persons for appointment. The Governor shall make such appointments once they are recommended by the Constitutional Council.
- (f) The appointment, promotion, transfer, disciplinary control and dismissal of employees of the PPS should be matters for the Provincial Public Service Commission.
- (g) The Provincial Public Service Commission is responsible for the implementation of public personnel policy with regard to all Provincial Public Service employees other than the Chief Secretary, Secretaries of Ministries and

Heads of Department including appointment, transfers, promotion, and disciplinary control.

- (h) The Chief Secretary shall be appointed by the President with the concurrence of the Chief Minister.
- (i) Secretaries of Ministries shall be appointed by the Governor, on the recommendation of the Board of Ministers, subject to criteria specified by the Public Service Commission, and subject to the approval of the High Posts Committee of the relevant Provincial Council.
- (j) Heads of Department shall be appointed by the Governor on the recommendation of the Board of Ministers, which shall consult the PPSC in making such recommendations.

10. To Advance Co-Operation between the Provinces, and the Centre and the Provinces - a Chief Minister's Conference to be set up

It is recommended that a Chief Ministers' Conference, comprising of the Prime Minister and the Chief Ministers of all Provinces be mandated to meet at regular intervals, in order to discuss issues of common concern, and to promote inter-provincial and Centre-Province co-operation.

The Prime Minister shall preside at the Chief Minister's Conference.

III. STATE LAND

National List - State Land

1. State land as provided by the Constitution
2. Requisition of private property for the purposes of any matter in the National List.
3. Acquisition of private property for the purposes of any matter in the National List, subject to the payment of just compensation.

Provincial List - State Land

1. State land and its use, alienation or disposal as provided by the Constitution, and in accordance with National Land and Water Use Policy.
2. Requisition of private property for the purposes of any matter in the Provincial List.
3. Acquisition of private property for the purposes of any matter in the Provincial List, subject to the payment of just compensation.

ANNEXURE: STATE LAND

1. All State land shall vest in the Republic.
“State land” means all land in Sri Lanka vested in the Democratic Socialist Republic of Sri Lanka immediately prior to the commencement of the Constitution.
2. The foreshore, all lands, mines, minerals and other things of value underlying the ocean within the territorial waters, rights pertaining to the continental shelf and rights pertaining to the exclusive economic zone of Sri Lanka, shall continue to vest in the Republic and shall be held by the Central Government.
3. The limits of the territorial waters, the continental shelf, the exclusive economic zone and other maritime zones of Sri Lanka shall be such as are specified, from time to time, by law.
4. The regulation of the development and exploitation of mines and minerals including oil fields, petroleum and petroleum products and the collection of royalties thereon shall be a subject and function of the Central Government.
5. The reclamation of land from within the territorial waters of Sri Lanka shall be a matter reserved for the Central Government. Any land so reclaimed shall be vested in the Republic and used by the Central Government except as otherwise provided by law.

6. All State land, whether under the control of the Centre or Provinces, shall be used, subject to the Constitution, and with due regard to national land and water use policy as laid down by the National Land Commission.
7. Alienation of State land shall be made on behalf of, and in the name of, the Republic and shall be subject to national land and water use policy as determined by the National Land Commission.
8. The Centre shall be entitled, subject to national land use policy, to use State land controlled or occupied, in accordance with due process of law, in relation to subjects and functions enumerated in the National List, by the Central Government, its institutions or any public corporation at the commencement of the Constitution.
9. A Provincial Administration may negotiate with the Central Government for the release of any State land referred to above to be used for the purposes of any subject or function in the Provincial List.

The provisions of paragraphs 14, 15 and 16 would apply where the Central Government refuse to release such land.

10. The Centre shall be entitled to the use of State land, situated within the Capital Territory, alienated before the commencement of the Constitution and the title to which continues to be with the Republic at the commencement of the Constitution.
11. Every Province shall be entitled to the use of all other State land within the Province and such State land shall, subject to:
 - (a) the rights enjoyed, immediately prior to the commencement of the Constitution, by any person in lawful possession or occupation, immediately prior to the commencement of the Constitution, of any such land; and
 - (b) the provisions of this Chapter, be at the disposal of the Provincial Administration of that Province for the purposes set out in the Provincial List, and the Provincial Administration shall be entitled to exercise rights in or over such land, including land tenure, transfer and alienation of land, land use, land settlement and land improvement, in accordance with applicable written law, and subject to national land use policy.
12. The distribution of allotments of land in land development schemes commenced prior to the promulgation of the Constitution and which have not been completed shall be according to the criteria that applied to such schemes prior to the commencement of the Constitution.
13. Priority in land settlement schemes after the commencement of the Constitution shall be accorded to landless persons. Among such persons, priority shall be accorded:

- (a) firstly, to persons of any sub-division, recognized by law, of the relevant District,
 - (b) secondly, to persons of the relevant District,
 - (c) thirdly, and to persons of the relevant Province, and
 - (d) fourthly, to other persons.
14. Where the Centre is satisfied that State land in a Province is required for the purpose of a subject in the National List, the Central Government may, after consultation with the relevant Provincial Administration, require the Provincial Administration to make available to the Central Government or to such public authority as the Central Government may specify, such land as may reasonably be required for such purpose and the Provincial Administration shall comply with such requirement.

Dispute Resolution – Land

15. Where a Provincial Council does not comply with such requirement, the President shall refer the matter for arbitration to a tribunal consisting of a member appointed by the Prime Minister, a member appointed by the Chief Minister and a Chairman nominated by the members so appointed. Where there is no agreement on the nomination of Chairman, the Chairman shall be nominated by the Constitutional Council.
16. A decision of such tribunal shall be binding on the Centre and the Provincial Council, and, subject to the right of the Government and the Provincial Council to appeal to the Constitutional Court against such decision, no other court or tribunal shall have the power or jurisdiction to inquire into, pronounce upon, or in any manner call in question, such decision.

Land Required for National Security or Defence

17. Where after consultation by the Central Government with the relevant Provincial Administration, the President, on the advice of the Prime Minister, is satisfied that State land in a Province is necessary for National Security or Defence, the President may, on the advice of the of the Prime Minister, direct the Provincial Administration to make available to the Central Government or to such public authority as the President may specify, and for reasons to be specified in such direction, such land as may reasonably be necessary for such purpose.
18. The President may thereafter, on the advice of the Prime Minister, authorize in writing a specified institution of the Central Government to take over such specified extent of land, and the said land may be dealt with accordingly.

19. The provisions of paragraphs 14, 15 and 16 shall not apply in the situation dealt with in paragraphs 17 and 18.
20. A Provincial Council, authority or person aggrieved by the aforesaid decision of the President or the takeover of such land, may appeal to the Constitutional Court against such decision or take over, seeking interim or final relief. Subject to the provisions hereof no other court or tribunal shall have the power or jurisdiction to inquire into, pronounce upon, or in any manner call in question, such decision or takeover.

National Land Commission

21. There should be a National Land Commission (NLC) established by the Constitution, along the lines of the other independent Commissions. The constitution of the NLC should ensure the equal representation of the Central Government on the one hand and the Provinces on the other, while also ensuring due representation of all the major communities.
22. The NLC should adopt a broad consultative process with the legislative bodies of the Province and the people in formulating any National Land Use Policy.

Powers and Functions of the National Land Commission

23. The National Land Commission shall, subject to the Constitution and law enacted by Parliament, be charged with:
 - (a) The formulation of national land and water use policy (which shall include policy relating to inter-provincial irrigation, water supply, hydropower projects), taking into account international standards relating to the appropriate amount of forest cover, exploitation of natural resources, the quality of the environment and other relevant matters.

In formulating such policy, the NLC shall afford a margin of appreciation within which the Central Government or Provincial Administrations may pursue their respective policies.

- (b) The formulation of national land and water use guidelines to give effect to the aforesaid policy;

Provided that all such guidelines shall be operative only once approved with a simple majority by Parliament and the Second Chamber.

- (c) Making of declarations in terms of approved national land and water use guidelines:

- with regard to areas to be designated as Reserved Forests, Conservation Forests, National Parks, Strict Natural Reserves, Nature Reserves, Sanctuaries and National Heritage Wilderness Areas, which declarations may include reviewing areas already recognized as such; and
- to the Central Government and the Provincial Administrations, with regard to protection of watersheds the appropriate amount of forest cover in each Province, conservation of fauna and flora and the protection of the environment;

Provided that all such declarations shall be operative only once approved with a simple majority by Parliament and the Second Chamber.

(d) Monitoring and reviewing land and water use and compliance with guidelines formulated or declarations made as aforesaid.

24. In formulating policy and guidelines and making declarations, the NLC shall consider the representations of, or applications made by, the Central Government, Provincial Councils, or any authority or officer thereof, or any person.
25. Where, after affording the Central Government or the Provincial Administration an opportunity to be heard, the Commission forms the opinion that the Central Government or a Provincial Administration is acting in deliberate non-compliance with guidelines or directions made by the Commission, the Commission may refer the matter to the Constitutional Court.
26. The Constitutional Court may, where it is of the view that it is necessary to do so, make permanent or interim orders directing the Central Government or the Provincial Administration (or specified officers / authorities thereof) to comply with such guidelines or directions or such parts thereof, as the Constitutional Court may direct.
27. Where the Provincial Administration acts in contravention of a permanent or interim order made by the Constitutional Court, the Constitutional Court may made order that the Central Government shall assume control over such extent of specified land as necessary to ensure compliance, for a period to be specified, or such other appropriate order.
28. The guidelines and declarations of the Commission shall be final and conclusive and shall not be questioned in any court or tribunal save and except the Constitutional Court. No other court or tribunal shall have jurisdiction to inquire into, or pronounce upon, or in any manner call in question, the validity of such guidelines or direction, on any ground whatsoever.

Inter-Provincial Irrigation Projects

29. Inter-Provincial irrigation projects are schemes where the command area falls within two or more Provinces.

30. Inter-Provincial irrigation projects and the relocation of persons displaced as a result of their implementation, shall be a subject and function of the Central Government and such relocation shall be undertaken in consultation with the Chief Ministers of the Provinces which benefit from such projects.

IV. CENTRAL LEGISLATION ON PROVINCIAL LIST SUBJECTS

1. All existing Central legislation (on Provincial List subjects) will remain in force and be applicable to the Provinces until amended or repealed by legislation enacted by the Province, and accordingly the powers of Ministers and officials exercisable under such legislation shall be exercisable by the corresponding Provincial Minister or official.
2. The Centre may enact legislation on any subject in the Provincial List provided all Provincial Councils agree to such legislation.

Provided that the Centre should not legislate on matters on the Provincial Council list with regard to any Province that does not agree to such legislation, without recourse to adequate constitutional safeguards to ensure that powers devolved should not be taken back unilaterally from the Provinces.

Miscellaneous

Consequent to the enactment of the Constitution, the Provincial Councils Act and the Provincial Council Elections Act will have to be suitably amended or replaced with new legislation.

V. THE CAPITAL TERRITORY

Establishment

1. The National Capital and the Seat of the Government of Sri Lanka shall be the City of Colombo within the Capital Territory.
2. The Capital Territory of Sri Lanka shall consist of such area within the Western Province, as specified in the XXX Schedule of the Constitution.

Government

3. The Capital Territory shall form part of the Western Province for the purpose of Parliamentary and Provincial Council elections.
4. The Provincial Council of the Western Province shall exercise its powers as specified in the Provincial List in respect of the Capital Territory.

Provided that, where specified subjects and functions with regard to the Capital Territory are specifically recognised in the National List as falling within the powers and functions of the Central Government, such powers and functions shall be exercised by the Central Government. [e.g. Law & Order, Urban planning and implementation in the Capital Territory, public utilities in the Capital Territory, Roads (excluding roads maintained by Local Authorities) within the Capital Territory, Drainage and waterways within the Capital Territory].

5. The statutes of the Provincial Council of the Western Province shall apply to the Capital Territory except as provided by Parliament under this Article. In the event of an inconsistency between a statute of the Provincial Council and an Act of Parliament enacted under this Article, the Act of Parliament shall prevail to the extent of the inconsistency.
6. The relevant Local Government institutions shall exercise their powers with regard to the geographical areas of the Capital Territory falling within their territorial jurisdiction, except as otherwise provided by an Act of Parliament.

VI. SECOND CHAMBER

1. There is general consensus that a Second Chamber should be established, which is largely representative of the Provinces.
2. It is suggested that the Second Chamber should consist of 55 Members, 45 drawn from the Provincial Councils (each PC nominating 5 Members of such PC on the basis of a Single Transferable vote), and 10 Members elected by Parliament on the basis of a Single Transferable Vote. Such 10 Members should be persons of eminence and integrity who have distinguished themselves in public or professional life.
3. The Second Chamber shall not have the power to veto ordinary legislation, but may refer ordinary legislation back to Parliament for reconsideration. After Bills are placed on the Order Paper of Parliament, they shall be referred to the Second Chamber to obtain its views, if any, prior to the Second Reading.
4. In addition to the legislative powers set out below, the Second Chamber shall also exercise such oversight and other functions as may be prescribed by the Constitution or law.
5. No Constitutional Amendment shall be enacted into law unless passed by both Parliament and the Second Chamber, with special (2/3) majorities.

If the Referendum requirement is triggered, the Amendment shall not be enacted into law unless also approved by the People at a Referendum.

6. Constitutional Amendments seeking to amend basic features of the Constitution including Fundamental Rights and Devolution may not be passed except by way of additional constitutional safeguards.

VII. ELECTORAL SYSTEM

1. The Electoral System shall be a Mixed Member Proportional (MMP) system, which seeks to ensure proportionality of the end result (allocation of seats), while also having directly elected constituency seats (thus ensuring such MPs accountability to constituencies)
2. The First Chamber of Parliament consists of a specified number of members (e.g. 233).
3. A specified number of bonus seats shall be allocated to the party that obtains the largest number of seats nationwide.
4. 233 seats are distributed as set out below;
140 (60%) on the basis of First Past the Post (FPP) and 93 (40%) as compensatory seats required to ensure that the final result reflects proportionality.
5. The PR compensatory seats shall be distributed at Provincial and / or National levels.
6. A specified number of extra seats shall be allocated to the Northern Province for a specified period of time, to compensate disparities caused due to displacement of persons.

Distribution of the 233 Seats

7. The FPP seats are filled from Single-Member Constituencies (SMCs) by the candidates winning the highest number of votes within each SMC.

The Delimitation Commission shall be authorized to carve out small electorates to render possible, the representation of a community of interest, which would otherwise be underrepresented (similar to section 41(4) of the Soulbury Constitution, Article 78(4) of the 1972 Constitution).

Alternate position -

The FPP seats are filled from:

- i. Single-Member Constituencies (SMCs) by the candidate winning the highest number of votes within each SMC.
- ii. Dual-Member Constituencies (DMCs) entitled to return two members each, by the two candidates winning the highest number of votes within each DMC. Voters would still have only one ballot, with two FPP votes and one party vote.
- iii. There shall be not more than 5 DMCs, to enable representation of groups that may otherwise be under-represented.
- iv. DMCs could be created by merging what would otherwise be two SMCs, thus ensuring that there is no unreasonable disparity in the value of each vote.

