



SUGGESTIONS
FOR A NEW
CONSTITUTION:

A PUBLIC PERSPECTIVE



Introduction

The 'Citizens Initiative for Constitutional Change' is a coalition of civil society organizations and individuals dedicated to ensuring that Sri Lanka finally receives a Constitution it deserves in 2016. After 38 years of governance under a Constitution that was architected purely by a handful of people, paying no heed to the needs of the populace, the Citizens' Initiative believed that Sri Lanka has been given a second chance to witness the change they wished to see. The current government's process of architecting a new Constitution has seen their willingness to accept public submissions and recommendations for the new Constitution, and this chance must not be taken lightly. Indeed, Sri Lanka may never get this chance again.

For this purpose, the Citizens Initiative travelled across Sri Lanka and conducted numerous workshops to gauge the opinion of everyday citizens and what they believe must be included in a new Constitution. Similarly, an email and letter campaign reached over thousands of people; many who wrote back to the Initiative with a myriad of suggestions, confirming their interest and enthusiasm for this cause.



The goal of the Initiative is simple: spread the message that the government is asking for public submissions for the new Constitution throughout Sri Lanka, and encourage as many citizens to submit their opinions.

This report is a compilation of many recommendations that came into the Citizens Initiative. The aim of this is to provide a reflection of a cross section of Sri Lanka's society; their needs, their burdens, and their hopes for a better Sri Lanka. This can be used as a guiding document to build your recommendations on.

We trust that this information will assist you in formulating your submissions for the new Constitution.



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அரசியலமைப்பு மாற்றத்திற்கான பிரஜைகளின் முயற்சி
Citizens' Initiative for Constitutional Change

PREAMBLE



- ◆ The Constitution must acknowledge that Sri Lanka is a multicultural, multi-ethnic society.
- ◆ All procedures in the Constitution should be implemented in a manner that recognizes the Rule of Law, Separation of Powers, and respects human dignity.
- ◆ The New Constitution should be Secular. Failing which, it must provide equal rights to followers of all religions (Buddhism, Christianity, Hinduism, and Islam) and ensure Rights of non-religious persons.



Reform of the Executive / Governance

❖ The Executive Presidency should be abolished. However, this shouldn't mean that an executive Prime Minister should assume this position. While the Prime Minister should be the Head of Government, executive power should be shared among the members of the Cabinet. All decisions should be made by the Cabinet collectively.

❖ A Bicameral system should be implemented with upper and lower houses.

❖ The Second Chamber must include Provincial representation, unrepresented groups, Civil Society experts from varying fields, as well as civil society representation.

❖ Appointment of Head of State should be through an Electoral College, inclusive of Provincial Council membership.



❖ Limit a Minister's personal staff. Ensure that relatives of the Minister cannot not be appointed to these positions.

❖ The Elections Commission must be strengthened. Internal democracy within political parties must also be distinctly stipulated and strengthened. The responsibility of nominating members of Parliament from the National List should be transferred from the party Secretary to the party members, in order to reduce personal bias. Party funds should be subject to an audit by the Elections Commission and be made available to Party members. A ceiling must be imposed for campaign funds for all candidates.

❖ Before a bill is introduced in parliament, public discourse on the matter needs to be facilitated for at least 3 months on the subject matter and once it is gazetted another 14 days should be granted for public consideration.



❖ The Head of State should be an apolitical figure.

❖ Cabinet membership should be strictly limited to 25 members, with 25 Deputy/State Ministers. The number of Ministries should also be specified. At least 6 of the Cabinet Minister positions should be given to a female.

❖ A separate Court must be established to address issues relating to Constitutional law

❖ The appointment of Permanent Secretaries to Ministries should be made by a Parliamentary Select Committee and must also be appointed after subsequent approval from the Cabinet. Public service officials that have undergone relevant examinations should be considered for these positions. The skills and interests of said person should also be taken into consideration when making such an appointment.



