

Discussion on Public Representation Committee Report on Constitutional Reform

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Organization of Professional Associations (OPA)



Introduction

The Public Representation Committee on Constitutional Reform (PRC) headed by Lal Wijenayake has concluded its activities across Sri Lanka, gathering input from citizens for the new Constitution. The Committee has compiled a report of their recommendations and presented it to the Prime Minister, and was made available to the public.

The Citizens Initiative for Constitutional Change envisaged that before the report is submitted to the Constitutional Assembly, a preliminary discussion on the content of the report must be facilitated among experts, academics, and the wider public. To this end, a discussion was held on the Thirteenth of June, 2016 from 2.30 p.m. onwards at the Organization of Professional Associations of Sri Lanka (OPA), Colombo 07

Speakers at the event included Dr. Paikiasothy Saravanamuttu, Attorney-at-law S.G. Punchihewa, Prof. Jayantha Senevirathne, Attorney-at-Law Elmore Perera, Attorney-at-law M.A.M Hakeem, Attorney-at-law C.A. Jothilingam, fellow CICC member Kumudini Samuel, and Chairperson of the PRC Attorney-at-Law Lal Wijenayake. The Discussion was moderated by Attorney-at-Law and fellow CICC member Sudharshana Gunawardene.

A number of attendees participated in the discussion including CICC members, PRC committee members, academics, media personnel, university students, and civil society members.

Lionel Guruge from the Centre for Policy Alternatives welcomed the attendees, mentioning that there has been limited discussion surrounding the PRC report and even more limited awareness. He stated that the PRC has worked efficiently given the time constraints and that the public has not been made aware of this effort and thus it has gone unrecognized. He concluded by stating that the aim of this discussion is to identify if public sentiment is reflected in this document.

A brief summary of the content of the discussion is given below.



Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives



Dr. Saravanamuttu highlighted a number of points from the report and what conclusions/discussion points can be extracted from it.

- Dr. Saravanamuttu identified that the PRC report sets parameters for the discussion on Constitutional reform.
- He stated that the report also provides a number of options on the topics where the committee members could not reach consensus on.
- The report, he believed, is important in that it now provides a basis for advocacy, as well as constituency for certain thematic areas.
- The January 2015 elections was meant to provide a political solution to the ethnic issue, however, he observed that that had not been dealt with.
- Regarding the differences of opinion reflected in the report, he posed the question of whether there would be a fundamental shift in the structure of governance, to which his personal opinion was that it would not be the case.
- He stated that if we wish to have a well-structured Constitution, certain compromises must be made.
- He believed that certain topics (Article 2 among others) must reach a settlement in the new Constitution and that he believed substantive powers must be dissolved, beyond the Thirteenth Amendment.
- He identified that many believe a strong government to be a pre requisite to a stable society; however he mentioned that we must also keep in mind that two insurrections and a thirty year war also occurred during the time of strong governance in Sri Lanka.
- He pointed out that a move away from an Executive presidency must not signify a move towards an Executive Prime Ministerial position.
- He observed that there seems to be consensus in the report for a second chamber in Parliament.
- He speculated as to the timeline of the Constitution making exercise and believed that the new Constitution would probably be drafted and ready before the budget discussion in November.
- Finally he observed that he feels the government seems more confident of receiving a 2/3rds majority in Parliament regarding the new Constitution, rather than receiving an overwhelming support at the Referendum.

S.G. Punchihewa
Attorney-at-Law



S.G. Punchihewa emphasised a few facts from the PRC report which he felt were important topics to discuss. Before discussing them in detail, he congratulated the PRC for producing a satisfactory report, and believed that if the PRC report was considered in entirety for the new Constitution that Sri Lanka could promulgate a Constitution in par with the South African or Kenyan Constitutions. He also stated that the content of this report should be broadly disseminated among the public in order to foster a discussion on it. He believed that the report provides a basis for advocacy if public sentiment stated on this report is not reflected in the new Constitution.

