

PROPOSAL

**(Based on
President Chandrika Kumaratunge's
devolution package)**

MADE BY

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TO FORM THE BASIS OF A NEW CONSTITUTION

PREAMBLE

These proposals seek to redefine the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka based on the following principles.

- a)** promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- b)** ensuring that all communities be given the space to express their distinct identity and promote that identity including the right to enjoy their own culture, profess and practice their own religion, and nurture and promote their own language including the right to transact business with the State in the national language of their choice;
- c)** ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinctions and in full equality before the law.
- d)** giving recognition to Sinhala and Tamil as official languages and recognizing English as a link language;
- e)** providing an effective constitutional framework for the sharing of power with the regions based on an internationally consistent and coherent value system. There would be clarity and consistency in the distribution of power between the center and the regions and the scheme would be one which is capable of effective implementation and include structures for the just and equitable resolution of center region disputes;
- f)** ensuring that all communities participate fully in the life of the nation whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

I. STRUCTURE OF DEVOLUTION

1.1 Unit of Devolution

A regional council will be established for every province identified by a new schedule to the Constitution. One of the regions would be constituted by redemarcating the existing boundaries of the present North-East Province in full consultation with a view to reconciling Sinhala, Tamil and Muslim interests.

1.2 Regional Councils

A Regional Council will consist of such number of members as may be determined by law. A Regional

Council unless sooner dissolved, continue for a period of five years. There will be a Speaker and a Deputy Speaker for each Council.

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

1.3 Governor

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

1.3.1) The Governor will vacate his office upon:

(a) resignation;

(b) a two-thirds majority of the Regional Council passing a vote of no confidence;

(c) removal by the President.

1.3.2) The Governor may summon, dissolve and prorogue the Regional Council on the advice of the Chief Minister.

1.4 Chief Minister and the Board of Ministers

The Governor will call upon the person who commands the confidence of the majority in the Regional Council to form the Regional administration.

1.4.1) The Chief Minister cannot be removed from office so long as he enjoys the confidence of the regional council.

1.4.2) Executive power in the Region will be vested in the Board of Ministers who will be appointed by the Governor on the advice of the Chief Minister. The Board of Ministers and the Chief Minister will be collectively responsible to the Regional Council.

1.5 Capital Territory

The territory comprising the cities of Colombo and Sri Jayawardenapura Kotte will be excluded from the jurisdiction of the Regional Council constituted for the Western Region and will be administered directly by the center, in such manner as the center may think fit.

II. FINANCE

- 2.1)** There will be a National Finance Commission entrusted with allocating grants to the region, keeping in mind the objectives of balanced regional development.
- 2.2)** Regional Councils will have the powers of taxation in certain specified areas, and the Constitution will require other revenue sharing arrangements.
- 2.3)** Regional Councils will have the power to borrow as well as to set up their own financial institutions. International borrowing above a prescribed limit will require the concurrence of the center.
- 2.4)** Regional Councils may regulate and promote foreign direct investment, international grants, and development assistance, subject to such conditions as may be specified by the center.

III. LAW AND ORDER

- 3.1)** There will be a regional police service headed by a Regional Police Commissioner appointed by the Chief Minister, in consultation with the Governor of the Region. The Regional Police Commissioner will be responsible to, and function under the control of, the relevant Chief Minister. The Regional police service will investigate all offences against persons and property.
- 3.2)** There will be a national police service responsible for investigating offences against the States, threats to national security, offences related to elections, inter-province crimes and international crimes. The national police service will be headed by the National Police Commissioner and will be responsible for the Central Government.
- 3.3)** The recruitment, transfers within the region, dismissal and disciplinary control of members of the regional police service will be the responsibility of the Regional Police Commission.
- 3.4)** There will be a National Police Commission, the functions of which will include the transfer of Police Officers from one region to another in concurrent with the Regional Police Commission.
- 3.5)** The National Police Commission and the Regional Police Commission will both be appointed by the Constitutional Council. In the case of appointment of the Regional Police Commission, the Constitutional Council will act in concurrent with the Chief Minister of the Region in question.

IV. LAND AND LAND SETTLEMENT

4.1) Land will be a devolved subject and State land within a region will be vested in the Regional Councils. State land within a region required for the purposes of the center in respect of a reserved subject may be utilized by the center in concurrent with the relevant Regional Council in accordance with such procedures as may be established by law.

4.2) Priority in future land settlement schemes will be given to persons first of the district and then of the Region.