8. The cut-off point for the distribution of National and / or Provincial compensatory seats remains to be decided.

Voting

9. Each voter shall have two votes, both contained in a single sheet.
10. One vote shall be for the SMC (or DMC) candidate, and the other vote for the party.
(The Constitution would have to provide anti-manipulation rules.)
11. In the event that a Member of Parliament (MP) ceases to be a member of the political party (on whose list such member was elected to Parliament) such Member's seat shall become vacant, and:
 - (a) In the case of the expulsion of a Member elected directly by a constituency, there shall be a by-election;
 - (b) In the case of the seat of a Member elected directly by a constituency becoming vacant due to death, resignation or disqualification, the party may nominate another candidate from the relevant list, without requiring a by-election;
 - (c) In the case of a Member elected through a list, the party shall appoint an alternate candidate from such list.
 - (d) The Supreme Court shall, subject to the jurisdiction of the Constitutional Court with regard to Constitutional interpretation, have exclusive jurisdiction to determine the validity of the expulsion of a Member of Parliament from the political party which nominated the Member. No other court shall, in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such expulsion and no court shall on any ground whatsoever grant an injunction or restraining order against such expulsion.

VIII. EXECUTIVE

1. There was general consensus that the Executive Presidency as it exists today, be abolished.
2. The President should be conferred with powers, including those in relation to Provincial Councils in specified situations.
3. The President should be elected by Parliament for a fixed term of office.

Election of Prime Minister

4. The following options were considered with regard to the process for the appointment of the Prime Minister.
 - (a) Direct Election of the Prime Minister
 - (b) Pre-nomination of the Prime Minister
 - (c) Westminster system
5. In the event that a system of Pre-Nomination of a Candidate prior to Election is adopted:
 - Any political party may nominate a candidate for election as the Prime Minister.
 - A political party may nominate the nominee of any other political party or group.
 - A political party may choose not to nominate a candidate for Prime Minister. .
6. Each person nominated by a political party for election to the First Chamber of Parliament, whether as a local electorate MP or under the PR party list, shall be deemed to pre-commit their support for the person nominated by that political party as the candidate for Prime Minister.
7. Independent candidates standing for election in a single member electorate or as members of an independent group under the PR rule may also pre-commit support for a candidate for Prime Minister.
8. At the end of the poll and the declaration of results, the Election Commission will determine whether or not a candidate for Prime Minister has received pre-commitments from a majority of all elected MPs. If a candidate for Prime Minister has received pre-commitments from a majority of all elected MPS, that candidate will be declared elected as the Prime Minister.
9. If the Election Commission determines that no candidate for Prime Minister has received a majority of pre-commitments from elected MPs on the above bases, the Prime Minister will be elected at a Special Session of Parliament where the sole business will be the election of the Prime Minister. This system will also apply if the Westminster model is adopted.

The election will be conducted by the Secretary-General of Parliament, an officer appointed by the Constitutional Council.

10. The election will be conducted by the 'exhaustive ballot system'. This system is designed to produce ultimately a candidate with an absolute majority of more than 50 percent. Under this scheme, if no candidate receives an absolute majority in the first round then the candidate with the fewest number of votes is eliminated and excluded from further ballots. The process of exclusion and re-ballot continues until one candidate has an absolute majority.
11. Parliament shall not be dissolved within the first 4 ½ years except in the following situations:
 - (a) The House requests early dissolution by a resolution passed by not less than two thirds of the number of members including those not voting.
 - (b) The government is unable to secure the passage of the Annual Appropriations (Budget) Bill after two attempts.
12. A Prime Minister and government, whether elected at the general election, or elected by the House after an inconclusive general election, shall not be removed from office during the first two years of its term except in the following situations:
 - (a) The House, by a vote passed by not less than two-thirds of the members including those not voting, expresses that it has no confidence in the government.
 - (b) The government is unable to secure the passage of the Annual Appropriations (Budget) Bill after three attempts.

In such case, the Parliament shall stand dissolved.
13. After two years have elapsed in the term, if a vote of no-confidence in the Prime Minister and government is passed by the House by simple majority, the House shall stand dissolved.
14. After two years have elapsed in the term, if the Annual Appropriations (Budget) Bill is defeated twice, the House shall stand dissolved.
15. If the Prime Minister while having the confidence of the House vacates office by reason of resignation, illness or other cause, a successor to the Prime Minister shall be elected at a Special Session of Parliament (in the manner provided for above).

IX. CONSTITUTIONAL COUNCIL

1. The Steering Committee is of the view that a Constitutional Council, along the lines of that established under the 19th Amendment to the Constitution should be established, in order to make recommendations with regard to the appointment of specified high ranking public and judicial officers, as well as members of specified independent commissions.
2. The composition / ratio (MPs: Non-MPs) of members of the Constitutional Council would have to be decided. It is suggested that the ratio should be 3 *ex officio* MPs: 7 Non-MPs.

X. DUE REPRESENTATION OF WOMEN

In consideration of the need to implement the principle of due representation of the female population of over fifty-one percent, it is recommended that specific provisions be included in the Constitution to facilitate such due representation in all constitutional, legislative and statutory bodies.

XI. PUBLIC SECURITY

- (i) The President may, on the advice of the Prime Minister, declare a state of emergency where there are reasonable grounds to apprehend the existence of a clear and present danger to public security, preservation of public order (including preservation of public order consequent to natural disasters and epidemics) or maintenance of supplies and services essential to the life of the community. The declaration of emergency shall state the basis on which such a state of emergency was declared.

- (ii) A Governor of a Province, on the advice of the Chief Minister, may advise the Prime Minister that a situation warranting a declaration of a state of emergency has arisen within such Province;

The Declaration of Emergency shall be subject to Parliamentary approval and be subject to judicial review.

“XXX. The President may, on the advice of the Prime Minister, where a situation has arisen in which a provincial administration is promoting armed rebellion or insurrection or engaging in an intentional violation of the Constitution which constitutes a clear and present danger to the territorial integrity and sovereignty of the Republic, by Proclamation –

(a) Assume to the President, all or any of the functions of the administration of the Province and all or any of the powers vested in, or exercisable by, the Governor, the Chief Minister, the Board of Ministers or any body or authority in the Province; and

(b) Where it is necessary for the effectual exercise of the powers under subparagraph (a) of this paragraph, dissolve the Provincial Council.

(c) The proclamation shall include reasons for the making of such proclamation.

Such a Proclamation shall be subject to Parliamentary approval and be subject to judicial review.”

XII. OBSERVATIONS AND COMMENTS BY MEMBERS OF THE STEERING COMMITTEE

Observations and comments by Members of the Steering Committee on the foregoing principles and formulations are included as part of this Interim Report.

For ease of reference, the documents have been marked as “**1A -1H**” indicating the respective Member/s who have submitted the same (*Please see table below*).

Document No.	Submitted by
1A	Hon. Nimal Siripala de Silva Hon. A. D. Susil Premajyantha Hon. Dilan Perera
1B	Hon. Anura Dissanayake Hon. Bimal Rathnayake
1C	Hon. Rajavarothiam Sampanthan Hon. M. A. Sumanthiran
1D	Hon. Patali Champika Ranawaka
1E	Hon. Dinesh Gunawardena Hon. Prasanna Ranatunga
1F	Hon. Rishad Bathiudeen
1G	Hon. Douglas Devananda
1H	Hon. (Dr.) Jayampathy Wickramaratne

31.08.2017

Additional Secretary,
Constitutional Assembly,
Parliament,
Sri Jayawardanapura, Kotte.

**Proposed submissions on the response of the Sri Lanka Freedom Party
on the interim report of the Steering Committee of the Constitutional
Assembly**

The response of the Sri Lanka Freedom Party which is recognized political party on the interim report drafted by the Steering Committee of the Constitutional Assembly is appended hereto in the form 08-page document. Please note that this response is based on the updated interim draft report of the Steering Committee of the Constitutional Assembly handed over to us on 08 August 2017. It is also based on documents handed over on the last day in relation to strengthening the women's rights in the Constitution and incorporates brief response thereto. You are kindly requested to include the response of the Sri Lanka Freedom Party in the form of an Annexure of the draft interim report.

Yours sincerely

.....
Minister Nimal Siripala De Silva (M.P.)

.....
Minister Susil Premajyantha (M.P.)

.....
State Minister Dilan Perera (M.P.)

Committee Members representing the Sri Lanka Freedom Party

**Proposed submissions on the response of the Sri Lanka Freedom Party
on the interim report of the Steering Committee of the Constitutional
Assembly**

The first paragraph of page one of the draft interim report of the Steering Committee shall be amended as follows. 'Agreed principles/ formulae' shall be substituted by 'negotiated principles/formulae'.

Further, the term 'expressed its agreement' in 'expressed its agreement for the principles/ formulae' shall be removed and replaced by 'negotiated'

01. Matters covered by Chapters I and II of the Constitution

The response of the Sri Lanka Freedom Party for the matters set out in the draft interim report is –

(a) We propose that the Articles 1 & 2 of the Constitution shall be maintained unchanged in their present form, i.e.

01. Sri Lanka is a Free, Sovereign, Independent and Democratic Socialist Republic and shall be known as the Democratic Socialist Republic of Sri Lanka.

02. The Republic of Sri Lanka is a Unitary State. – **In the Tamil Language and the English language the word 'unitary' shall be used and shall carry the interpretation of the word of the Sinhala Language.**

Article 3 shall be maintained just as it is i.e.

(In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.)

Articles 4,5,6,8 shall be maintained unchanged in their present form. There is no objection for the incorporation of Article 7 in relation to the national anthem as set out in the report of the Steering Committee of the Constitutional Assembly.

The Constitution shall accord the foremost place to Buddhism. **The Existing Article 9 shall be maintained just as it is without any amendment i.e.**

(The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Article 10 and 14(i)(e).

The Sri Lanka Freedom party is not in agreement to any other alternative proposal in the draft drafted by the Steering Committee of the Constitutional Assembly.

PRINCIPLES FOR DEVOLUTION OF POWER

The SLFP is in agreement to the proposal to devolve more powers to the local government institutions as proposed by the Steering Committee.

01. It cannot be agreed to the principle to have Divisional Secretary offices based on ethnic composition as it could lead to communal disharmony and would be an obstacle to maintain ethnic and religious reconciliation.
02. The main unit for the devolution of powers shall be the Province. **There is agreement to implement the 13th Amendment on devolving powers.**

The Sri Lanka Freedom Party is in agreement that the core principle for the devolution of power shall be the province. There shall be absolutely no entitlement to amalgamate two or more provinces and create a province and the Sri Lanka Freedom party proposes that any existing opportunity of such amalgamation mentioned in the Constitution and the provincial council laws should be removed from the legal system. The proposal on creating 'Jana Sabha' units should be further discussed.

1. INTER PROVINCIAL CO-OPERATION

The concept of inter-provincial co-operation is accepted, but collective decisions and amalgamation of provinces shall not take place.

2. PROTECTION AGAINST SEPARATION

It shall be clearly stated in the Constitution about the unitary status and shall be mentioned that the country remains 'undivided and cannot be divided.' It shall be incorporated in the Constitution that the declaration of or taking steps to declare any part of the country as a separate state by any Provincial Council, Authority or any person is an offence that carries severe punishment. **The Constitution shall also enshrine legal provisions preventing expression and implementation of extremist ideas based on community or religion.**

Matters set out in Sections 3.1,3.2, 4, 4.1,4.2,4.3, 4.4,5,5.1 in the draft report of the Steering Committee shall be subject to further extensive discussions.

04. Devolution of power amongst a number of layers of the government shall be specific and set out with definitions. We are in agreement with this concept and the matter shall be further discussed and it is required to maintain a short concurrent list. As per the proposals contained therein we are in agreement with the maintaining of a national list, provincial list and a local government list.

05. We acknowledge that the subjects required for ensuring sovereignty, territorial integrity and economic integrity shall be allocated to the central government. This has to be extensively discussed and prepared.

5.1 National policies- Legal Framework: It is required to further study the practicality of the implementation of the concept outlined in the draft.

We propose that the Constitutional Court set out in 5.1 shall be a court consisting of judges of the Supreme Court appointed by the Supreme Court.

5.2 National Policy – Matters contained herein shall be subject to further discussions. **The authority of Parliament in respect of the formulation of national policies shall not be restricted.** Similarly, the powers vested in the Provincial Councils shall not be taken back. The Sri Lanka Freedom Party is not in agreement with the inclusion of Article 72 of the German Constitution.

It can be agreed, in principle, to the matters contained in 5(6) under the national policy of the draft.

06. LOCAL GOVERNMENT– Implementing selected local government functions.

The matters contained herein can be agreed in principle.

07. GOVERNOR

In determining the matter concerning the powers of the Governor, it shall be done with due regard to the concept that he/she functions as the representative of the President and due consideration shall also be accorded to the powers and responsibilities vested in the President. Therefore, these powers shall be drafted having studied the powers and the nature of the office of the President elected under this Constitution whilst giving due consideration to the judgment delivered by the Supreme Court when the 13th amendment to the Constitution was challenged.

Thus, the powers to be vested in the Governor shall be determined on the basis of the manner in which the President is elected and the powers and privileges to be conferred on him.

The Sri Lanka Freedom party is in agreement with the principles that the President shall appoint the Governor in consultation with the Chief Minister and that the Governor should be apolitical.

The SLFP is not in agreement with the proposal that the Governor shall only perform ceremonial functions. The Governor, under the Constitution shall be vested with powers as a representative of the President to act in instances when the Provincial Council is defunct, in the event of the collapse of law and order situation, in a situation where peaceful environment needs to be maintained or if there is an any attempt to break away from the Central Government. The Governor shall be vested with authority to execute such powers without an hindrance. The power for the Governor to act immediately, to reject if any attempt is made by a Provincial Council or a Chief Minister to violate the unitary status of the country or declare a separate state or an autonomous region should be vested with him.

The other powers to be vested with the Governor shall be framed **comprehensively**, having regard for the entirety of the constitutional amendment.

Save for the instances where such special powers are conferred on the Governor, the SLFP accedes to the concept that the Governor shall act in consultation with the Board of Ministers. Further the SLFP is in agreement with the view that the Governor shall be appointed by the President.

The SLFP concurs with the principle in 7.1 that the Governor shall be apolitical.

The SLFP is also in agreement with the concept outlined paragraph 08 that the constitutionality of statutes of the Provincial Councils shall be determined by the Constitutional Court appointed by the Supreme Court.

The remaining matters in Paragraphs 8, 9 and 9.1 of the draft can be agreed in principle. However Paragraph 9.1 which states that the President shall appoint the Chief Secretary in consultation with the Chief Minister shall be amended. Paragraph 9.1 A shall be amended as follows. The Governor will appoint the heads of departments on the recommendation of the Provincial Public Services Commission.

The SLFP is in agreement with the Paragraph 10 in principle. It shall be chaired either by the President or the Prime Minister.