- Power Sharing – The report mentions specific power sharing with regard to Provincial Councils, Urban Councils, *Pradeshya Sabha*, but also a village level civilian-led governance unit. It has also recommended recognition of the Estate Sector (Plantation Community) as a part of the village unit and as such should come under the purview of the Urban Council and Municipal Council as well.
- Regulatory Principles – A ‘Co-op Method’ must be considered as an alternative to existing state and market principles and must be recognized by the government. It has also recommended the government respect and acknowledge National Labour Rights.
- The State – International Treaties/Conventions must be implemented within one year of ratification.
- Fundamental Rights – Right to Life, A Commission for Discrimination and Inequality to be established and many other recommendations under this thematic area, the Right to Health, the Right to Education, Right to Land, Protection of the Environment, the Right to an Income, and many other recommendations were listed under this category in the PRC report which Mr. Punchihewa elaborated on.
- He further emphasised that the report recommends;
 - The Courts must also be made responsible in the instance of infringement of a persons’ Fundamental Rights,
 - That it must be possible to take legal action in Court against Fundamental Rights infringement on the part of Private institutions,
 - That any person or party/organization can pursue a Fundamental Rights case,
 - The time duration to submit an application on Fundamental Rights to be extended to three months,
 - At extreme cases, an irregular application form must also be accepted.

Kumudini Samuel
CICC Member and Joint Coordinator
Women and Media Collective



Kumudini Samuel provide insight into the work conducted by the Women and Media Collective for Constitutional reform. She stated that there was a lack of awareness on the subject in many Districts they went to during this time. From a female advocacy point, she stressed the importance of law review in the new Constitution as that would benefit the women of Sri Lanka significantly. With this she further stated that democracy, human rights, and other topics that go in tandem with good governance practices were also discussed at their meetings. Representing women's advocacy groups, Ms. Samuel made the following observations;

- The recommendations for the Fundamental Rights chapter includes rights that have never before been considered in Sri Lankan history and the PRC must receive commendation for it.
- Special focus must be given to starting a discussion on how to interest more women to participate in politics at a regional and national level.
- The recommendations of the PRC with regard to female quotas in the occasion a new electoral system is introduced was a significant achievement as it has been the focus of many women's rights groups advocacy for a long time.
- The inclusion of a Women's Commission at a National level had also been mentioned in the PRC.
- Finally she surmised that a broad discussion on the content of the PRC must be facilitated at a national as well as regional level and encourage alternative views to the report recommendations, if any.

Prof. Jayantha Senevirathne
University of Kelaniya



Prof. Senevirathne made two brief comments regarding Constitutional reform in Sri Lanka, however prior to that he praised the PRC for accepting the submissions made by many inter-religious organizations across Sri Lanka. His primary observations were:

- In 1991, a forum named the *Convention for a Democratic South Africa* was created in South Africa for the same purpose of gathering recommendations from the public for a new Constitution. The only difference between that forum and the PRC, he observed, was that in all topics relating to the Constitution, the forum reached a consensus; however, in the Sri Lankan experience the PRC report clearly states varying opinions of the Committee members.

His recommendations to the new Constitution were;

- One unitary national level office/forum for Reconciliation must be established. Currently, a number of forums exist under the purview of PM Ranil Wickramasighe, Former President Ms. Chandrika Bandaranayake, and Minister of National Dialogue Mano Ganeshan. What is needed, he stressed, was the need for one strong unit for Reconciliation instead of branches or sub units as it exists today.
- He also stressed the need for military reformation with regards to promotion of reconciliation and inter-ethnic harmony, especially in terms of regiment names and their duties. He recalled an example from the South African experience, where the title of the army was converted from the 'South African Defence Force' to the 'South African *National* Defence', Force whilst making it an environment for all communities in South Africa to enrol. He believed that in Sri Lanka, such a reformation is also needed.

C.A. Jothilingam
Attorney-at-Law



Attorney-at-Law Mr. Jothilingam spoke specifically on behalf of the Tamil community of Sri Lanka and whether or not the PRC report recommendations reflect the interest of the community. Accordingly, his recommendations/observations for Constitutional reform was centred on what he believed was the best alternative to the Sri Lankan Tamil community.

- The best solution to the national conflict is to recognize the Tamil community as a separate community within Sri Lanka.
- Sri Lanka should also be recognized as a multi-ethnic society in the Constitution. As such, Sri Lanka's governance system must shift from a unitary state to a federal state.
- In order to preserve and protect the Tamil community's land, human rights, and identity, the North and East must be amalgamated. He acknowledged that the minority Muslim population in that region may raise concerns over this merger and recommended that if that is the case, the Muslim community must be consulted.
- Self-governance must be afforded to the Tamil population. This must occur for two reasons; 1) on the basis that the Tamil population is recognized as a separate community, and 2) that the Tamil community needs self-governance in order to re-build their lives and community after being affected by the conflict.
- Necessary space must be made in Central government for the inclusion of Tamil community, in that the Central government must reflect the diversity of Sri Lanka. As such, the Central government must become a bi-racial government.