4.3) Regional Councils shall appoint special commission on administration of land to inquire into and report on the rights of dispossessed people over land, settlements made by GOSL and LTTE on private or state land and land subject to encroachment, notwithstanding the lapse of any time relating to prescription.

V. EDUCATION

5.1) Education and Higher Education will be devolved subjects included in the regional list.

5.2) Certain specified schools and universities may be declared “National” institutions administered by the center.

5.3) The recruitment, transfer and disciplinary control of teachers other than those in National Schools will be the responsibility of the Regional Council.

5.4) Training of teachers will be the responsibility of both the center and Regional Councils depending on whether such teachers are to be recruited to the National or Regional Councils.

5.5) Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the center.

5.6) There will be a National Education Commission composed of representatives of the center and the regions entrusted with the following functions:

(a) identifying “national” schools and universities in concurrent with regional Chief Ministers and stipulating criteria for admission into these national schools and universities.

(b) setting minimum standards with regard to training, examination, curriculum, and employment of teachers

VI. ADMINISTRATION OF JUSTICE

6.1) There will be a High Court in every region. The High Court will exercise criminal, appellate and writ jurisdiction within the region.

6.2) The Regional Judicial Service Commission, which will be appointed by the Constitutional Council in concurrent with the Chief Minister of the region will consist of the Chief Judge of the High Court and the two High Court Judges next in seniority.

6.3) Regional Judicial Service Commission will be responsible for the appointment of Regional High Court Judges and minor judiciary within the region. The Regional Judicial Service Commission will consult with the National Judicial Service Commission with regard to the transfer of judges.

6.4) The Governor will appoint a Regional Attorney-General who will advise the Governor on the Constitutionality of laws passed by the Regional Council. If a law is seen to be unconstitutional, the Regional Attorney-General after consultation with the Governor will institute action before the Supreme Court or any other tribunal specially set up to resolve disputes between the center and the region.

VII. PUBLIC SERVICE

7.1) There will be a Regional Public Service Commission (appointed by the Constitutional Council in concurrent with the relevant Chief Minister) responsible for the recruitment, disciplinary control and dismissal of all persons employed by or seconded to, the Regional Councils.

7.2) The Regional Public Service Commission will consult with the National Public Service Commission, (also appointed by the Constitutional Council) in effecting the transfer of all such persons outside the Region.

7.3) Public Service Commissions shall prioritize in hiring accorded:

- (a)** firstly, from persons of the sub-division,
- (b)** secondly, from persons of the relevant District,
- (c)** thirdly, from persons of the relevant Region and
- (d)** fourthly, from other persons.

VIII. COMMISSION ON DEVOLUTION

8.1) There will be a Permanent Commission on Devolution appointed by the Constitutional Council to resolve disputes between the center and a region or disputes among the regions. The Commission will have powers of mediation as well as adjudication.

IX. FRAME WORK RELATING TO DEVOLUTION

9.1) The Constitution will provide:

a) that the Republic of Sri Lanka shall be united and sovereign. It shall be a union of Regions.

b) that the territory of Republic will consist of regions, the names of which are set out in the first schedule. and its territorial waters,

c) that the legislative power of the People will be exercised by the Parliament, Regional Councils, and the People at a Referendum to the extent hereinafter provided: and

d) that the executive power of the people will be exercised by the President of the Republic acting on the advice of the Prime Minister and the Cabinet of Ministers and the Governors acting on the advice of the respective Chief Ministers and Regional Boards of the Ministers to the extent hereinafter provided.

9.2) Article 76 of the existing Constitution will be deleted.

X. SUBSTANCE OF DEVOLUTION

10.1) Regional Councils will exercise exclusive legislative and executive competence within the devolved sphere. The subjects and functions will be distributed between the center and the regions as set out in the appendix.

10.2) Regional Councils will have exclusive power to make any law with respect to any matter not enumerated in the Reserved List.

10.3) 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.