❖ Independent Commissions - it is proposed that the following Independent Commissions be created and strengthened in addition to those existing:

1) Education Commission

2) Media Commission – State media should be given autonomy. Under the provisions of this Commission, there should be Code of Conduct for media.

3) State Planning Commission

4) Reconciliation and Languages Commission (Office for National Unity and Reconciliation could be alleviated to this status) This Commission should be strengthened to implement the Official Languages Commission. This Commission could also fall under the jurisdiction of the Head of State. The goal of the Reconciliation Commission would be to address and restrain any ethnic, religious, and/or cultural issues in Sri Lanka.



5) Women's Commission – It is also proposed that in addition to Independent Women's Commission, women's committees should also be established at every Local Government level.

6) Finance Commission – The Finance Commission should be an independent commission that is answerable only to the Cabinet and stands above the jurisdiction of the Central Bank and the Ministry of Finance.

❖ The new Constitution must make provisions to ensure eradication of bribery and corruption.

❖ Make compulsory by law to ensure that citizens' have a right to receive an acknowledgement sent to or handed over at any government office, either immediately or within three days and to receive an interim reply within two weeks and to receive a final reply within one month.



- ◆ There should be protection against the prolonged use of the Public Security Ordinance and Emergency Regulations.
- ◆ A fix time limit must be stipulated for case. E.g. civil cases could be concluded in two years and criminal cases over three years.
- ◆ Consideration must be given to the powers and duties of the Attorney General's Department in the new Constitution, especially with regards to preserving a level of autonomy from the government.
- ◆ Central funding should not be appropriated to any Minister for development projects; instead, funding must be appropriated to the departments responsible for the particular development project.
- ◆ Citizens must be allowed the opportunity to voice their opinion and recommendations at Local Government Galleries.



❖ The level of governance should be as follows:
President – Head of State
Prime Minister – Head of Government
Provincial Councils
Local Government
Citizen Councils

Citizen Councils

Citizen Councils are independent, civil society based democratic mechanisms that represent the public. Citizen Councils should have vested powers to provide recommendations to Provincial Councils, Local Government, and the Central Government. Citizen council membership is composed of citizens who are already members of various village level voluntary action bodies e.g. Funeral Assistance societies, Fisheries and agricultural cooperatives, Sports clubs etc.



Citizen Councils are arranged into 5 sub committees; Good Governance, Language and Culture, Youth, Women and Children, and the Environment. The committee membership totals 5 members; a President, Vice President, Secretary, Vice Secretary, and Treasurer. Together, the members of each committee advocate on behalf of their topic, and attracts participation from all other CC members within their district to assist them in achieving their goals.



Citizen Councils must be made up of enthusiastic community representatives who are genuine about their dedication towards uplifting the standards of their respective communities. However, they will need guidance during their initiatives, and for this purpose it is proposed that CCs in each Divisional Secretariat level is guided by an advisory committee, comprising of community religious leaders, public officers, and elected politicians and community representatives such as Provincial Councilors and Local government members. It is assumed that CCs could be most effective if roughly 40 CCs are established per Divisional Secretariat. Citizen Councils must also be included in the consultation process whenever local authorities decide on a new initiative for the community, and since CCs comprise of community members, an efficient level of monitoring will also prevail; as they will be vigilant on any corrupt or illegal activities that occur during such initiatives. Overall, Citizen Councils' contribute in the three methods of problem solving, administration, and monitoring of activities and initiatives.

Devolution/Power Sharing

❖ The Rights of the Sinhala Buddhist community must be protected.

However, when devolving power, consideration must also be given to the unique situation of the North. Other minority Rights (including those of Muslim communities) should also be protected.

❖ Powers of the Governor should be reduced and more power should be transferred to the members of the Provincial Council.

❖ The collection of public funds should be done in a transparent and accountable manner.