STATE LANDS

The principles set out in the draft under the headings 'National List -State Lands' 'Provincial List – State Lands' can be agreed with in principle. The SLFP, in principle, is in agreement with matters set out in paragraphs 1 to 14 of Annexure 1' State Lands', but Paragraph 15 'Settlement of Land Disputes' shall be amended to read that the Chairman of the Panel of Judges shall be appointed by the President. As per Paragraph 16, an appeal shall be submitted to the Constitutional Court appointed by the Supreme Court.

NATIONAL SECURITY OR LAND NEEDED FOR SECURITY PURPOSES

Paragraph 17 relating to this, should be amended, as based on the advice of the Prime Minister or with or without his advice when the President is satisfied with it.

Paragraph 18 which said it should be based on the advice of the Prime Minister should be removed.

In agreement with Paragraph 19.

Paragraph 20 should be removed. The Executive's decisions taken regarding national security or lands for security purposes, should not be challenged in any courts, is the opinion of the SLFP.

NATIONAL LAND COMMISSION AND THE POWERS OF THE NATIONAL LAND COMMISSION

Though the SLFP is in agreement in principle with the proposals No. 21 to No. 30 in relation to the National Land Commission and the powers and functions of the National Land Commission, the matters contained therein shall be further discussed extensively and separately. There is agreement in respect of recommendations relating to Interprovincial Irrigation Projects. But some matters therein shall be discussed to reach a compromise. **In addition, a policy on settlement shall be formulated, taking into account the large scale settlement projects, river basins and their interprovincial connections. It shall be mentioned in the Constitution that these are subjects and functions coming under the purview of the Central Government.**

CENTRE FORMULATING LAWS IN RESPECT OF PROVINCIAL COUNCIL LIST

There is basic agreement regarding matters contained in this paragraph.

CAPITAL TERRITORY

Though it is agreed to this concept in principle, its implementation should be further discussed.

SECOND CHAMBER

There is an agreement in principle regarding the establishment of a second assembly. The Sri Lanka Freedom Party is of the opinion that in order to make the process of selecting members to the second chamber more democratic and to reflect public will, it is more appropriate to adopt a process of selecting members through provincial council and parliamentary elections. We agree with the concept that those members should be well known and honest among public and have showcased their professional talents. The stance of the SLFP is that the Second Chamber should comprise 36 members who will be selected from Provincial Council representation and 19 members selected from Parliament representation. It is appropriate to appoint two members of the Second Chamber as members of the Cabinet of Ministers.

The Sri Lanka Freedom Party is of the opinion that the special two third majority for constitutional amendment referred to in Paragraph 5 is required only from the Parliament.

There is an agreement in principal about matters referred to in Paragraph 6

ELECTORAL SYSTEM

The Sri Lanka Freedom party is in agreement in principle to proposals in the draft in this regard and emphatically states that amendments relating to the electoral system should be brought first in amending the constitution.

This was a special pledge given to the Sri Lanka Freedom Party when the 19th amendment to the constitution was presented. Particularly, the Members of Parliament of the Sri Lanka Freedom Party joined the government for the attainment of the political objective of having the proposal for the change of electoral system changed which is a dire need of our times. Further, His Excellency the President Maithreepala Sirisena, in his election manifesto, had acknowledged that the changing of the electoral system was a primary requirement.

ELECTIONS

The party in principle is in agreement with matters contained in Paragraphs 9 and 10. The Sri Lanka Freedom Party is of the opinion that a by-election shall be held if the seat of a member becomes vacant upon his death, resignation or disqualification. Subject to this provision, the SLFP is in agreement in principle to other matters contained in paragraph 11.

EXECUTIVE

The opinion of the SLFP is that complete abolition of the Executive Presidency, that is present today is not prudent. Considering various terrorist and extremist activities that happen in various countries in the world, the SLFP believes a President should be elected directly from the public mandate with a certain amount of powers to protect the unitary status of the country and to keep and to protect the stability of the country specially in a situation where a large volume of power is granted to the Provincial Councils. Thereby every ethnic group of the country without narrow ethnic, religious problems gets a political power by selecting a president and gets the opportunity to become a member of the presidential election process, and hence, it becomes a practical method for national reconciliation.

The President that is elected in that manner shall be the Head of the Cabinet of Ministers, and it shall be ensured that he has the opportunity to hold the ministerial portfolios relating to national security, the three armed forces, and the police.

The fact contained in Section 10 of the draft, i.e., the concept that Parliament shall not be dissolved within the first four and a half years except on specific situations, can be agreed upon, but under what specific situations the Parliament can be dissolved during this period need to be discussed further. However, the Constitution shall be formulated in a manner that the concept that the country shall always be ruled by a government of which the majority consists of representatives of the people is implemented, and the opportunity for democratically ousting a government is given to the representatives of the people.

Sri Lanka Freedom Party very strongly proposes that the constitution shall essentially limit the number of ministers and the number of state and deputy ministers to 30 each,

and that subjects shall be divided among the ministries on a scientific basis and the ministerial portfolios and the subjects coming under each of those ministries shall be included in the constitution.

Sri Lanka Freedom Party strongly believes that selection of the Prime Minister shall be done following the Westminster system. Sri Lanka Freedom Party also states that, subject to this system, the other proposals for selecting the Prime Minister, that are not in line with that system should be removed.

CONSTITUTIONAL COUNCIL

It is the view of the Sri Lanka Freedom Party that how the composition of the Constitutional Council is determined shall be studied again taking into consideration the manner in which the Constitutional Council has acted so far, the efficiency of the members appointed to it and the attitudes and views of the people towards it.

The extent to which the functions expected of the Constitutional Council that has been established through the present Constitution have been fulfilled has to be reviewed. Accordingly, the methodology in which the composition of the Constitutional Council is determined has to be thought of newly.

LAW AND ORDER, AND PUBLIC SECURITY

LAW AND ORDER

We policy-wise agree to paragraphs 1, 2, 3, 4 and 5 of the Section on Law and Order given under this Section. Although we basically agree to the facts contained in this Chapter, further discussions have to be conducted before reaching a consensus on the powers that should be given to the Provincial Police Service. The powers given to the Provincial Police Service and the powers given to the National Police Service should be clearly specified in the Constitution. It is the view of the Sri Lanka Freedom Party that this should be done after long deliberation.

PUBLIC SECURITY

- i. Under this, when implementing an emergency law, the President shall be given full powers to appoint through a declaration of emergency law with or without instructions to the Prime Minister.
- ii. This paragraph should be amended by replacing 'to the Prime Minister' with 'to the President'. However, in both the aforesaid situations, those decisions shall not be subjected to judicial review. Our standpoint is that, it is not necessary to get the approval of the Parliament for declaring emergency situation having acted accordingly on advice to the President on declaration of emergency situation within the province by the Governor as it is not practical to do so.
- iii. The facts contained in the lines from 1 to 12 in Section XXX can be agreed upon; however, it is the stance of the Sri Lanka Freedom Party that the President should give powers to implement them with or without advice from the Prime Minister for that.

- iv. Such a declaration should not be subjected to the approval of the Parliament or should not be subjected to judicial review. Therefore, Sri Lanka Freedom Party does not agree to that Section.

STRENGTHENING THE RIGHTS OF WOMEN IN THE CONSTITUTION

With regard to the aforementioned matter, Sri Lanka Freedom Party strongly believes that strengthening of the rights of women in the Constitution should be done after reviewing the results and background of the Local Government Elections and a methodology should be developed to increase the representation of women in the Parliament. Further, Sri Lanka Freedom Party agrees as a policy that the Constitution should contain provisions necessary for strengthening the rights of women and children. Facts relating to this methodology should be included in the Constitution after carrying out extensive discussions.

Signed by:

Minister Nimal Siripala De Silva (P.M.)

Minster Susil Premaratne (P.M.)

State Minister Dilan Perera (P.M.)

Committee Members who represent the Sri Lanka Freedom Party

1B

[Translation]

People's Liberation Front (J.V.P.) – Sri Lanka

Views on the Draft Interim Report of the Steering Committee of the Constitutional Assembly and Amendments for it.

The current Constitution, which was promulgated in the year 1978, has been amended 19 times by now and it has become a distortion which is harmful to democracy. Therefore, we believe that it is essential to promulgate a new Constitution which safeguards democratic rights, human rights and the rights of all communities, in lieu of the aforesaid Constitution.

We do not think that all the problems that the country is faced up with can be solved through the proposed new Constitution. People's Liberation Front has a different opinion and a vision in regard to the entire crisis that the country is faced up with, the solution for it and the new Constitution which should be promulgated to solve that crisis.

We are well aware of the limitations prevalent in a new Constitution which is formulated within the very socio-economic structure existing at present whilst it remains unchanged. We also of the opinion that the Provincial Council system is not an option to effectively resolve the national problem that has arisen in the country. However, we shall submit our amendments with the view of granting rights to all communities along with the objective of avoiding a secession of the country having paid due consideration to Provincial Councils as well since they have become a reality in the country by now.

Hence we shall submit below our views and amendments for a new Constitution which shall grant more democratic rights to people than the existing Constitution having incorporated in it provisions for abolishing the Executive Presidency, formulating a new electoral system, upholding human rights and granting rights for all communities.

Views and Amendments

1. The Executive Presidency shall be completely abolished. However an Executive Prime Minister shall not be created in lieu of the position of the Executive President. The following amendments submitted by us are based on the aforesaid principle.
2. The Constitution shall not provide provisions to allow any two or more provinces to merge into one single unit.
3. A system shall be formulated to extend the jurisdiction of the present Supreme Court in lieu of establishing a separate "Constitutional Court".
4. The powers of the Governor shall not be weakened and the aforesaid powers shall adequately be reinforced in a context in which the executive presidency is abolished.

5. The Article which disallows “withdrawal of the powers that have been delegated” coming under the heading “Formulation of Laws by the Centre on the subjects incorporated in the Provincial Council List” and the Article 6 coming under the heading “Second Chamber” shall be incorporated into the Constitution to make changes or amendments in powers or in the Constitution as a whole as per requirement.
6. It shall be ensured that the final outcome of the proposed mixed system of the First Past the Post system and the Proportionate Representation system for the election of Members of Parliament should be on the proportionate system and provisions shall not be made to allocate slots for other additional Members of Parliament in a manner in which the said system is changed.
7. The person who commands the consent of the majority of Members of Parliament shall be appointed as the Prime Minister.
8. The Articles 11, 12, 13 in the section of “Election of the Prime Minister” coming under the heading “The Executive” shall be changed.
9. There shall be one single police service, which is responsible for law, order and public security. A broad discussion should be conducted in regard to the powers and functions to be assigned on national and provincial levels.

Hon. Anura Dissanayaka, M.P.,
Hon. Bimal Rathnayake, M.P.,

TNA position

1. Sri Lanka shall be a Union of Provinces/States. Sri Lanka shall be a federal state within the framework of a united/undivided and indivisible country. The Centre and the Provinces/States shall exercise exclusive power in their areas of competence in accordance with the provisions of the Constitution.
2. Sri Lanka shall be a secular state. If the majority consensus is in favour of Buddhism being given the foremost place, the terms and conditions relating thereto should be specified.
3. The Northern and Eastern provinces shall constitute one province/state. The North and the East have been historically inhabited by the Tamil speaking People and the said two provinces and every district in those provinces are even today predominantly Tamil speaking despite demographic changes. Adequate safeguards shall be incorporated to ensure that no injustice is meted out to any one and that all citizens receive equal treatment.
4. The powers and functions to be assigned to the provinces/states shall be in conformity with the recommendations of:
 - (i) The report of the Mangala-Moonesinghe Select Committee,
 - (ii) The Constitution Bill, 2000
 - (iii) The report of the multi ethnic Experts' Committee appointed by President Mahinda Rajapaksa and the report of the All Party Representatives Committee (APRC) chaired by Prof. Tissa Vitharana and approved by President Mahinda Rajapaksa.

There has been a vast and substantial consensus built around the above proposals.
5. The Province/State shall have the necessary powers to muster the required finances to exercise the devolved powers.
6. The Governor of a province/state, being the representative of the President shall endeavour to ensure a smooth working relationship between the centre and the provinces/states and shall not have any power to interfere with the exercise of executive power of the Province/State but the powers of the Governor shall be clearly defined in the Constitution.
7. The Senate (the second chamber) shall be a representative body constituted of representatives from the provinces/states and shall also be conferred with powers to oversee the possible dilution or taking back devolved powers from provinces/states.



8. The Constitution shall be the Supreme Law and the Constitutional Court shall be entrusted with the responsibility to interpret all matters and settle all disputes in relation to the Constitution.

9. In the interests of reaching an acceptable consensus, the TNA will be willing to consider agreement with the main principles articulated in the interim report if the same are acceptable to the two main parties.

R. Sampanthan

R Sampanthan MP – Trincomalee District
Leader of the Opposition

M A Sumanthiran

M A Sumanthiran MP – Jaffna District

30th August 2017

Jathika Hela Urumaya

Updated draft interim report of the Steering Committee of the Constitutional Council
8th August 2017.

Observations of the Jathika Hela Urumaya.

Introduction

This document too is based on the documents submitted by us for the purpose of formulating a new Constitution previously.

As we have pointed out previously, the formulation of a new Constitution should take into consideration the practical realities of the country as well as the national policies. Trying to formulate a Constitution as a means of responding to foreign pressure that occurs from time to time and to suit the individual political ideologies held by the Constitution makers will end up in the country being plunged into a chaos.

A Constitution that does not reflect the majority opinion of the country will neither be approved nor receive the required legitimacy. Further, if the Constitution does not fall in line with the national needs and policies of the country, it will impede the achievement of national targets of the country. Accordingly, the Constitution makers should not try to foolishly hold on to political ideologies they have upheld for life but develop an open mind broad enough to comprehend the public opinion and national needs. Then only we will be able to develop a Constitution that suits us.

A new Constitution should strive to achieve two main aims; stability and democracy. The process of formulating a new Constitution becomes a sensitive act that should be accomplished with openness and rationality as it seeks to achieve both those aims together which are mostly seen as being contradictory to each other, in a manner that does not harm their practical qualities.

Stability means political stability, social stability, economic development and environmental sustainability.

Democracy means peoples sovereignty, human freedom, human rights and good governance.

In the formulation of the 1978 Constitution, political stability and economic development were given prime attention to suit the time while democracy was seen as a deterrent to achieving those targets, thus creating an “executive” with authoritative powers which could be interpreted as arbitrary and would undermine democracy. The struggle to win back democracy and freedom commenced thence. As a direct result of this struggle and as a result of the attempts made to find a consensual solution to the war, a process of constitutional reforms with more attention to democracy got underway. What we witness today is an extension of that attempt. Accordingly, our position today is the total opposite to the situation that prevailed at the time of the formulation of the Constitution of 1978. **Both these extremes are erroneous. We need a moderate path that balances stability and democracy.**

This Constitution making process has proposed a very feeble Central Government and federal governance made up of powerful provincial administrative units. It is evident that the drafters of the Constitution believe that devolving on land based on the province is the best method of redressing the grievances of the minority communities of Sri Lanka. A close scrutiny of things shows that this is merely a political demand and a slogan far from a logical solution that seeks to address the genuine grievances of the people. A look at the ethnic distribution and composition of Sri Lanka shows that the province is in no way a logical political unit. For example only 32 per cent of total Tamil population of the country and 43 per cent of the Sri Lankan Tamils live in the Northern Province, the only province which can be won by a political party based on Tamil nationality.

