

# PUBLIC REPRESENTATION COMMITTEE REPORT – PUBLIC DISCUSSION

MATALE, KANDY, AKKARAIPATTU,  
BATTICALOA, KANTHALE

8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> JULY, 2016

CENTRE FOR POLICY ALTERNATIVES



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Citizens' Initiative for Constitutional Change

## **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 Centre for Policy Alternatives (CPA) envisaged that before the report is submitted to the Constitutional Assembly and before the drafting of the new Constitution, a preliminary discussion on the content of the report must be facilitated among experts, academics, and the wider public. To this end, discussions were initiated around Sri Lanka, with the first instalment taking place in the Districts of Matale, Kandy, Akkaraipattu, Batticaloa, and Kanthale on the 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> of July, 2016. Accordingly, the Matale discussion convened on the 8<sup>th</sup> afternoon at Liberty Hotel, whilst the discussion in Kandy convened on 9<sup>th</sup> morning at Devon Rest. The Akkaraipattu discussion convened on the morning of the 13<sup>th</sup> at the Akkaraipattu NGO consortium premises, whilst the Batticaloa discussion convened that afternoon at the Batticaloa NGO consortium premises. Finally, the Kanthale discussion convened on the 14<sup>th</sup> morning at Lake Front Hotel.

Before commencing the discussion, the attendees were provided with an abridged version of the PRC report in an easy-to-read, simplified language, highlighting the important points of the report in Sinhala and Tamil. Those who had not previously read the comprehensive report were able to extract information from the abridged version and thus engage in the conversation. Lionel Guruge, Senior Researcher at CPA opened the discussion with a few introductory comments about the aim and projected outcome of this initiative, following which the floor was opened for participants to provide their feedback and comments.

These meetings were especially targeted at civil society members who submitted recommendations to the PRC in these Districts, as well as other active civil society members. The attendees encompassed diverse backgrounds and ethnicities, and a satisfactory gender representation was also prominent. In particular, attendees ranged from civil rights activists who had previously engaged with CPA in discussions of this nature, journalists, scholars and academics, school teachers, *Grama Sevakas*, public officers, women's rights activists, and so on.

The Kandy discussion was also attended by Chairman of the PRC, Lal Wijenayake, thereby allowing participants to engage in a critical discussion regarding the report. As Chairman, Mr. Wijenayake was able to provide insight into the functioning of the PRC and how they reached consensus on certain topics. By participating in these discussions, Mr. Wijenayake was able to receive vital information regarding public perspectives on the report and the Constitution-making process overall, which would prove to be an essential component when he, together with the rest of the PRC members are asked to provide their input to the Constitution sub-committees tasked with drafting specific sections of the Constitution such as the Bill of Rights, Devolution, etc. Participants attending these sessions are also encouraged to submit their recommendations to these sub-committees directly, thereby increasing advocacy for specific issues.

Renowned human rights activist Attorney-at-Law S.G. Punchihewa also attended these discussions to provide a legal background to certain pertinent issues when needed.

A unanimous consensus prevailed at all the meetings that this was an important initiative in order to facilitate and promote democratic governance in Sri Lanka. The main objective of these

meetings was to engage in a critical discussion as to whether the recommendations submitted by the citizens was accurately and adequately reflected in the PRC report and if not, what reasons may have caused this deficient. The discussions also aimed to focus on the next steps with regards to incorporating these recommendations into the Constitution. As such, a few members expressed their dissatisfaction at the lack of their submissions being incorporated into the report.

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

## **‘An opportunity to right the wrongs of our last Constitution’ –**

**Lionel Guruge**  
**Senior Researcher**  
**Outreach Unit, Centre for Policy Alternatives**



Lionel Guruge initiated the discussion by giving a few introductory comments on how the present Constitution was made excluding certain political parties and the public in general. As a result, Sri Lanka's history is now ridden with two insurrections and a bloody civil war that spanned three decades. The willingness by the government to include public participation in this re-drafting process was commendable and provides the perfect environment to improve democratic governance from a grassroots level in Sri Lanka.