Taking the above factors into consideration, Mr. Jothilingam expressed his disappointment in this sentiment not being reflected in the PRC report. He believed special focus needs to be given to these issues if the Tamil community's issues are to be resolved.

M.A.M. Hakeem
Attorney-at-Law
Lecturer
Faculty of Law
Colombo University



Mr. Hakeem predominantly focused on dissecting the content of the PRC report. His observations were as following:

- For the first time in Sri Lankan history, a committee was established to receive submissions from the public for Constitutional reform. 20 experts were included in this committee and they received submissions under 20 thematic areas relating to Constitutional reform.
- The report highlights issues of importance to the public.
- The report also shows that majority of the public believe a solution to the national question could be sorted through a new Constitution. The National Flag, the National Anthem, Religion, Governance, and Power Sharing were also discussed in relation to this topic.
- He also made special mention about the inclusion of Women's Rights and Women's representation in the PRC report.
- With regard to Religion, he observed that the PRC report includes 4 varying recommendations and that when promulgating a new Constitution, a decision must be made that protects the needs and requirements of all Sri Lankans.
- He concluded that whatever the recommendations may be, the final verdict lies in the hands of the public. As a primary discussion, Mr. Hakeem regarded this meeting an essential and important event.

Mr. Elmore Perera
Attorney-at-Law
Member of the CICC



Attorney-at-Law and CICC member Elmore Perera began his commentary stating that Constitution making is too important to be kept to the politicians alone, and that is why this discussion is important. He observed that at many instances, the PRC committee members have refrained from making a decision on certain topics and he believed that to be a good thing as it leaves it open to the public to reflex on it further and derive an opinion of their own. A few of his observations are given below.

- Sri Lanka has bled for many years and there is a sincere desire for lasting reconciliation. Questions about the National flag and Anthem, Religion etc. do not have easy answers, and thus the views of people in different parts of the country must be taken into consideration when taking steps towards reconciliation in the Constitution.
- Mr. Perera commended the recommendation to regard the Constitution as supreme, and that the only body allowed to interpret the Constitution is the Supreme Court. If the Judiciary is to interpret the Constitution, it is necessary for there to be a “fiercely independent Judiciary”. He commented that the current Judiciary does not seem to possess this form of independence and hopes that after the new Constitution is established, we can progress towards such an ideal.
- Commenting on the Presidency, he firmly stated that it is his opinion that the executive Presidency is abolished; however he has observed that the PRC report makes no specific mention of this fact.
- Mr. Perera also commended the recommendation to include only 25-30 Ministers and 25-30 Deputy Ministers in Cabinet, which he believed was essential given the situation today.
- Power Sharing – Mr. Perera endorsed the Second Chamber recommendation. Regarding Province mergers, he observed that there is no definite recommendation in the report, but it has mentioned the importance of respecting the rights of the minority populations in such regions.
- Local Authorities – Mr. Perera stated that the main issue with regard to local governance is that grassroots level citizens have no means of getting involved in the governance of Sri Lanka. Quoting the report he said that “members of Local Government have become contractors and businessman rather than representatives of the people”, and therefore endorsed the idea of a *Grama Rajya* system mentioned in the report, and that this system must be firmly rooted at the grassroots level. He believed that we may borrow from the Indian experience regarding their *Panchayat* system for better guidance on this.

Lal Wijenayake
Chairman,
Public Representation Committee



As Chairman of the PRC, Mr. Wijenayake was invited to share his thoughts/experiences during the drafting of the PRC report.

- Mr. Wijenayake professed that regarding certain topics, the PRC committee members have still not reached consensus and continue to engage in this discussion. For this purpose he believed that the discussion surrounding the PRC report must continue until the promulgation of the new Constitution. To this end he concurred that public discussions such as this is important.
- He also shared with the attendees the PRC's methodology and activities regarding the drafting of this report which included travelling to each District to receive oral and written submissions, having an in-house discussion regarding the submissions, and how they reached a conclusion. At certain instances due to the inability to reach a consensus on some topics, he confessed that the PRC published the most popular public opinion on the subject.
- He observed that during his experience drafting this report, that Sri Lankan society possesses strongly democratic values, however is hesitant to take steps for radical reformation. He observed this is particular with regards to topics such as Federalism.
- He surmised that although the committee members could not reach consensus on certain topics, they however were in concurrence with regards to topics such as Fundamental Rights and human rights.

Media Coverage



<http://www.rupavahini.lk/main-news/sinhala-news/11381-2016-06-13.html>

<http://www.ft.lk/article/548665/Village-level-devolution--Provincial-Police-Commission--secular-State-among-suggestions-for-new-constitution>