❖ A Concurrent List distinctly specifying the powers vested in the Provincial Council must be re-iterated. Under such List, all stipulated powers must be given over to the Provincial Council.





- ◆ **Strengthening the Thirteenth Amendment and expanding its impact on numerically smaller minorities as well as pockets of Sinhalese in predominantly non-Sinhalese regions.**
- ◆ **Proposal to create a semi-autonomous Hill Country Tamil bilingual (Sinhala and Tamil) sub region as an alternative to making the Central and Uva Provinces fully bilingual. Colombo city could be trilingual, and all the regional capitals either bilingual or trilingual.**
- ◆ **The autonomy to write Statutes should be given to Provincial Councils as long as it adheres to the provisions of the Constitution.**
- ◆ **The number of Ministers in the Provincial Council should be increased from 4 to 7. From this, at least two seats must be allocated to female figures.**
- ◆ **The Ministries of Provincial Councils must be specified.**



◆ The various departments of Local Government must come under the perusal of the Provincial Council; yet must be allowed a maximum possible degree of autonomy.

◆ A Committee system of government likened to that introduced through the Donoughmore Constitution should be re-introduced and be regulated by the Provincial Council. The Citizen Councils must also be represented in these Committees, and Committees specific to Women, Children, and Youth must be represented.



Electoral Reform

- ❖ A mixed electoral system should be practiced. When giving nominations, provisions should be made to reserve a 25% quota for women and a 25% quota for youth.
- ❖ A minimum educational qualification must be stipulated for candidates; minimum Advanced Level qualification for Parliamentary and Provincial Council candidates, and minimum of Ordinary Level qualification for Local Government candidates.
- ❖ Defeated candidates should not be given the chance to enter Parliament through any other means.
- ❖ Proposal to make election manifestos legally binding and accordingly hold the Prime Minister/Parliamentarians/Local Councillors accountable if they fail to achieve the promises detailed in said Manifesto.
- ❖ In order to strengthen internal democracy within political parties and ensure political ethics, the guidelines produced through the March 12th Movement should be abided by when electing positions within the party.



- ❖ The list of Candidates should be given to the Elections Commissioner before the commencement of elections, so that he may declare the winning candidates.
- ❖ A Calendar for Election dates should be introduced and adhered.
- ❖ Governors must be elected by a Parliamentary Select Committee consisting of the President, the Prime Minister, and the Speaker of Parliament, among others.
- ❖ In order to uphold legitimacy:
 - 1) Citizens must have the Right to Recall an elected member of Parliament by means of a Petition or otherwise, if they deem him/her unfit to hold office
 - 2) When governments do not accomplish tasks set forth in their Manifesto's, government members must be accountable for it and provide reason to the public on why it was unaccomplished.

Fundamental Rights



- ◆ The Right to life should be recognized as Fundamental Right. Special occasions such as necessary abortion must follow necessary medical consultation and recommendation, and in such occasions, can be allowed.
- ◆ The Right to Health should be recognized as Fundamental Right
- ◆ Strengthen the Human Rights Commission.
- ◆ Special laws should be enacted to deal with sexual abuse and child abuse. It is also essential to strengthen environmental protection.
- ◆ Human Rights, as well as ratified United Nations Conventions must be made aware to all members in every tier of governance.
- ◆ All Acts must adhere to the Official Language Policy and therefore must be first written in Sinhala and Tamil, as well as English.
- ◆ All government institutions must adhere to the Official Language Policy. Name boards/signage must be produced in both Sinhala and Tamil.