APPENDIX

A. THE REGIONAL LIST

1. Health and indigenous medicine
2. Education and Educational Services, excluding national schools and national universities and the setting of minimum standards for training, examination, curriculum and teacher qualifications
3. Agriculture and agrarian services,
4. Irrigation within a region
5. Animal husbandry
6. Fisheries
7. Forestry and protection of the environment within a Region
8. Industries and industrial development
9. Energy
10. Transport
11. Minor ports and harbours
12. Roads and waterways
13. Housing and construction
14. Urban planning
15. Rural development
16. Local Government
17. Co-operatives
18. Supply and distribution of food within the Region
19. Promotion of tourism

20. The regulation of cultural activity within a region, including public performances
21. Broadcasting and media, including television
22. Relief, rehabilitation and reconstruction
23. Social security
24. State land and its alienation or disposal (state land within a Region required for the purposes of the Centre in respect of a reserved subject may be utilized by the Centre in concurrent with the relevant regional Council and in accordance with such procedures as may be established by law).
25. Regional police and law and order
26. Administration of Borstal and reformatory institutions
27. Regional public service
28. Sports
29. Regulation of unincorporated associations and societies within the Region.
30. Regional debt
31. Domestic and international borrowing (international borrowings above a specified limit would require the concurrence of the centre).
32. The regulation and promotion of foreign direct investment, international grants and developmental assistance to the Region.
33. Regional financial and credit institutions
34. Excise duties to be specified
35. Turnover taxes on wholesale or retail sales to the extent to be specified.
36. Betting taxes, taxes on prize competitions and lotteries other than National Lotteries
37. Motor vehicle license fees
38. Stamp duties on transfer of properties, such as land and motor cars
39. Fines imposed by courts
40. Court fees, including stamp fees on documents produced in courts.
41. Land revenue, including the assessment and collection of revenues, and maintenance of land

records for revenue purposes.

42. Taxes on mineral rights
43. Offences against laws with respect to any of the matters specified in the list
44. Fines in respect of the matters in the Regional List
45. Planning at the regional level.
46. Natural Resources

**B. RESERVED LIST
(CENTRAL GOVERNMENT LIST)**

1. Defence, national security, national police, and the security forces
2. Immigration, Emigration and Citizenship
3. Foreign Affairs
4. National Census and Statistics
5. National Planning
6. Currency and Foreign Exchange, international economic relations and monetary policy
7. Public Debt of the Government of Sri Lanka
8. Foreign loans of the Government of Sri Lanka
9. Regulation of banking and other financial institutions
10. Insurance
11. Stock Exchange and futures markets
12. Audit of the Government of Sri Lanka
13. Taxes on income capital and wealth of individuals companies and corporations
14. Custom duties including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions)
15. Turnover taxes and stamp duties, goods and services taxes (excluding those taxes and duties

devolved on the regions)

16. Pensions payable by the Government of Sri Lanka or out of consolidated fund.
17. Atomic Energy
18. Maintenance and management of the National Grid
19. Regulation and development of oil fields, petroleum and petroleum products
20. National Rivers
21. Airports, harbours and ports with international transportation
22. Inter-regional transport and railways
23. Civil aviation
24. Inter-regional highways
25. Shipping and navigation; Maritime Zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf)
26. Parliament Elections
27. Posts and telecommunications
28. National Public Service and the National Public Service Commission
29. National Health Administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national Universities; Training, education and research relating to Health; development of National Health standards; administration of all special programmes)
30. Drugs, poisons and narcotics
31. Administration of justice
32. National Universities
33. National standards with regard to professions, occupation and training
34. National standards relating to research, development and training in the area of agriculture.
35. Inter-regional irrigation schemes
36. Fishing beyond the territorial waters

37. Management of central policy and research institutions in the field of education eg. National Institute of Education; Management and supervision of national schools, conduct of national public certification examinations; imposition of minimum standards for training, curriculum and teacher qualifications
38. Adoption of children
39. National Industrial Research & Training
40. Regulation of activities for the enhancement of quality standards
41. Foreign trade, inter-regional trade and commerce
42. Patents, inventions, designs, copyright, trademarks and merchandise marks
43. Monopolies and mergers
44. Inter-regional food distribution
45. National media including Central Government Broadcasting and Television Institutions
46. National Archives and Museums, and archaeological sites declared by law to be of national importance
47. National Environment and National Policy on Tourism
48. Specialized National Housing Programmes
49. Specialized National Poverty Alleviation Programmes
50. Youth and Women's Affairs
51. Religion (Buddhism, Shaivism, Christianity, Islam)
52. Development of National sports administration and infrastructure
53. Intervention in instances of National (natural and environmental) disaster and epidemics
54. Labour regulation and standards
55. Surveys for the purpose of any matters enumerated in the Reserved List
56. Offences against Laws with respect to any of the matters in the list
57. Fees in respect of any of the matters in the list but not including fees taken in any Court
58. Public utility infrastructure development