Accordingly, it is clear that in a system of devolution of power based on the province aimed at addressing the grievances of the ethnic Tamil people, 68 per cent of the total Tamil population of the country has been excluded from that system. If the language problem is sought to be solved by devolving powers on the province, only 44 per cent of the total Tamil-speaking people will be benefitted out of that solution even if that language policy is implemented in the Eastern Province too in addition to the Northern Province.

If police powers are devolved only 32 per cent of the total Tamil people will benefit of it. As far as police powers are concerned, the situation of Muslims is far worse. The system prevailing in India, which was used as the model in introducing the provincial council system in Sri Lanka, is totally different to ours. 92 per cent of the Tamils of India live in the State of Tamil Nadu. This type of situation need to be deeply considered when introducing a new Constitution.

Therefore, given the ethnic distribution and composition of Sri Lanka the most effective channel through which ethnic grievances and aspirations can be addressed is national level reforms and not devolving powers based on provinces. Language problem, if for example considered as one of the main grievances of the Tamil polity, can only be solved through the national level. Religious freedom too can only be guaranteed through a national endeavor and not within provinces. All these direct us towards a national level reform process.

In addition to this, if we consider the issue of grassroots level political participation, the impediments that can be seen at the provincial level are the same at the national level too. For example, there is no big difference for a person in Dehiattakandiya to reach the Eastern Provincial Council located in Trincomalee and the Central Government in Colombo. Smaller units are required for this purpose.

Therefore, the Jathika Hela Urumaya considers the local government area as the unit of decentralization. This should function based on a village council system which will ensure public participation while protecting the element of transparency. Further, the borders of the existing local government units in Sri Lanka should be scientifically demarcated based on demography, ethnic composition and economic factors, a new. This will help form the most effective administrative unit of devolution. Unlike in the province, it is easy to form a local government area in a manner that ensures the representation and participation of a specific population.

It is only in relation to Tamil people living in the Northern Province who can at the least keep some hope that grievances of a minority community will, to some extent be solved in the system of devolution of power based on provinces. But that, at the same time neglects the minorities in almost all other provinces.

If the local government area is used as the unit of devolution, then the Sinhala people in the Northern Province (ex. Vavuniya South), Tamil people in the Eastern Province

(eg. Thirukkovil), Muslims in the Eastern Province (eg. Sammanthurai) and Upcountry Tamil people in the Central Province (eg. Thalawakele) will be able to ensure their effective political participation. It is on this basis that the Jathika Hela Urumaya presents the following views.

1. Matters revealed through Articles 1 and 2 of the Constitution

Articles 1 and 2

Articles 1 and 2 should not be changed.

As the official name “Democratic Socialist Republic of Sri Lanka” used to call Sri Lanka is unnecessarily long and does not imply any specific political or economic meaning, it is pertinent to consider if required to change it as “**Sri Lanka**” or “**Republic of Sri Lanka**”.

Article 2

The present Sinhala, Tamil and English versions should remain the same. Also, the unitary status of Sri Lanka should remain in spirit while status enshrined in Articles 2, 4 (a) and 76 (1) should not be changed under any circumstances. As we have categorically and specifically pointed out in our earlier documents, the notion that grievances of minorities in Sri Lanka can be resolved through a process of devolution on land area based on provinces is only a long standing illogical opinion of a few people. This absurd opinion makes the opportunity of evolving a methodology aiming at delivering justice to all communities a mockery while seriously obstructing the achievement of national development targets essential for the existence of the country. Therefore, instead of the illogical and harmful proposal of devolving powers based on provinces, a more effective and logical framework should be thought of even at this later stage.

As pointed out earlier, we are of the strong contention that the local government system should be strengthened in a manner that people will receive maximum power and that national development is not disturbed.

What should specifically be noted is that, as mentioned by the drafters themselves ‘the Constitution should not be a document that people fear’ and also that it should be devoid of vague and deceitful expressions. The Constitutional framework presented by this set of proposals is undoubtedly a federal one. While it is so, it is not at all good to try to purposefully hide it from the people. **In formulating a new Constitution**

openness should be maintained at all cost in place of concealment. If a new Constitution is introduced, it should definitely be done with agreement among the people coupled with broad consensus. If such an agreement is to take place, the true nature of the proposed Constitution and the governance system expected to be established by it should be genuinely explained to the people.

Article 3

Article 3 of the present Constitution should not be changed. The drafters have not explained why an alternative formula has been presented in place of the present Article.

Article 4

Article 4 of the present Constitution should not be changed. The drafters have not explained why an alternative formula has been presented in place of the present Article.

Article 5

Article 5 of the present Constitution should not be changed. It is clear that the alternative formula has been presented to suit a federal framework. Since our stance is different we don't see a need to change this Article.

Article 6

There is nothing wrong in the proposed formula.

Article 7

Proposed formula is acceptable. Our contention is that the logical and efficient manner in addressing the grievances and fair aspirations of different communities is not devolving power based on provinces but moving towards national reforms.

Therefore presenting the stance on the National Anthem explicitly like this and explaining the situation that existed up to now is more clearly acceptable.

Article 8

Proposed formula is acceptable

Chapter II/Article 9

Article 9 of the present Constitution should not be changed at all.

Though not only politicians but even certain academics are in a wrong perception, both constitutionally and legally Sri Lanka is a Secular State.

The Article 9 of the Constitution has not at all made Buddhism the State religion. That Article is only a constitutional decoration. However for thousands of years there has been a bond between Buddhism and the State which even Britishers accepted when signing the Upcountry Agreement. Accordingly having recognized this historic legacy at least nominally, led to the consolation of the Sinhala Buddhists. Therefore that state should prevail.

Provisions of Articles 10, 12 and 14 (1) (c) of the Constitution which have laid down the relationship between the religion and State of Sri Lanka practically and legally should remain unchanged.

Principles of Devolution

1. Using the Subsidiarity Principle

We cannot agree to the Subsidiarity Principle laid down in this Bill for following reasons:

Especially, the manner in which what the Subsidiarity Principle is described, i.e. **“Anything that the lowest tier has the capacity to do, should be devolved to it”** is an extremely illogical and confusing interpretation about governance. Theoretically, now that there exist in the world outside states smaller than local governance units operating in Sri Lanka, a Local Government unit of ours is capable of performing anything which that such states can perform. Accordingly, it gives the notion that by following the Subsidiarity Principle, any power - including the power of self-determination - can be devolved to the lowest tier existing in our country, i.e. a Pradishiya Sabha.

It is not based on such unrelated concepts, but based on a broad-based context of national political, economic, social and cultural interests that the decentralization of

power should be dealt with. As we have pointed out through previous documents, the most appropriate form especially in terms of national development is conducting the whole state according to a common national plan but not allowing the respective Provinces or localities to determine or implement development policies according to their liking and understanding. A fact which becomes obvious is that the development strategy of the present regime is to make decisions on economic development and to implement them in a nationally centralized manner. At the same time, as we have pointed out through our previous documents, it is the decision-making at national level that is appropriate for ensuring environmental sustainability. Sri Lanka is a single geological and ecological system. At the same time, environmental conservation is inevitably interlinked with economy and therefore, it is necessary to handle the environment and the economy so that each does not become a shackle to the other. Accordingly, these two should be handled nationally, rather than at Provincial or local level.

2. The Proposal that the Province should be the Main Unit of Devolution

This proposal is contradictory to the proposal regarding Subsidiarity. It is really surprising that the drafters have ventured to state that “the main unit of devolution shall be the Province” immediately after they said that “Anything that the lowest tier has the capacity to do should be devolved to it”. The lowest tier of the governance structure of Sri Lanka is local government, viz. Pradeshiya Sabhas, Urban Councils and Municipal Councils. Accordingly, there is not the slightest doubt that their real intention is nothing but giving the Provincial Councils every possible power and making the Provincial Council an immensely powerful unit. When the concepts of treating Provincial Councils as the main unit of devolution and the Subsidiarity Principle are considered together it is clear that it may be used to form even a con-federal governance structure, which is not an agreeable state of affairs.

We have laid down our party’s position about the Provincial Councils system in clear terms. This system was introduced in a situation in which Sri Lanka had been in the grip of a huge pressure amidst India’s direct political and military influence and the pressure simultaneously exerted by LTTE’s terrorism. It is clear that the Provincial Councils system had been built in accordance with the norms and models and political and military aspirations of that country and not rather to suit Sri Lanka’s political, social

and economic aspirations and realities. All Tamil armed groups including the LTTE expressed their consent to this India's solution at least in the beginning but received strong opposition from majority of the Sinhalese people. Although the LTTE expressed opposition to the intervention by India, all other Tamil military groups and political parties accepted India's solution willingly. The only obstruction to the implementation of the Provincial Councils system was the LTTE's launching of a gory war holding Tamil people to ransom in an extreme and power-crazed way, which brought about a situation in which it was impossible to bring peace to this country without defeating that terrorist extremism. It should be accepted that no new grievances have joined the problems of Tamil people since signing that agreement on 29 July 1987 up to now and most of the grievances have been resolved. Accordingly, it is very clear that Tamil politicians have no just cause for demanding more and more power. Therefore, what is left to be done at present is to strike an open discussion about the lacunae existing in the Provincial Councils system, which was hurriedly introduced amidst a depressive atmosphere within a chaotic situation at that time. Using the same slogans and extremist arguments used by the LTTE to justify their recourse to armed action and submitting them in a dogmatic manner is not going to lead to a rich discussion. We should not forget that they were put forth not to achieve peace but to justify their war. We should and also could win Fundamental Rights and social justice not locally but collaboratively and nationally. While it stands, we cannot agree to this proposal, which has been put forth to make the Provincial Councils system extremely powerful and as its inevitable result, weaken the central government.

Although some factions are holding on to the absurd notion that a broad devolution centering on geographical territory based on Provinces is necessary for resolving the grievances of minority communities, it becomes evident that it is an illogical notion in view of the ethnic distribution of the Sri Lankan population. It is only the Northern Province that remains a non-Sinhalese dominant one. Even then, it is only 43% of the Sri Lankan Tamil population and 32% of the overall Tamil population that live there. Accordingly, it is evident that there is no possibility of ensuring any collective rights such as language, cultural, social and religious rights locally. The model which Sri Lanka should use instead is one of acting in unison, i.e. acting to resolve the grievances of each ethnic community and to ensure the rights of every ethnic community nationally. At the same time, the most appropriate in terms of economic

development is one of conducting the whole of the state according to a national plan and not one of allowing each Province to implement development policies according to the wishes and perceptions of each Province.

In fact, it is apparent that the present government's economic development strategy has been prepared with a good understanding about this fact. At present, proposals have been made to establish development agencies for the Eastern Province, the Central Province and the North-Central Province, and a Megapolis Authority for the Western Province. They all aim at turning development into a national task. As such, the move to effect a devolution of high level clashes directly with this national development strategy. This all point to the fact that our government's strategy is to conduct the decision-making and implementation of development policies from the centre, or in other words, at the national level. Accordingly, our Constitutional structures should be formed to suit such strategy.

In addition, it is the decision making at national level that is suitable to ensure environmental sustainability. Sri Lanka is a single geological and ecological system. At the same time, environmental conservation is inevitably interlinked with economy and therefore, it is necessary to handle the environment and the economy so that each does not become a shackle to the other. Accordingly, it can be said that these two should be handled nationally, rather than at Provincial level.

Decentralization should be done only when it is essential or better to do so. At the same time, decentralization of power should be done in a manner which ensures the active, effective and maximum participation of people. It should be considered as the major factor in both unit and structure.

3. Local Government Institutions

From the proposals submitted in respect of Local Government institutions also it becomes clear that the drafters are determined to create a weak central government and a powerful Provincial Councils system. This set of proposals, instead of submitting any proposal to strengthen Local Government institutions, have focused on barring all opportunities available to the central government to influence and on giving full power

in that regard to the Provincial Councils. It is to be regretted that the drafters, having put forth a principle termed “Subsidiarity Principle” in the beginning, have presented their proposals along a completely different principle. Without a doubt, this set of proposals intends to create a Federal system of government comprising a weak central government, weak Local Government system and very strong Provincial governance structure.

The stand of the Jaathika Hela Urumaya is that it is through the conferring of maximum possible power to the local authorities, which is the lowest governance structure, that maximum people’s participation in the governance process can be guaranteed and both the goals of democracy and goals of economic development can most productively be achieved without collision between each other.

When we compare Sri Lanka’s ethnic and urban-rural aspects of the incidence of the population, it is evident that the most productive one is a local level decentralization, rather than a Provincial level devolution. Eastern Province is one of the best examples to understand this fact. A resident of the Eastern Province will get no unique identity or direct political or economic benefit merely because he or she is called an Eastern Province citizen.

If the residents of Kokkadicholai, Samanthurai or Padiyathalawa are to link with authority with their political and economic aspirations in a logical and fruitful manner, it is necessary to localize that power as much as possible. Accordingly, examined from whatever perspective including political, geographical, ethnic and economic perspectives, Sri Lanka has the need for governance structures of two tiers, i.e. the national and the local. In other words, there is no logical need in Sri Lanka for a governance tier called Provincial except for mere political interests. What we have been doing since 1987 maintaining under the artificial institutions called Provincial Councils some functions, which the central or local levels could have performed very easily and efficiently, having snatched them away from the central or local levels and vested in the said Provincial Councils. This is an impediment to national economic development, which is our immediate and essential need at present. Therefore, it needs be subjected to some open-minded thinking.

As a country, Sri Lanka should now strive to achieve rapid economic development. On the other hand, it should also strive to achieve decentralization of power so that it does not hamper that development drive and the active and maximum participation of people is ensured. These two needs can only be guaranteed by organizing Sri Lanka as a unitary state on the one hand and decentralizing power to the lowest tier as much as possible on the other. As such, Provincial Councils are an obstacle to national development and national unity and on the other hand they will not be instrumental in giving results expected through devolution.

The clear and definite position of the Jathika Hela Urumaya is that the devolution process should be directed towards strengthening Local Authorities. Local authorities should be given the maximum opportunity to carry out the functions pertaining to local survival and development in accordance with the national policies. However, no local authority should be allowed to act in a manner that will disrupt national development plans and other national policies. As most of the activities of the local authorities are those relevant to the village level, a Village Councils system should be established to ensure active village-level people's participation. Making and implementing decisions relevant to the locality should be done through the participation of the people in the area and the local councilor of the area should function as the liaison between the Village Council and the local authority council.