He also observed that some public opinion has not been included in the PRC report and discussion should focus on that issue. However, he also mentioned the importance of being aware of the reality of the situation. He emphasised that not all recommendations can possibly be included into a Constitution and therefore we must be cautious and realistic about what should be included and what could be discussed at a different level. He also mentioned that some subjects or thematic areas may have gotten a sentence-worth of recognition in the report; yet it is important to understand that if that sentence is drafted in the Constitution in an accurate manner, it could ensure adequate representation of the thematic area which cannot be infringed upon.

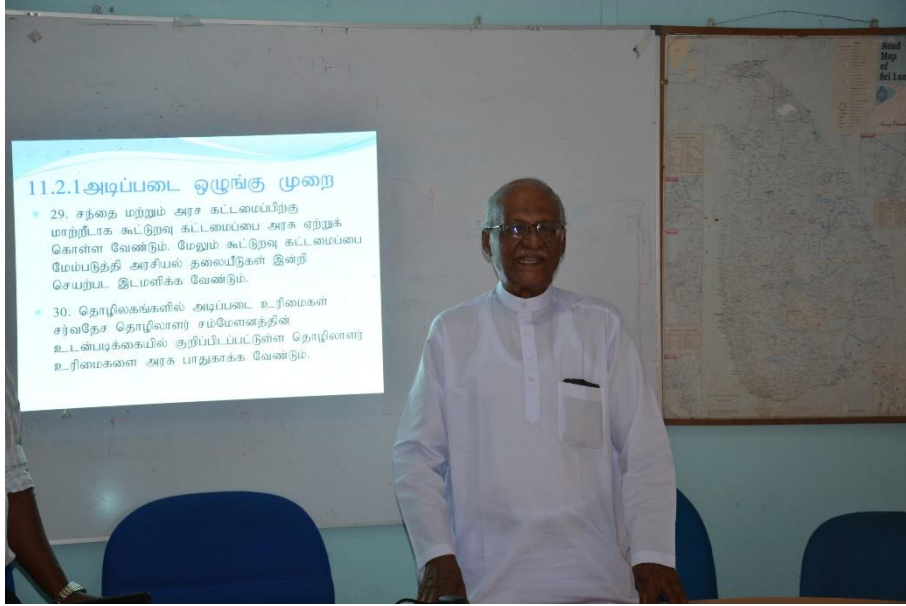
He also spoke about how little informed the public was about the PRC and its proceedings, stating that in a country that hosts a population of 20+ million, only 2500+ persons have submitted recommendations to the PRC. He accredited this gap in information dissemination to the media, stating that they were not proactive enough in spreading this information.

In conclusion he observed that the PRC report had made strong statements with regards to human rights and democracy in Sri Lanka and that these discussions must build upon these

recommendations for a stronger Constitution, stating that passive acceptance of the status quo with regards to Constitution making cannot be an option anymore.

## “Must be cautious about the implementation stage after a new Constitution”

S.G Punchihewa  
Attorney-at-Law



S.G. Punchihewa partook in the discussion by discussing a few salient points regarding the PRC report and its subsequent adoption into the Constitution.

He observed that the PRC report was structured in a manner that shares credibility with Constitutions of the Scandinavian region such as Norway, Sweden, and Denmark, especially with regards to its Human Rights section. He further stated that if such recommendations are adopted, Sri Lanka's Constitution could be considered in parity with strong Constitutions around the world. He was quick to emphasize two central points however; One being that there is no guarantee that these recommendations will be adopted into the new Constitution bill and as such, civil society must urge politicians to push for its adoption during the Constitutional Assembly meetings. Secondly, he stressed that as strong as it seems, even the South African Constitution has a few pitfalls and accordingly, we must be wary about the implementation stage that follows after a new Constitution is promulgated. Deriving examples from the Indian context, he exemplified that even if a Constitution protects certain rights, if laws can be drafted directly overriding the Constitution, the Constitution itself would disintegrate.