- ❖ **Fundamental Rights should adhere to the guidelines specified in the ICCPR (International Covenant on Civil and Political Rights) and the State should ensure that all Human Rights are protected.**
- ❖ **Address the gap of legal provisions for statutory rape for persons between the ages of 16 and 18 by giving legally recognizing all persons below the age of 18 as minors.**
- ❖ **The establishment of Sinhala/Tamil schools must be avoided.**
- ❖ **There should be no anomalies in the treatment of, or benefits received by government officers across Sri Lanka, i.e. the benefits received by all government officers should be standardized. There should also be no political affiliations with regard to hiring government officers to any post.**
- ❖ **Education on the study of the Constitution must be included in school curricula from grade 3-11.**
- ❖ **There must be a mechanism to solve minor issues/civil issues before being taken up by the Mediation Board.**
- ❖ **Fundamental Rights cases should be allowed to be filed outside Colombo in each Districts highest Court.**

General Issue

Although Chapter Six of the current Constitution (Directive Principles of State Policy and Fundamental Duties) stipulates through Article 27 that food, housing, health, and education must be provided by the State, it is vetoed by Article 29.

As a remedy to this, Sri Lanka must ratify the 1980 International Covenant on Economic, Social and Cultural Rights. Through this, Article 27 would automatically be given room to be implemented.

GENERAL ISSUES FACED BY THE PUBLIC THAT MUST BE ADDRESSED THROUGH THE CONSTITUTION



Land Rights

The concerns of citizens pertaining to land vary across the different provinces of Sri Lanka. While the northern and eastern areas still face difficulties with military occupation, communities living in the estate sector are yet to be granted ownership of the land they live on. Relevant local authorities and the central government have not issued deeds and permits to the people, owing largely to a lack of a proper plan for resettlement. Having been displaced from these regions due to the violence, citizens have either lost their documents or did not possess them to begin with. People in Vavuniya have been faced with unfair distribution of land where the spaces allocated to them post-war are much smaller than the land they originally inhabited before displacement. Citizens from war-affected parts of the Eastern province such as Urani, located in close proximity to both Yala and Kumana national parks, were displaced during the violence. When they returned, they found that the lands that their homes were on had been overrun as the forest grew wild. For this reason, the Department of Forest Conservation has claimed these as forest lands and will not allow people to clear the land and rebuild their homes where they once were.

Housing

Across the island, people are faced with issues in regard to housing and the regions are characterised by the problems faced. In the North and East, housing issues centre around resettlement and in the Central and Uva areas, sub-standard housing for estate communities is of highest concern.

Lack of clean drinking water

A problem that is brought forth in several parts of the country is that the water the people have access to be not suitable for consumption. In Kantale, a staggering number of deaths have occurred due to kidney disease resultant from over-calcified water. Lakes, which are sometimes at lower elevations than the town, are high in concentration of pesticides from surrounding fields and rendered unsuitable for consumption. The issue of waste arises in Jaffna in relation to by-products from limestone in the area, factory waste and leaks from unexploded landmines, all contributing to deteriorating the water quality.

Environmental Issues

Issues pertaining to the environment manifest in various methods: environmental hazards that are the result of adverse effects of development projects, natural disasters and the lack of efficient alternatives set in place by the local government in such occasions, deteriorating environmental conditions propagated by illegal activities that are overlooked or sometimes promoted by political figures, threats to personal security and crop cultivation due to threats from wild animals, and lack of maintenance of established or natural nature resources and general inefficiency of local authorities with regards to environmental issues.

Women's Issues

While the issue of single woman families no doubt exists across the country, there is a large number of women-headed households in the North and East, largely as a result of the many male lives lost in recruitment and combat during the conflict. In addition, there are some women homes in which the male head is one of the many of those classified as 'missing', in reference to the enforced disappearances and detainees unaccounted for during the period of 1983 to 2009. The women stated that there is no sufficient state monetary aid that has been given out to these women who also say it is difficult for them to find employment. They have to resort to traditional methods of income that include farming and labour work that may not yield pay that is adequate enough to feed their children. Women (predominantly in the North) also fall prey to elaborate loan schemes by private banks and are forced to pay sums that they cannot afford. This is mainly due to the fact that documents are not provided in Tamil.

The above mentioned issues should be addressed and resolved through provisions set forth in the new Constitution.