4. Concurrent List should not be Abolished leading to further strengthening of the Provincial Councils System

The drafters have proposed to vest in the central government only "the subjects necessary for ensuring Sri Lanka's sovereignty, territorial integrity, defence / national security and economic uniformity". Although many words have been used there, all of the words "Sri Lanka's sovereignty, territorial integrity, defence / national security" refer to the subject we usually call national security. Although it is broadly interpreted, it does not include anything more than a few aspects such as foreign relations and immigration and emigration. At the same time, it is not clear what is exactly meant by 'economic uniformity, the other factors included in it'. It can be interpreted broadly to cover many subjects if necessary. Or else, it may be a mere embellishment which does not legally pronounce anything definite, like the 'Guiding Principles of Government Policy' contained in the Constitution. What becomes manifest by the

aspirations hitherto unveiled by the drafters of this set of proposals is that they do not have any readiness to give any significant power to the central government. What ultimately happens by this weakening of the centre is that Sri Lanka state will find itself in an inefficient and anarchic situation in which it is incapable of achieving economic, social and finally political goals.

5. **National Standards and National Policies** move beyond the status of Constitutional embellishments only by a trifle.

6. **Local Government institutions** should be considered the major unit of devolution is our party's position.

7. **The Powers of the Governor of the Province** should be maintained same as it now exists. All the Governors of Sri Lanka so far have, respecting the mandate of the people, allowed Members of Provincial Councils, who have been elected by popular vote, to carry out the functions of the Provincial Councils and this has become the tradition in respect of Provincial Councils. Therefore there is no need for change in it.

8. The Need for a **Constitutional Court** does not arise as our party's stance is to strengthen local authorities and not Provincial Councils.

9. It is apt in terms of democracy to establish **independent Commissions** for Provincial Councils in the same way as established for the de-politicization of the governance of the central government.

10. Our party is agreeable to the establishment of a **Chief Ministers Conference**.

STATE LANDS

This part pertaining to state lands should be read together with the central government and Provincial Council lists. As such, the facts mentioned in this part of the proposals clearly point to the fact that a bigger portion of the powers pertaining to lands will be vested in the Provincial Councils. It is only the territorial waters belonging to Sri Lanka and the lands located within the capital city that have been proposed to be vested in the central government. Apart from a few very limited circumstances, the power over lands will actually be vested in Provincial Councils. This so happens because the central government and the Provincial Councils can enjoy land powers only for the purposes as stated in their respective lists. As such, the central government will not actually wield significant power in respect of lands, it is inevitable that central government will be dispossessed of its power in respect of lands almost completely. A fact that should be mentioned specifically is that this set of proposals has rendered the obtaining of lands necessary for national security difficult and uncertain.

If the power over lands is given almost totally to the Provincial governments in that manner, obstructions will be posed to the achievement of national development goals on the one hand and guaranteeing of national security on the other. As such, the opinion of the Jathika Hela Urumaya is that destructive results may be caused by giving wider powers over lands to the Provincial Councils while putting the central government into a powerless state in terms of power in respect of lands.

Lands should strictly be a central government subject. As the present government has taken steps to establish a land bank, it is the continuation of lands as a subject of the central government that will be consistent with that national policy. As it has been stated already, it is such a policy that will be effective in relation to national development.

Formulation of laws regarding the subjects of the Provincial list by the Center

There is no need of expressing a special opinion regarding this section since the Jathika Hela Urumaya is totally against a Federal System comprising a powerful Provincial Government and a weaker Central Government as proposed by the drafters.

Land in the capital

As opposed to the Federal System proposal by the drafters, the Jathika Hela Urumaya holds the view that the capital should be a special zone which is under the direct rule of the Central Government. Therefore, the urban area surrounding the present Colombo city of the Western Province should be maintained under the purview of the Central Government as the **'Greater Colombo' Metropolitan Zone**.

Second Chamber

It is the view of the Jathika Hela Urumaya that the proposal to form a second chamber is a waste of time and money; make the rule inefficient as well as difficult to achieve national, socio-economic and political goals and will not help fulfill any expected outcome.

If a second chamber is formed as proposed, it will be a duplicate of the composition of the Parliament. Although the elected members represent a certain party, there is no reason to prevent them defying its stance. If a group opposing the party that has the majority in the Parliament is elected it would often impede the functions of the ruling party. At first such election would not have any benefit and secondly it would be detrimental to the functioning of the Parliament.

The proposal mentioned under number six of this section clearly depicts the true intention of the drafters. According to it 'a constitutional reform which aims to curb the powers that have been decentralized to Provinces cannot be adopted.' **Therefore, supremacy of the future generation has been abolished from this article.** What is expected by including such an eternal clause that cannot be amended by following a certain procedure or under any circumstance?

On the other hand, the future generation will be left with no other alternative except being confederate or to make each province a separate state under the fully fledged Federal rule to be created in accordance with this proposal. These drafters are proposing to define such a rule as a 'unitary' rule. The motive behind creating an extreme Federal rule and defining an article which cannot be reversed due to any reason as 'unitary' should be explained to the general public by these drafters.

Election System

It is the view of our party that it is essential to amend the electoral system to strengthen the democracy of Sri Lanka. However, it is compulsory to draw attention to one important aspect in this regard. That is, the nature of the Executive and the electoral system is mutually connected in the 1978 constitution. Although a semi-presidential system or a mixed system exists in Sri Lanka, the 1978 constitution was prepared to make the President stronger when he has the support of the Parliament as well. Therefore, the electoral system for the Parliament was amended from simple majority, which existed until then, to proportional representation in order to prevent such a powerful President having unwanted Parliamentary power. Under the proportional electoral system gaining two thirds or five sixth majority is practically a difficult task. The original nature of the constitution has changed drastically due to the 13th amendment which curbs the power of the Center led by the President and the 19th amendment curbed the powers of the President. Whenever there is a proportional representation it is important for the Executive to have more powers to maintain the integrity of the rule. Also, if the powers of the executive are to be reduced such a situation must be balanced by a corresponding reduction of the proportional character so as to ensure that the ruling party has a majority in Parliament. This must be taken in to account, when reforming the electoral system.

Since the powers of the Executive have been curbed considerably already, the electoral system should be amended assuring a majority within the ruling party. Therefore, the formula our party is proposing with regard to amending the electoral system is that **the party that obtains the highest number of votes should have the most number of seats while the Parliament representation of minor political parties that already have representations should also be assured.** Therefore, the number of seats allocated for the party placed first should be increased by reducing the number of seats allocated for the party placed second. We are proposing this

system as there will not be a considerable change if the party placed second receives 90 seats or 75 seats.

The Jathika Hela Urumaya is proposing an electoral system where members will be elected from the electorates and the party that obtains most number of votes having a practical majority as mentioned above which has a tendency towards proportional representation. We hope to express our view clearly after conducting required calculations regarding the system proposed by the draft.

The Executive

The Westminster system as well as the mix Presidential system existed in Sri Lanka till 1978 and 1987 respectively before the Provincial Councils were established. The issue regarding the impact the Provincial Councils have on the Sri Lankan constitution when the 13th amendment to the constitution was introduced was addressed by emphasizing the central importance of the Executive Presidency in relation to the unitary nature of the state. Therefore, it is obvious that the existence of a Presidency with a genuine power is essential for the Provincial Councils to prevail intact. Although as a party we are against the Provincial Council system, we recognize its existence since it is a part of the present Constitution. However, if the Provincial Council system exist in such a manner then it is compulsory to have a Presidency with a genuine power. If not there is a risk of integration and the stability of the state being damaged.

The view among certain leftist groups that the Parliamentary system in itself is democratic and the Presidency in itself is non-democratic is baseless. The Parliamentary, Presidency and Semi-Presidency systems exist in United Kingdom, United States and France respectively and all those countries are democratic in a same manner. Therefore, attempting to establish democracy by abolishing the Presidency and by creating the Parliamentary system is meaningless.

All the things presented as grievances by the minor communities particularly by the Tamil people, surfaced not during the time the Presidential system was in effect but when the Parliamentary system was effective. Similarly, unlike in the Parliamentary system in the Presidential system, the minorities will have much opportunity to participate when electing the Executive. The capacity of the Presidential system to safeguard the stability of the state expected by the majority of the people is relatively high. Therefore, it can be stated that the Presidential system fulfills the

expectations of the majority and the minority at the same time. Therefore, the most logical approach regarding co-existence is that the Presidential system should prevail further.

The Presidency which was created from the 1978 constitution had become non-democratic not due to an inherent defect in the Presidency, but because of the nature it was established under the constitution. That mistake was corrected to a considerable extent from the 19th amendment to the constitution. Such reforms can be done if required. Therefore, it is the view of the Jathika Hela Urumaya that a democratized Presidential system should prevail.

The Constitutional Council

We do not oppose the Constitutional Council.

Law & Order and Public safety

Law and Order should further be a national matter. But with parallel to it, **it is compulsory to assign Police Officers who have knowledge of Tamil language to serve in Police stations situated in areas where considerable number of Tamil people live.** Furthermore, the suppression and the distress caused to the public by the Police should be curbed while the mechanisms and systems at national level to grant relief to the victims should be further strengthened. One of the points that should be clearly stated is that 57 % of Sri Lankan Tamils and 68 % of the entire Tamil population live outside of the Northern Province. Therefore, if the intention of granting Police powers to the Provincial Council is to address an 'ethnic grievance', it is evident that this measure will not serve that purpose. This is why our party believes that it will be meaningless to address the 'ethnic grievances' from devolution of power based on the land, when the composition and the demography of communities are taken into consideration.

The power to declare and maintain **State of Emergency** should be intact as mentioned in the present constitution.

The conclusion

Creating a Federal system comprised of Provincial states that have such a strong power and a weaker Central Government will be extremely harmful for the national security, unitary nature of the country and the stability of the state.

Devolution of power to this extent is completely against the present government's economic and development vision. The final outcome of such a system will weaken the national development and will become a factor that develops divisions among ethnicities, class and eventually will lead to uprisings.

By proposing a Federal model based on fundamental ideals of such a nature, the drafters are depriving the opportunity the country had, to introduce a constitutional reform that could have been practically adopted. In addition, presentation of such a series of proposals will only pave the way for a bitter dialogue between communities and eventually will further expand the ethnic divisions.

The Jathika Hela Urumaya opposes the ideology of this constitutional draft due to these reasons. We would like to urge all to have an open, logical and futuristic mentality in their approach towards constitutional reforms without having extreme views.

Patali Champika Ranawaka

General Secretary

Jathika Hela Urumaya

[Translation]

31st August, 2017

Chairman,
Steering committee to the Constitutional Council,
Parliament of Sri Lanka.

**The Interim report (the draft) of the steering Committee of the
Constitutional Council;**

**The written submission of the Joint Opposition on the draft Interim
report of the steering Committee of the Constitutional Council, dated 8th
August 2017.**

We, wish to put forward our standpoint on aforesaid interim report as follows;

In advance, we have submitted a memorandum (schedule -1) dated 03.04.2017 containing 14 constitutional principles that are irreversible, along with our views on various matters which were raised on 03.04.2017 on the draft interim reports which were issued from time to time, with a detailed submission dated 03.04.2017 on the matters covered by the 1st and 2nd chapters of the current constitution and further additional letters and memoranda. This submission is made without prejudice to previous submissions and further thereto.

When history is taken into account it is evident that there had been formal and developed constitutions even before 2500 years, until the European invasions and such constitutions had been successful in satisfying the daily needs of the people, while leading Sri Lankan society towards a contented self-sufficient country. By the time that Arahath Mihindu graced this land, the unwritten constitutional provision, to the effect that the leader of the state should rule in accordance with "Ten Royal Virtues" as the trustee of the land and the resources of the people, had been effective throughout the history.

The model of previous constitution which had been created to make the sovereignty function in a circular track with checks and balances of mutual existence of people, king (state) and Bhikkus, was a much more developed and a practical model than that of the constitutional principles which are tried to be taught by the westerners. The fact that had been affirmed by the ancient laws such as Badulu edicts, is that in ancient Sri Lanka there had been an effective devolution of power which had been effected within a unitary state and that those days people had an opportunity and a right to participate in executive and legislative decision making, straightforwardly.

Our own constitutional traditions and theories that prevailed for thousands of years, were suppressed under imperial rules of Western Europeans. The validity of the Soulbury constitution which was imposed by the British that granted Sri Lanka the freedom on 4th February 1948, was also effected by a royal decree which was passed by the British Parliament. Therefore, the united front was mandated in 1970 to execute a constitutional revolution to formulate an autochthonous constitution based on the sovereignty of our own people. Accordingly, By way of a constitutional council that was established by the parliament, 1972 constitution was formulated as a constitution that derived power from the sovereignty of our own people. 1978 constitution also was formulated on the basis of 1972 constitution. Therefore Sri Lanka continues to be a sovereign and a Democratic Republic since 1972.

A separatist political group which made Tamil people helpless and isolated, was operative since decades in the country and they abused such helplessness, creating conflicts among people, demanding for a separate area of rule.

The malicious and anti - people approach had created a worse effect on the development of the people and the country. These separatists transformed themselves into a gang of brutal terrorists later.

The government of the day which was rendered helpless due to the pressures of separatists and of certain international states imposed 13th amendment on us forcibly irrespective of the public protests, in 1987. However, not only the L.T.T.E,

the most powerful terrorist group of the time but also the other political parties that are following the separatism even today accepted the Provincial Council system which was introduced by 13th amendment as an effective and conclusive solution.

The Supreme Court determined that Sri Lanka is a unitary state even under the 13th amendment. But it had dragged the country towards the threshold of the Federal system (opposite system to unitary state). Though Mr. Wardharaja Perumal who was the Chief Minister of the North Eastern Provincial Council, declared the province as a separate state *ex parte*, the state of Sri Lanka was able to dissolve the province and to defeat the conspiracy of declaring a separate state. Such move was possible as Sri Lanka was a unitary state and the state had the control over the provinces.

Consecutive executive presidents who came to power up to the year 2009, initiated military operations to defeat the L.T.T.E. Only the leadership of President Mahinda Rajapaksha could defeat brutal terrorism. So shedding all differences, all the people could march towards a massive development. But the separatists worked politically, to accomplish terrorist expectations, even after year 2009. They were backed by the international parties. An international community which propped up the separatists with the intention of having economic and political benefits by dividing and politically destabilizing the country, has emerged. These two parties are engaging in a conspiracy under the patronage of separatists and deceive the people, shamelessly. New life expectations of helpless Sinhala, Tamil and Muslim people who underwent hardships for a long period of time due to terrorism, are being shattered by the clutch of the separatists.

President Maithripala Sirisena, the incumbent president who came in to power in 2015, pledged that an amendment to the constitution will be brought without touching any provision which can only be amended through a referendum. The expectation created in people was to have a constitutional amendment that limits the powers of executive presidency reducing the number of Ministers and endowing the parliament with more powers and to have a more democratic election system. No mandate has been given to do away with the unitary nature of the country, neither to neglect the duty of the government in protecting and prioritizing the Buddhism and to create a federal state or a state of federal nature.

