

A FRAMEWORK FOR THE CONSTITUTION OF THE UNION OF CEYLON

In August 1995, the President of Sri Lanka announced proposals for the devolution of power to the country's regions with a view to resolving the present ethnic conflict, and to ending discrimination on the basis of race, religion, caste or region. As a response to those proposals, the framework, which follows is one, which it is considered will meet the present needs of the country.

It incorporates (in paragraph 1.2) certain important statements of principle contained in the Preamble to the President's proposals and adds to them principles which have been frequently declared on behalf of the Tamil people.

1. Preamble

1.1 This framework document provides the basis for a new constitution for the Union of Ceylon, which shall consist of two internally autonomous States -- one for the primarily Tamil area and the other for the area which is mainly Sinhalese. This reflects the fact there have been identifiable homelands (historical and existing) on the island for the Tamils (in the North and East provinces) and the Sinhalese (in the rest of the provinces) for over two millennia. Relations between the States will be governed in accordance with generally applicable principles of international law and justice.

1.2 This framework document is based on the following principles:

(a) promoting a vision of the Union of Ceylon where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;

(b) ensuring that all communities be given the space to express their distinct identity and promote that identity including the right to enjoy their own culture, profess and practise their own religion, and conserve and nurture their own language;

(c) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law.

1.3 This document further provides for recognition of the Sinhala and Tamil as official languages of the Union of Ceylon and English as a link language.

2. Basic structure of the Union of Ceylon

2.1 The Union will have a confederal structure, consisting of two States, each being internally autonomous and committed to the furtherance and maintenance of the principles and values declared in the Preamble, including in particular the protection of the fundamental human rights declared in the Constitution and the maintenance of democratic principles.

2.2 Subject to these principles, the internal autonomy of each State will extend to the adoption by each State of its own internal constitution (e.g. size and structure of the legislature, frequency of elections).

3. The Central Council of the Union:

(a) Composition

3.1 The Central Council will provide the channel of communication and coordination between the two States and it will consist of an equal number of representatives from each State.

3.2 If the number of representatives from each State is not to be equal, there will need to be a weighted voting system.

3.3 Each State will determine the manner in which its representatives on the Central Council are selected and appointed.

3.4 Each State will be entitled to appoint substitute representatives to act when the appointed representatives are unable to do so.

3.5 The Council will appoint a President and Deputy President of the Union from amongst its own members for a period of (say) four years at a time in an agreed alternation between representatives of each State.

(b) Powers and Functions

3.6 Powers will be reserved to the Council of the Union to deal with:

(a) foreign affairs; (b) the external defence and security of the Union; (c) monetary policies, the maintenance of a common currency and a Central Bank; (d) the maintenance of relations between the States and the broad coordination of their policies; (e) the maintenance and execution of such other matters as may from time-to-time be vested in the Council by agreement of the States.

3.7 Consideration should be given to including additional matters amongst the powers reserved to the Council (for example, international fisheries and telecommunications).

3.8 All matters not expressly reserved to the Council will be within the separate and exclusive jurisdiction of each State (for example, the Council will have no overriding powers in relation to the maintenance of law and order within a State).

3.9 The Council will be entitled to undertake expenditures on the matters reserved to it within an agreed budget, the revenue to pay for such expenditure being provided by each State in such proportion as may be agreed. A Central Finance Commission comprising representatives from each state will oversee the Union budget. The number of representatives will be equal or there will be a weighted voting system.

4. Constitutional Court

4.1 A Constitutional Court will be created to interpret the Constitution of the Union and to ensure compliance by a State with the principles of the Preamble and the entrenched human rights provisions of the Union Constitution.

4.2 Any person seeking recourse to the Constitutional Court would have to exhaust local judicial procedures in his or her State before applying for leave to appeal to the Constitutional Court.

4.3 The Prime Minister of each State will have the right to seek an advisory opinion from the Constitutional Court.

4.4 Each State will have the right to appoint an equal number of Judges to the Constitutional Court. If the number is not equal, the possibility of weighted voting would have to be considered.

4.5 It would be for consideration whether appointment of Judges should be until a stated retiring age (or for life) unless removed for inability or misconduct by resolution of the Council.

4.6 The Judges of the Constitutional Court will elect a head but he/she would not have a casting vote. The Head of the Constitutional Court could (like the President of the Union) be elected by the Judges, for a fixed period and on a basis of alternation between the States.

4.7 It would be for consideration whether in addition to the Judges appointed by each State there should be one or more Judges of international reputation appointed by the Council from outside the Union.

5. Constitutions of the States

5.1 Each State will adopt its own constitution, but each constitution would be required to endorse the principles stated in the Preamble to the Union Constitution and the common entrenched clauses protecting human rights. These clauses would exclude the possibility of discriminatory treatment of minorities and individuals wherever in the Union they are present or resident. Amendments of the Constitution of each State shall be by a two-thirds majority of the membership of the national assembly of each State including those not present.

5.2 The citizens of the Union (regardless of the State in which they resided or from which they originated) would share a common nationality for the purposes of international law. The freedom of movement between the States, the freedom to reside and take up employment in either State, and related freedoms would be guaranteed to all citizens of the Union.

6. Referendum and Guarantees

6.1 At the end of four years from the commencement of the Union, each State would be entitled to modify the powers of the Union affecting that State, provided that the residents of that State, in a referendum had by a majority voted in favour of that course of action.

6.2 The implementation and operation of the Constitution and the maintenance of peace between the States would be guaranteed by the United Nations, which would have appropriate powers of enforcement.