He applauded the PRC for giving more scope for public opinion rather than their own in the report. He observed that due to the diverse nature of the collective, varying opinions needed to be given due prominence in the report.

Mr. Punchihewa then proceeded to dissect the PRC report and emphasize a few important topics such as:

- **Devolution** – Local Authority jurisdictions (especially the recommendation to include the Estate community under the purview of Local Authority bodies)
- **Regulatory Principles** – The co-op system in place of the current market system, Labourer’s Rights, International ratified conventions, etc.
- **Fundamental Rights** – Right to Life, Equality, Right to Education, Right to Land, Environmental Rights, Rights of persons with disabilities, Rights of persons of different sexual orientations, etc.
- He also stressed on a few recommendations especially relating to Human Rights, being that any person should be allowed to file a Fundamental Rights case, and that the Judiciary must also be held responsible in the occasion that a persons’ Fundamental Rights has been infringed by a mechanism of the Judiciary, among others.

### Topics of Discussion – A Public perspective.

From the discussions held in the above mentioned Districts, the specific points raised by the public were as follows:

- ❖ **Transitional Justice** – the public expressed the necessity of conducting an analysis on the causes of the two insurrections and the civil war and to establish transitional justice mechanisms in a manner that will eradicate and prevent such violence from springing again. Also suggested was that Transitional Justice should be included into the Constitution in order to give its mechanisms more credibility.
- ❖ **Devolution** – The need for a bottom-up approach to power sharing that ensures citizens are given due prominence in power-sharing matters, to create a Senate system within each Provincial Council which will then constitute a Second Chamber in Parliament functioning under a Bicameral system, and the need to explicitly describe what ‘Federal’ and ‘Diaspora’ mean in Sri Lanka’s political system were among the suggestions made by the public regarding devolution. There was also suggestions to merge the North and the East.
- ❖ **Fundamental Rights** – It was suggested that the government should be responsible for the safety of its citizens and therefore the right to receive assistance from the government in the occasion of a natural disaster should be included under the Fundamental Rights category. Also mentioned was the importance of securing the rights of Atheists and persons who do not follow any religion through the Constitution, as well as the need to ensure full implementation of the Official Languages Policy in every government body, especially the judiciary.  
Some also suggested that there needs to be a credible body that monitors and ensures the appropriate implementation of the Bill of Rights. The need to strengthen the Human Rights Commission was also mentioned in this regard.  
In the occasion that one needs to receive information regarding ones Fundamental Rights if infringed upon, that person may receive this information by post. In case the information gets misplaced within the postal system, there needs to be another alternative to receive this information, was another suggestion. It was also suggested to allow Fundamental Rights cases to be tried at a District and Magistrates Court level, whilst others also mentioned the importance of ensuring equal rights for women.  
Overall, the need to ensure appropriate implementation of the Rights stipulated in the new Constitution was mentioned as a crucial element to its success.

- ❖ **Labourers' Rights** – The importance of ensuring the economic rights of labourers especially the Plantation Community must be incorporated in the Constitution.
- ❖ **In general**, the public expressed caution as to what degree the recommendations in the PRC report will be incorporated into the new Constitution. They were concerned as to the increase of legislature in the Constitution, while some others believed the Constitution must give Buddhism its prominence as the State religion.

### Gallery



Discussion in Matale



Discussion in Kanthale, Trincomalee



Discussion in Batticaloa



Discussion in Kandy



Lal Wijayanayake in Kandy



Discussion in Kanthale, Trincomalee



Discussion in Kandy



Discussion in Akkaraipattu, Ampara



Discussion in Batticaloa



Batticaloa



Discussion in Matale



Matale