In such a context, through constitutional amendment process, efforts are being made to bring about a new constitution that surpasses the powers of 13th amendment which was brought with the inducements of separatists and their international patrons which had never been the aspiration of the Tamil people and no issue of a community can be solved with that. Further, it would not contribute towards the development of the country .

All the interim committee reports which were formulated by the interim committees of the constitutional council that has been established by the parliament by a resolution , have aimed at dividing the country and the people evermore. Subtle strategies have been adopted in that regard. Major experts and venerable bikkus who express their views on unitary state, have not been called before the sub committees for their inputs .Only the separatist recommendations that contained in the report of the Public Representations Committee (Lal Wijenayaka report), which was not a part of Constitutional Council , have been inserted into the subcommittee reports without the knowledge of the Parliament .No effort has been made to consider , analyze or at least to state any idea expressed on unitary state . But a confederal principal like subsidiary which will be helpful in creating units that can be independent , has been introduced by the Centre -Periphery report subtly . Further proposals have been made to delete or distort the article 9 of the constitution which carries the basis of the state that Sri Lanka continues to have for a history of 2500 years . Proposals have been made for a constitution which creates independent territories (units) that will have governing powers.

Aforesaid subcommittee reports are that biased that they have been formulated as if no view had been expressed in support of the unitary nature of the State . They have been formulated to lay emphasis on the opinion of the respective chairmen (except for subcommittee on finance). No impartial analysis has been carried out on the representations made by all the parties and groups. Aforesaid subcommittees have violated the resolution passed by the parliament .All subcommittee reports have been formulated against the unitary state concept. It was due to aforesaid reasons that all the parliamentarians who represent the joint opposition took a decision to refuse all six subcommittee reports and declare it.

Another reason to refuse all subcommittee reports (six) is that the Centre-Periphery subcommittee report had determined the key model on which other sectors which were considered in other subcommittee reports will be operated.

Our observations on the contents of the Interim Report that has been submitted to the steering committee on 8th August 2017

In formulating aforesaid interim report and all the other interim report drafts, the recommendations of the centre periphery report have been considered. In addition to that the recommendations of the Lal Wijenayake committee report which operated outside the constitutional council and which was formulated with the views of less than 4500 people (Direct and indirect), has been utilized. Such recommendations have been directed towards eliminating the unitary state.

Therefore, our stance on the matters with regard to interim committee draft reports, has been made clear through aforesaid 14 aspects. And also, our submissions dated 03.04.2017 on nature of the state, sovereignty and religion has been presented along with our objection against the proposals that have been made to amend chapter 1 and 2 of current constitution with the intention of damaging the unitary model of the state and to harm the country and the people.

Hidden strategies that have been adopted

Firstly, We wish to submit our objections which have been already submitted with regard to the mode and the methodologies that have been adopted in formulating the drafts of interim reports.

1.Nothing has been mentioned in aforesaid draft interim reports as to who is responsible for the preparation and determination of the fields and limits of the such interim reports. Therefore those draft interim reports have not been compiled in terms of the views and decisions of all the representatives of the steering committee. This steering committee is not obliged to consider or approve such reports that have been compiled arbitrarily, by the outsiders without any proper consultation on the criterion and the grounds that has to be determined by the steering committee.

But such unsystematic interim reports have been issued by the committee as a practice and it is our stance that by such act the committee has violated the powers that have been conferred by the parliament .

2. Further , we emphasize the fact that such preparation of interim reports is in contravention to the decision that had been taken by the committee previously as to not to prepare any interim report until there is an agreement in the steering committee on respective subject matters .
3. No oral or written submission that had been submitted by the joint opposition to the committee , have been considered in compiling these interim reports . We already have expressed our objection against the inclusion of entirely different facts in the interim reports and the efforts that have been made to pretend that we are in agreement with such matters . Further, we have to inform that this covert and unorthodox strategy is being adopted since a month or so.
4. We have observed that there are contradictions over the terminology that has been used in Sinhala, Tamil and English copies when those copies of 08.08.2017 are studied comparatively. For instance, the words used in Tamil and English copies to depict the word “unitary state” are sheer contradictory. These kind of acts would bring perilous results .
5. Further , we object the measures that have been taken to adopt the recommendations of **Public Representation Committee** lacking the approval of all the members of the steering committee . The main reason for that is (among other things) (a) that committee has not been established by a resolution passed in the parliament and it is not a part of the constitutional council (b) the functions of the committee are not scrutinized by the parliament and such committee is not responsible for the parliament (c) such committee has been set up before the establishment of constitutional council by the parliament (d) public allegations have been raised against the committee to the effect that the strategies adopted by the committee and the manner as to how public opinions were sought are arbitrary and biased. (e) the committee has come to the conclusions paying no attention to the views of a sample which represents all the people (f) majority of the people of the country was ignorant of the functions of the committee and the committee has sought public representations only from 0.0002 % of the people of this country (g) as there is no scientific justification or reason to

believe the conclusions arrived by the committee are the views of the majority of the country.

6. We object the utilization of **center-periphery relations subcommittee report and the other committee reports** in formulating the drafts.
7. When formulating **subcommittee reports** also only the representations and views that are in agreement with the **devolution principal of subsidiary** have been adopted and the representations and views founded upon **unitary state** have been neglected in a biased manner .
8. Under the title “Agreed principals and propositions“, following statement had been included in the report dated 8th August 2017

“According to the discussions held on the 5th and 6th of July 2017, the subject matters incorporated in page 1 to 11, have been agreed upon” . That statement is completely inaccurate. We completely reject the aforesaid statement and it has been communicated before.

Matters covered by Chapter 1 and 2 of the constitution

1. Chapter 1 of the constitution deals with the formulation and determination of basic model and structure of the constitution of Sri Lanka and determination of the limitations of the institutions and components .We emphasis the fact that current constitution of Sri Lanka stipulates that Republic of **Sri Lanka should be a Unitary state** . We strongly object to all the provisions contained in the draft interim reports that challenges the basic model of a “unitary state“
2. And also , we strongly object the adoption of “ **subsidiary principal of devolution of power** ” in regard to Sri Lankan constitution(this will be discussed further at a later stage) . We affirm the fact that this principle had been enshrined with the view to abolish the “unitary state “ . It creates federal , con federal or separate units through which the sovereignty of the people

can be operated independently or separately and **eventually that act would facilitate the declaration of separate states or separate states will made to be declared** .

Article 1 and 2

3. We emphasize that the same terminology that has been used in the article 1 of 1978 constitution should be preserved. (term **“Ceylon”** in English text also should be preserved)
Sri Lanka (Ceylon) is a free, sovereign, independent and Democratic Socialist Republic and shall be known as the Democratic Socialist Republic of Sri Lanka.
4. We strongly object to other formulations that have been proposed in the interim report draft in place of Articles 1 and 2. This will abolish the Unitary State of Sri Lanka.
5. Accordingly, the article 2 of the 1978 constitution should be kept as it is:
“the Republic of Sri Lanka is a Unitary state “
6. And also , it is observed that the term **“Republic”** that had been used to depict Sri Lanka , has been subtly removed .We emphasize the fact that the word **“Republic of Sri Lanka”** should be used wherever “Sri Lanka” is mentioned .

Under “issues “ in the final Interim Report ,it has been proposed to include the word ***“Unitary”*** in Sinhala copy and to include ***“Orumiththa naadu”*** in Tamil copy . We object the proposed English and Tamil terminologies . The meaning of ***“ Orumiththa Nadu”*** in Tamil is entirely in opposition to the Sinhala meaning of “ Unitary state “ . The meaning of ‘Orumiththa Nadu “ carries the meaning ***“ the country that is formed by amalgamation”*** . The word that has been proposed in English language is not the word “ unitary state “ , but a word that does not carry a meaning in English language .

On the other hand we completely oppose the definition given to the term “unitary state”.

The aforesaid definition intends to provide an artificially created distorted meaning to the term; “unitary state” which means a state which is undivided or made of several merged provinces.

Accordingly we deny all the terms and constructions mentioned in all the four paragraphs coming under the matters on 1st and 2nd pages.

7. This is a clear strand of evidence which indicates the fact that this interim report is drafted on a separatist agenda. Strategies have been created by this to abolish the character of unitary state of the country. We shall pay our attention to the interpretation given by the Supreme Court to the term unitary state in its ruling on the 13th Amendment to the Constitution. Accordingly, the main characteristics of a unitary as is explained in Constitutional Law are as follows:

- (a) Existence of a Supreme Parliament at the Centre.
- (b) Non-existence of other independent/Sovereign secondary institutions.

On the other hand state power is equally divided among federal states and one federal state does not come under the purview of another. They function independent of one another.

Furthermore, we state that following conditions are essential to safeguard the unitary character of a state – as is emphasized by the aforesaid ruling of the court.

- (a) The President (Government) shall have the capacity/power to exercise his (its) executive power within the Province through the Governor.
- (b) The Parliament (Government) shall have capacity/power without any restriction to amend an existing law in a province or formulate laws superseding any existing law in a province.
- (c) The supremacy of Parliament shall be safeguarded.

(d) Provincial Councils shall not function as another institution which exercises the legislative (or executive) power that can compete with the Government or Parliament.

Article 3

8. We deny the proposition that has been proposed in the draft for Article 3. We emphasize that Article 3 of the Constitution of 1978 shall remain as it is.
9. Article 3 of the Constitution provides provisions to the effect that sovereignty is vested in the people and that it is an unalienable power. The court has defined sovereignty as a power which cannot be divided or broken.

Article 4

10. We completely deny the proposition that has been proposed for Article 4 of the current Constitution. We state that a highly fragile, unspecific and unstable state will be created by the proposition that has been proposed. The aforesaid proposal will terribly put the whole state, country and the people into an insecure situation.
11. The Article 4 specifically defines the manner in which the sovereignty of the people which has been upheld by the Article 3 of the current Constitution will be exercised through the system of governance.

The principle of devolution of power among the main public institutions namely (a) the Legislature (b) the Executive and (c) the Judiciary has been specifically accepted and executed by it. Therefore, we emphasize that the Article 4 of the current (1978) Constitution shall remain as it is.

Article 5

12. We completely deny the proposed proposition. The aforesaid proposition will put the territory of Sri Lanka into a state of utter uncertainty. Furthermore, any revelation has not been made in regard to the (so called) ?? schedule

mentioned in it and the fact of mentioning about such (unrevealed) schedule imply that a draft Constitution which contains such a schedule has already been formulated and the aforesaid matter has been concealed from the Members of the Steering Committee, Parliament and the People.

13. We completely deny the proposal for defining the **territory of Sri Lanka based on provinces** and utilizing the criteria of international law which incessantly varies.

14. Therefore, we emphasize that the Article 5 of the current Constitution, which is based on Districts, shall remain as it is. Similarly no interpretation of the term “Provinces” is incorporated into the current Constitution.

Articles 6,7,8

15. As the second sub schedule intended in the proposed clause number 06 has not been submitted to the committee, that formulation is rejected and also it is emphasized that the **clause number 06 of the current constitution and the Lion’s Flag in the second sub schedule of the current constitution shall remain intact.**

16. **Similarly, it is emphasized that the clause 7 and the third sub schedule of the current constitution shall remain unaffected and the words National Anthem therein , shall be changed as the National Anthem of Sri Lanka and further it is emphasized that the clause 8 (Independence Day) too shall remain unaffected.**

Article 9

17. Second alternative proposal proposed in the draft of 08.08.2017 and the alternatives 2,3,4,5,6 and 7 included in the drafts of the interim reports which were previously published, are unanimously and strictly rejected and strong objected.

It is emphasized that clause 9 of the current constitution shall remain as it is. i.e.

“9. The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14 (1) (e).”

Even though the above stand has been informed by us on several occasions prior to this, alternative terms are repeatedly proposed in view of repealing clause 9 . We firmly reject this.

Principles of Division of Power

1. Use of the Principle of subsidiarity

As this principle is included in the report of the subcommittee on Centre Periphery relations, it has been repeatedly included in the interim reports of the Steering Committee (Amidst the objection of the Joint Opposition).It is a mystery as to who has proposed this principle. There is no transparency in it. Further it has not been disclosed as to whether this principle has been utilized for the purpose of devolution of power.

Principle of subsidiarity has been formed in Europe. It has gradually developed and is currently utilized to weaken the independent and sovereign units of administration for the administration at the Centre. Example-Clause 5 of the European Union Convention. This principle does not carry any specific meaning or scope. It is a principle which can be utilized to fulfill political needs in a manner which suits the particular occasion. In case if power is devolved in Sri Lanka utilizing this principle the said periphery units can exercise their sovereignty as separate areas independent from the government .

All the proposals included from page number 4 of the above report have been presented to generate a divided nation within the aforesaid power division structure.

Therefore, all the aforesaid proposals are contrary to the unitary state principles.

Therefore, as a whole, we object and reject all the proposals indicated from page 4 to 28 of the draft Interim Report (dated 2017-08-08).

2. Unit of Power Devolution

The scope of the unit intended here is not comprehensible. Similarly we are against implementing a methodology where one province merged with another and functions as a separate unit. We also reject the proposals in relation to the unit of power devolution mentioned in paragraph 2 of page number 4 since it is a proposal made on the basis specified in the report of the Committee on Centre- Periphery relations.

We firmly state that every inch of land in the country is inherited by all the citizens of the country and therefore if any structural change is to incur in a certain province , it shall be endorsed by the entire Sri Lankan community . Therefore we state that a decision cannot be taken to establish a separate administrative unit merely for people residing in two provinces .

The third alternative under the aforesaid heading is a proposal submitted by the Tamil National Alliance asking to recognize Northern and Eastern provinces as one unit. The Joint Opposition strongly objected this proposal and the whole steering committee too has rejected the said proposal. This proposal cannot be included in draft interim report in such a situation. Therefore we strongly reject the said proposal.

It is apparent that the principles and limits of power devolution included in all of the interim reports, have been included consistently with the limits and aspirations included in the statements periodically made by the Tamil National Alliance and initially by the LTTE organization and also with the expectation of enforcing the aforesaid views.

Community Council

This proposal is completely based on racism and racialism. We are not in agreement with this, since it is a wording which proposes to divide Sri Lankans on the basis of their nationality, race and place of residence .

2.1 Inter-provincial corporation, 2.2 Protection against separatist divisions

Whatever the relationships build up by all the peripheral administrative units (example-provinces) shall be built through the government. We are against the proposal proposing to enable such units to build up such relationships independently. Similarly, protection against separatist divisions has been granted on the basis that the state of Sri Lanka is a structure which comprises of indivisible units .If the state of Sri Lanka is considered as a single unit and as a unitary state , no need arises to think of divisions.

Instead, it is proposed that the Clauses 157 A, which consider it an offence to violate the territorial integrity of Sri Lanka, and that such shall be prevented, introduced by the 6th amendment of the current Constitution be further strengthened.

3.Local Government Institutions

We are against the wordings in 3.1 and 3.2.The administrative powers vested with the government regarding local governance included in the current constitution shall prevail the same and the policies of the government shall be decided by the government itself in a manner that affects the whole country.

4.Division of Power among tiers

We reject the proposal regarding the removal of the concurrent list as stated in sub paragraphs 4.1. and 4.4 and also the total wordings proposed under the said basis .

5. National Policy , National Standards and Legal Framework

Peripheral units or the provinces shall have no entitlement or opportunity to decide on a discretion independent of the government regarding any matter coming under the above definitions. All the decisions that shall be taken at the national level shall be taken by the Government and Parliament alone.

Therefore, We reject all the wordings from 5, 5.1,5.2, 6 .

6. Local Governance- Implementation of selected provincial functions

The wording given under this topic is vague and unclear as it has been given. Similarly, We reject the said wordings as it has been apparently proposed under the Concept of subsidiarity.

7. Governor

The powers vested with the governor under the 13th Amendment of the current constitution shall remain unaffected and he shall implement his powers in a manner that represents the government and the executive at the provincial level. We object the wording proposed in the draft.

8. Constitutionality of Provincial Ordinances and Constitutional Court

We vehemently object this wording and proposal. And we emphasize that the establishment of any court outside the courts that utilize the judicial power specified under clause 4 of the current constitution or the establishment of any other institution which can utilize the judicial power, shall not be performed.

9. Establishment of independent Provincial Public service Commissions and the Constitutional Council

We are against the wordings and paragraphs proposed under 9.1 and also emphasize the fact that the Provincial Public service Commissions already implemented, are also a failure. They are mere mechanisms that involve a high cost and weaken the provincial level administration.

State Lands

All the state lands shall be possessed by the state.

Since all the wordings and proposals pertaining to state lands included in the said pages cannot be accepted, they shall be completely reviewed.

Legislation by the centre regarding the subjects coming under the provincial list

The government shall have unlimited power to enact any law affecting a subject coming under the Provincial Council. As per the proposed wording, Parliament needs

the approval of the Provincial Council to enact laws and that will damage to the supreme legislative power of Parliament. Through that, the unitary nature of Parliament is infringed. Therefore the proposed wordings and the clauses are rejected.

Second Chamber

The wording and the clauses proposed pertaining to the second council shall be reviewed.

Electoral system

Election of the Executive

The proposed wordings presented pertaining to these matters shall be reviewed.

Constitutional Council

When we consider the manner in which the Constitutional Council generated through the 19th amendment to the constitution is implemented, it is apparent that the selection and appointment of higher level public and judicial officers and members of Commissions do not take place in a democratic and independent manner as expected of a structure of this nature. This method is currently deployed merely to appoint relevant officers as per the expectations of a minority. Therefore, it shall be inquired as to whether it is required for a Constitutional Council to further exist in the present manner. The proposed system too is seemingly confusing and has been proposed with a possibility to be abused. Accordingly, the wording proposed on the Constitutional Council too needs to be reviewed.

Law, Order and Public Security

A structure of a Police system created as per the aspirations of the separatists and implemented under the principle of subsidiarity has been proposed here. The proposed wordings too are incomplete and complex. Therefore, we reject the said wording and all the clauses.

Conclusion

We declare that the interim report of the steering committee dated 08.08.2017, the interim reports of steering committees issued prior to that and the interim committee reports(are not scientific reports) which have been formulated considering the ideas and representations of all the Sri Lankans in a justifiable and comparative manner and that they are partial reports merely formulated as per a plan to abolish the unitary government.

We do hereby further note that we are in agreement with the statement issued by the most venerable Mahanayaka theros recently asking not to formulate a constitution which endangers Sambuddha Sasana and the wellbeing of a unitary country.

We firmly believe that all the ethnicities including Sinhalese, Tamils and Muslims can create a peaceful and prosperous Sri Lanka while protecting the unitary state.

We hereby inform that the Joint Opposition is not in agreement with and therefore rejects this draft report which has been presented to formulate a constitution which revokes the unitary state and the united existence of Sri Lanka which was prevalent for thousands of years.

1. Hon.Dinesh Gunewardena , M.P.
 2. Hon.Prasanna Ranathunga , M.P.
- (Members of the Steering Committee)

Schedule 1

The uncompromising constitutional principles presented to the Steering committee of the Constitutional Assembly on 07th October 2016 by the Joint Opposition.

1. Unitary State

Sovereignty shall be in the people shall be inalienable (as per Articles 2 and 3 of the constitution of 1978). Supremacy of Parliament shall be maintained

2. The territory of the Republic of Sri Lanka shall be as article 05 of the constitution of 1978.

3. *The National flag and the National anthem shall be as the articles 6 and 7 of the constitution.*
4. *No alteration shall be made to the Article 9 on Buddhism included in Chapter III of the constitution of 1978.*
5. *The system of Presidency (current system) shall be altered.*
6. *Provinces shall not be merged. Provinces shall not have the ability to be integrated.*
7. *Prime Minister shall be elected by Parliament.*
8. *The leader of the opposition shall be elected by the members of the opposition of Parliament.*
9. *The Provincial Council system shall not be a threat to the unitary state and its security. Provincial councils shall utilize their powers subject to the executive and legislative powers of the centre. A report of the further studies conducted by us in this regard shall be presented.*
10. *The powers included in the list of powers possessed by the local government institutions shall be increased.*
11. *Priority shall be given to the local business community.*
12. *Lands of the country shall not be transferred to foreigners.*
13. *State welfare shall be maintained without fail.*
14. *The election system shall be a mixed system comprising of a more number of seats from the first past the post system and a less number of seats from the proportional system.*

On behalf of the Joint Opposition:

1. *Hon. Dinesh Gunewardena, M.P.*
2. *Hon. Prasanna Ranathunga, M.P.*

Members of the Committee



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 கைத்தொழில் மற்றும் வணிக அமைச்சர்

Rishad Bathiudeen M.P.
MINISTER OF INDUSTRY AND COMMERCE

කර්මාන්ත හා වාණිජ කටයුතු අමාත්‍යාංශය
 கைத்தொழில் மற்றும் வணிக அமைச்சு
 Ministry of Industry and Commerce

ත.පෙ. 570, 73/1, ගාලු පාර, කොළඹ 03, ශ්‍රී ලංකාව
 த.பெ. 570, 73/1, காலி வீதி, கொழும்பு 03, இலங்கை.
 P.O. Box 570, 73/1, Galle Road, Colombo 03, Sri Lanka.
 Date: 30/8/2017

The chairman and Honorable Members,
The Steering Committee,
Constitutional Assembly- Secretariat,
 The parliament of Sri Lanka,
 Sri Jayewardenepura Kotte.
 Sri Lanka.

Dear Chairman,

Observation on the updated Draft Interim Report of the Steering Committee of the Constitution Assembly.

I hereby tender the primary observation of me and my Party on the published interim draft of the constitutional assembly as at 20.07.2017 for your consideration. Prior to this on the same key subjects a Joint Proposal have been submitted by ACMC, EPDP, SLMC and TPA making a common stand which we reiterate and along with personal observation I also annex hereto the Joint Proposal submitted earlier.

Rishad Bathiudeen MP
Minister of Industry & Commerce.
Hon. Member of the Steering Committee
Leader - ACMC.

අමාත්‍යතුමා அமைச்சர் Minister	2435248	ෆැක්ස් தொலைநகல் Fax	2390885	අමාත්‍ය ඉගෙනී කාර්යාලය அமைச்சர் அலுவலகம் Minister's Secretariat	2431670 2431674 2435105	දුරකථන தொலைபேசி Telephone	2392150 2327554 2392149
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Observation of All Ceylon Makkal Congress (ACMC) on the Draft Interim Report on the Constitution dated 20.07.2017.

In Principle our party in agreement to the provision of the article “1” and “2” except the point of agreement of maximum devolution should be granted and ACMC’s stand for a unitary state in true sense where all citizens are made to feel that they are Sri Lankans.

ACMC is in principle agreeable to the Articles “3, 4, 5, 6, 7, 8 and 9”

ACMC’s position on the Principle of Devolution

ACMC recommends that more power and authorities be devolved to the local authorities but the devolution power to the province shall be caused with proper checks and balance at the center. And ACMC is against the any constitutional provisions for merger of any two or more provinces as one provincial council. And the constitution shall not recognize the north and east as a single province.

The Governor of the Province

Shall be appointed by the president act on the advice of the board of the ministers of the province and be answerable and responsible to both provincial council and the parliament.

ACMC also welcomes the constitutional court and welcomes a model similar to the constitutional court in South Africa.

State Land

All state lands shall be with the center in the national list. And there shall be a mechanism that the provincial council may request for release from the center for the usage of provincial list subject matters.

The fair and equitable usage and release of the land to the minority propel within the provinces including IDPs shall be and ensured through over side at the center.

Exp: The alternative lands granted by the state to the IDPs returning in Mullaitivu is now being administratively hindered by the northern provincial council owing to the religion and language of those returnees.

Acquisition and requisition of the Land shall be with the center in the national list and shall not be a subject matter in the provincial list.

Central Legislation on the Provincial List subjects

ACMC is on the view that the provincial legislation shall be a subordinate legislation. And where necessary the parliament shall have power with necessary majority to enact laws on the provincial council list subjects with or without of the approval of the second chamber. Where it deems necessary for uniformity of laws to prevail across the island.

Second Chamber

The second chamber should consist the members of the various communities who are unless otherwise cannot be represented in the parliament and the provincial representative to the second chamber could also be drowned not form among the sitting members of the provincial council but persons of eminent and integrity who have distinguished themselves in public or professional life in the relevant province or hails from the relevant provinces.

Electoral System

ACMC is of the view that the “MMP” system may undermine the fair representation of the minorities and minor parties. And strongly of the view that the present proposal representational system shall prevail. And ACMC is primarily not in the favor of the change of electoral system. Nevertheless in the alternative the joint proposal submitted by ACMC along with EPDP, SLMC, and the Democratic people’s front to the steering committee consensus for implementing electoral zone system.

- The joint proposal also is annexed here to for the reference.

Executive Presidency

ACMC is of the view that the executive presidency in the present format elected by the people at the presidential election shall not be changed. The selection of the prime minister shall be as per present provisions. ACMC also welcomes for deputy president provisions as reflected in the year 2000 constitutional bill.

Constitutional Council shall be in the format of 19th Amendment.



Rishad Bathiudeen MP

Minister of Industry & Commerce.

Hon. Member of the Steering Committee

Leader ACMC.

2017.08.30

Annexure:

Joint Proposal submitted by APMC, EPDP, SLMC and TPA

**Proposals to the Steering Committee
(Principles only)**

A	PRINCIPLES of the STATE
01	Principles of the state shall be enshrined in the constitution wherever they are applicable and possible
02	Upholding Srilankan Identity while recognizing the multi-ethnic, multi-lingual, multi-religious and multi-cultural characters of Sri Lankan society
03	Sri Lanka consists of four major ethnic communities, namely the Sinhalese, the Srilankan Tamils, the Muslims and the Malayaha Thamils (Indian Origin Tamils -IOT) and many other linguistic and cultural minorities
04	No provincial council or any political party or any entity within or outside Sri Lanka, by direct or indirect means, shall attempt or advocate separation or secession of any part from Sri Lanka.
05	No provincial council or any political party or any entity within or outside Sri Lanka, by direct or indirect means, shall attempt or advocate an initiative towards armed activity to achieve any political or other goals in Sri Lanka
06	Power shall be devolved to the provinces.

B	TERRITORIAL INTEGRITY
01	Sri Lanka shall be known as "United Republic of Sri Lanka". It shall be "Sri Lanka Ekshath Janarajaya" in Sinhala Language and "Aikkiya Ilangai Kudiyarasau" in Tamil language.
02	Sri Lanka shall consist nine provinces as per territorial schedule-1
03	Sri Lanka shall ***consist 25 administrative districts as per territorial schedule-2
04	The subdivisions of the districts and subsequent territories of the local government entities should be declared by the president in concurrence with the provincial council administration PC within which the respective territory falls

C	PRESIDENCY
01	The head of the state and government shall be the president
02	The president shall be elected by the people directly at the presidential election
03	The president shall be answerable to the parliament and the powers of the president shall be as per the original proposals of the nineteenth amendment
04	The presidential tenure shall be 5 years and there shall be fixed date of presidential elections
05	The president shall not hold any ministerial portfolio other than the subject of Defense
06	There shall be three (3) Vice-Presidents
07	The three Vice-Presidents shall be from the different communities, namely the Sinhala, Sri Lankan Tamil, Muslim and Malayaha Tamil (IOT), each such community being different to the community of which the President is a member.

D	PARLIAMENT
01	The Parliament shall have two chambers.
02	The first chamber of the parliament shall consist 245 members who shall be elected through direct elections conducted by the EC (the electoral system is explained below)
03	A Second chamber of the parliament shall be established to review the laws passed at the First chamber of the parliament
04	The membership of the Second chamber shall be on *ethnic basis with 18 Sinhalese, 6 Srilankan Tamils, 6 Muslims and 6 Malayaha Thamils (IOT) to the total of 36
05	Vice-President shall be the chairperson of the Second Chamber of the parliament and a Vice-President shall be hold the chairpersonship for one year in a rotation.

E	LANGUAGE
01	All constitutional clauses amended by 13 th and 16 th amendments relating to the subject of languages shall continue to prevail
02	The current format of Article 18(1) shall be amended and shall read as "Sinhala and Tamil shall be the Official Languages of Sri Lanka"
03	Divisional secretariat divisions where the Sinhala or Tamil linguistic minority population exceeds one eighth of the total population of that area, shall be declared through gazette notifications as Bilingual Divisions by the President considering the recommendation of the Department of Official Languages.
04	Both official languages and the link language shall be strictly used for all state and civil purposes within all such Bilingual Divisions recognizing the multi-lingual, multi-ethnic, multi-religious and multi-cultural character of Sri Lankan society.

F	RELIGION
01	The clause relating to the subject of Religion shall read as “The Republic of Sri Lanka shall give to <i>Buddha Dharshanaya</i> , the foremost place and accordingly it shall be the duty of the State to protect and foster the <i>Buddha Sasana</i> , while assuring to all religions the rights granted by Articles 10 and 14(1)(e)”

G	NATIONAL ANTHEM
01	The clause relating to the subject of National Anthem shall read “The National Anthem of the Republic of Sri Lanka shall be “ <i>Sri Lanka Matha</i> ” in Sinhala language and “ <i>Sri Lanka Thaaye</i> ” in Tamil language as per the words and music of which are set out in the relevant Schedules

H	PRINCIPLE of SUBSIDIARITY
01	Divisional Secretariats shall be demarcated wherever possible, for the Communities of Interest (Col), whether ethnic, religious or such other like interest, but differing in one or more respects from “the majority of the citizens” and being minorities in that district and/or province, as the case may be.
02	Population of a Divisional Secretariat shall not exceed 25,000 and extent of territory shall be also considered as a criterion for the establishment of divisional secretariats in the non-urban areas.
03	One Pradeshiya Saba shall be established for every Divisional Secretariat area in the non-urban areas
04	Minimum and maximum numbers of population and rudiments of urbanization shall be determined for the urban councils and municipal councils.
05	Local government authorities I.E., municipal councils, urban councils and pradeshiya sabas, shall exercise maximum powers on the basis of the principles of devolution
06	Such powers shall be clearly listed and such list shall be referred as the “LG List”.
07	All LG councils shall be governed through Executive Committee system. (The Committee system is that; there shall be no ruling and opposition groups. The committee system involves councilors of all parties sitting on committees and taking decisions on the different services provided by the respective council.)

I	POWER SHARING
01	Concurrent lists of power between the national and provincial shall be abolished.
02	There shall be three separate clear lists indicating the powers allotted to national, provincial and local government entities
03	Powers devolved to the provincial councils under the 13 th amendment shall continue to stand as devolved powers and there shall not be any constitutional attempt to shelve any power from the PC list of powers
04	Cabinet of the provincial councils shall consist six (06) members
05	One minimum reservation for each of the Community of Interest in the six-member cabinets of all the Provincial Councils, if members of such communities are elected
06	Adopt the proposal of APRC on 'Community council for dispersed minorities'

J	ELECTORAL REFORM
01	PRELUDE: Any drastic change from the current system shall not open doors for any social pandemonium. The ethnic, social and political minorities shall be taken into confidence within the spirit of accommodation.
02	The proposal shall be known as " The Zonal Electoral System " similar to the Idea initiated in the 14 th amendment.
03	The election shall be proportional.
04	The Parliament shall consist a total of 245 members. 215 members shall be elected to parliament. 30 seats shall be reserved for the purpose of national list.
05	The whole country shall be divided into 40 to 50 electoral Zones. Allocations of Numbers of electable members of each zone shall begin with the population basis and shall be updated every year as per the registered voter population by the EC.
06	The territories within the current Provinces shall be demarcated into electoral zones with one electoral zone comprising population between 400,000 to 500,000.
07	Demarcation of electoral zones shall not violate provincial borders and may ignore the borders of current electoral and administrative districts within a province, if necessary.
08	The President shall, for the purpose of dividing, provinces into electoral zones, establish a Delimitation Commission consisting of Seven (7) persons appointed by him as Members, who he is satisfied are not actively engaged in politics and one (1) such person shall be the chairman of Election Commission. The President shall appoint two (2) such Members to be the Joint Chairmen of the Delimitation Commission and one (1) such person shall be the chairman of Election Commission. The president shall also

	<p>appoint four (4) more Additional Members representing minority community aspirations namely;</p> <p>(a)Srilankan Tamils (b)Muslims (c)Malayaha Tamils (IOT) (d)Sinhala community in the north & east</p>
09	In dividing a province into zones, the Delimitation Commission shall have regard to the polling divisions, <i>the</i> current constituencies, wherever possible.
10	Where it appears to the Delimitation Commission that there is in any province and/or administrative district, a substantial concentration of persons identified by a community of special interest (CSI), whether ethnic, religious or such other like interest, but differing in one or more respects from "the majority of the electors" and being minorities in that province, the Delimitation Commission may, divide that province into zones so as to ensure the representation of that interest, thereby addressing the concerns of the minorities
11	The Chairman of the Delimitation Commission shall communicate the decisions of the Commission to the President. The President shall by Proclamation publish the names and boundaries of the zones, in accordance with the decisions of the Delimitation Commission. The zones specified in the Proclamation shall come into operation at the next ensuing General-Election of Members of Parliament, and shall be the electoral zones for the purposes of the Constitution and any law for the time being in force relating to the election of Members of Parliament
12	Where it appears to the Delimitation Commission that there is in any province and/or administrative district, a substantial concentration of persons identified by a community of special interest (CSI), whether ethnic, religious or such other like interest, but differing in one or more respects from "the majority of the electors" and being minorities in that province, the Delimitation Commission may, divide that province into zones so as to ensure the representation of that interest, thereby addressing the concerns of the minorities
13	Principles of the same system shall be applicable to elections to provincial and local government councils
14	Same electoral zones shall be applicable to provincial councils while the number of electable members shall be declared by EC as per the registered voters of the respective zone
15	The current territories of the Local government councils shall be divided into electoral

	<p>zones of the respective council and the electable members shall be declared by EC as per the registered voters of the respective zone</p> <p>(I.E., The electoral zones of Colombo MC shall be the current five polling divisions, the electorates)</p>
16	The threshold (cut-off point) of 5% should be reduced to 2% in the parliamentary electoral process and there shall be no threshold for provincial and local government electoral process
17	Registered political parties may arrive at bilateral or multilateral electoral alliances. Such agreement shall be submitted to and subsequently authorized by the EC at the time of nominations
18	Votes obtained under separate symbols/parties shall be put together for the calculations of national PR, provided respective parties declare their intentions to work as an Alliance. Such declarations and the bilateral or multilateral agreements shall be submitted to the EC at the time of the nominations.
19	The electoral reform process shall also comprise modifications of the voter registration process upgraded to a modern automated voter registration mechanism and enabling any voter to register him/herself at any time of the year, once he or she obtains the eligibility.
20	<p><u>Comparisons between current system and proposed system:</u></p> <p>(1A) <u>Current shortcoming:</u> Preferential vote pattern that gives room for intraparty and inter party violence and commotion.</p> <p>(1B) <u>Possible remedy:</u> The smallness of the zone by both demography and geography when compared to the current large district, lessens the possibilities intraparty and interparty violence and commotion</p> <p>(2A) <u>Current shortcoming:</u> Largeness of the district by both demography and geography, creates conditions for large scale expenditure</p> <p>(2B) <u>Possible remedy:</u> The smallness of the zone by both demography and geography when compared to the current large district, reduces the level of expenditure</p> <p>(3A) <u>Current shortcoming:</u> The absence of accountability of an elected MP towards a constituency, distances the elected member from the voters</p> <p>(3B) <u>Possible remedy:</u> The smallness of the zone by both demography and geography when compared to the current large district, brings the elected member closer to the voters and accountability tendency</p> <p>(4A) <u>Possible Advantage:</u> The short period of time necessitated for this process is the</p>

advantage of this proposal has over other proposals.

K	* FOOTNOTES
01	<u>Sri Lanka Muslim Congress (SLMC)</u> * Electoral Reform: Stands by the electoral reform proposals that it had already submitted to the steering committee
02	<u>Eelam People's Democratic Party (EPDP)</u> * Religion: The clause to the subject of religion shall read as "The republic of Sri Lanka shall be a secular state while assuring to all religions the rights granted by articles 10 and 14 (1) (e)" * Electoral Reform: The Thirty (30) seats reserved for the purpose of national list elected on provincial basis
03	<u>All Ceylon People's Congress (ACMC)</u> * Power Sharing: The cabinet of the provincial councils shall consist seven (7) members * TERRITORIAL INTEGRITY : Sri Lanka shall consist 26 administrative districts (26 th being the Oluvil District basing South Eastern Coast) ** PARLIAMENT : The membership of the Second chamber shall be on ethnic ratio

We, the members of the Steering Committee, representing the dispersed minorities, also referred as communities of interest (CoI), whether ethnic, religious or such other like interest, but differing in one or more respects from "the majority of the citizens" and being minorities in that district and/or province, as the case may be, do hereby submit above stated proposals to the steering committee to be discussed within the constitutional process:

Rauf Hakeem Leader - Sri Lanka Muslim Congress (SLMC)	Mano Ganesan Leader - Tamil Progressive Alliance (TPA)
Rishad Badudeen Leader - All Ceylon People's Congress (ACMC)	Douglas Devananda Leader - Eelam People's Democratic Party (EPDP)

23th January 2017/Colombo/ Hg/Mg

COMMENTS ON THE DRAFT INTERIM REPORT (08TH AUGUST, 2017) |
OF STEERING COMMITTEE

SUBMISSION BY DOUGLAS DEVANANDA, M.P.

1. It is suggested that the concept of "Basic structure doctrine" be adopted so as to ensure that some fundamental features of the Constitution such as minority rights, religious freedom and protection of human rights remain as entrenched provisions that cannot be repealed or amended by either a referendum or by two thirds majority of both.
2. Under Chapter I I Article 9 the second formulation appears acceptable as it includes people with other beliefs, such as cosmopolitanism, outside organized religions to be respected and protected.
3. Under Principles of devolution, para 2, provisions should be made to re-demarcate existing provinces by Parliament in consultation with stakeholders.
4. Under para 3 Local Authorities 3.1 recognizing local bodies as third tier is in contradiction with the principle that the primary unit of devolution is the province. This can lead to conflicts between the local authorities and the province. If the centre wants to delegate powers and functions to local bodies it should be through the provincial councils or at least in consultation with the provincial councils.
5. Moreover, it is suggested that there should be only two types of local bodies, namely, the Municipal Councils covering all urban and semi areas, and Pradeshya Sabas covering rural areas and plantation areas. Plantation areas should fall within the ambit of local administration.
6. Under the powers of the Governor the suggestion to abolish the post of the Governor is not practical. He should be appointed by the President to be the representative of the Centre and at the same time act as a link between the Centre and the province. He should not be a mere ceremonial figure but play a role in keeping with the principle of checks and balances.
7. Under Para 9 Provincial Public Service Commission, in para 9.1 (b) asking the Chief Minister and the leader of the opposition to jointly nominate members to the PPSC is not feasible. They have to be sent separately by both parties. The foremost criterion should be that utmost consideration should be given to the pluralistic nature of the given province.

8. Under para 9.1(I) the secretary to the Governor should be appointed in Governor's discretion.
9. Under State Land- annexure: state land Dispute Resolution item 15 the total number in the arbitration panel is confusing.
10. Under Central Legislation on Provincial List Subjects para 1 it must be made absolutely clear that in respect of devolved subjects, even if the Province has not promulgated a statute, the provincial minister and his officials ONLY shall exercise power. Otherwise there is the central government minister poaching into the territory of the province.
11. Under the chapter on Second Chamber, item 2, the criteria for election of members to the Second Chamber is defined as persons of eminence and integrity etc. It is suggested that the same criteria should apply in respect of members to be elected by the Provincial councils also. Furthermore, it is suggested that due consideration should be given to the ethnic composition of a province in electing members to the Second Chamber. The proposal for a second chamber is primarily based on the need to meet and satisfy the problems of minorities as they will remain a minority in the first chamber always. It is strongly urged that fifty percent of the members of the second chamber shall be filled with members from all minority communities.
12. The report under Law and Order and Public Security has been abridged too much. However the very important matter of concern is the voice given to the ethnic minorities in respect of law and order. It is suggested that in the composition of the National Police Commission and the Provincial Police Commission the focus of attention should be on the pluralistic nature of the Sri Lankan society. Moreover, the law enforcement agencies are the ones that bridge the differences between the communities and this must be recognized. It will be in everyone's interest to maintain the ratio of communities living in an area while recruiting personnel for the Police and the armed services. It will also be necessary to deploy such services in a given area on the basis of population, subject of course to the security requirements at a given time at a given place.
13. At least for some time, due to the protracted civil war, adequate number of suitable candidates cannot be found in the Northern and Eastern provinces. Hence the principle of reverse discrimination should be applied.

Addendum to the Draft Interim Report (Dr) Jayampathy Wickramaratne

I am in basic agreement with the contents of the Interim Report of the Steering Committee as they represent a broad consensus among political parties and would also be acceptable to the large majority of the people of Sri Lanka and also the various ethnic groups.

I wish to add my own comments on the matters covered by the Interim Report. The views expressed herein are also the views of the United Left Front and the Lanka Sama Samaja Party (Majority Group).

The Constitution

- The Constitution is the supreme law of Sri Lanka. Any act or conduct inconsistent with the Constitution is void.
- Any amendment or repeal and replacement of the Constitution shall only be made by Parliament and the Second Chamber and by the People, in the manner provided for in the Constitution.
- The Constitution should clearly lay down the elements of its 'basic structure' which should be entrenched.

Principles of Devolution

The Chief Ministers of the various Provinces and the respective Leaders of Opposition made some very important suggestions before the Steering Committee and the various sub-committees. The proposals of the Chief Ministers of the seven 'southern' provinces have been made on the basis of the experiences of nearly 30 years of devolution in Sri Lanka. Similar proposals were made by the Chief Ministers' Conference some years back.

In relation to the possible "merger" of provinces, I agree that the existing provisions of the Constitution (Article 154A (3)) should be retained, with the additional requirement that the consent of the people of each of the Provinces concerned should also be required. I have a slightly different formulation:

Parliament may by law provide for two or three adjoining Provinces to form one administrative unit with one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers and for the manner of determining whether such Provinces should continue to be administered as one administrative unit or whether each such Province should constitute a separate administrative unit with its own Provincial Council, and a separate Governor, Chief Minister and Board of Ministers, *subject to the approval of the electors of each of the Provinces concerned ascertained at a poll.*

Accordingly, it is up to Parliament whether to make a law on possible mergers but such law should necessarily include provisions for the approval of the people of the concerned Provinces.

Community Councils

The paper submitted by the SLMC/TPA/ ACMC/ EPDP to the Steering Committee proposes the adoption of the All Party Representatives Committee (APRC) Proposal relating to the establishment of a 'Community Council for dispersed minorities'. This merits consideration. The APRC Report contains detailed recommendations in this regard.

State Land

Where there is no agreement as to whether a particular state land should be available for use by the Centre or a Provincial Council, the matter may be determined by the National Land Commission.

All Chief Ministers should be ex officio members of the National Land Commission.

Second Chamber

I am in agreement with the proposal to set up a Second Chamber.

However, I have reservations about Provincial Councils being required to nominate only PC members. I suggest that a Provincial Council should nominate persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of the Council.

All Chief Ministers should be ex officio members of the Second Chamber, so that the link between the Centre and Provinces will be more visible.

Electoral system

I am in basic agreement with the proposed electoral system, subject to the following:

1. The number of "bonus seats" allocated to the party that obtains the largest number of seats nationwide should not exceed 06.
2. Dual-member constituencies should be permissible. The number of DMCs should be left to the Delimitation Commission.
3. The creation of small constituencies to render possible the representation of a community of interest should be permitted, as was the case under section 41 (4) of the Soulbury Constitution and Article 78 (4) of the 1972 Constitution.
4. Proportional Representation should be calculated on a nation-wide basis.
5. There should be no cut-off point and the natural cut-off point should apply as is the case in determining seats under the present National List.
6. The PR compensatory seats a party is entitled to shall be distributed at Provincial level in proportion to the votes obtained by the party, with 20% distributed at National Level. The compensatory lists should be closed, set out in order of priority. A Party may nominate a person to be a candidate for an FPP constituency as well

as to a compensatory list. I have no objection to the seats that a party is entitled to, being filled by the 'best losers'.

Executive

I am for the abolition of the Executive Presidential system of Government. The President should be elected by an Electoral College consisting of Members of Parliament and the Second Chamber.

While the President should ordinarily act on the advice of the Prime Minister, I have no objection to the President exercising certain powers after consulting the Prime Minister.

(Dr.) Jayampathy Wickramaratne, M.P.