



Global Tamil Forum (GTF) Submission for a New Constitution

Context

1. The authoritarian trajectory and the sharpening of the national conflict in Sri Lanka during the last four decades can be traced to a high degree to the inadequacies of the 1972 and 1978 republican constitutions, which concentrated power in a single institution without effective checks and balances, and entrenched, rather than countered, majoritarianism, in particular the Sinhala-Buddhist character and dominance of the state.
2. The removal of the specific minority protection clause existed in the Soulbury constitution (Section 29, which was then thought of as unalterable), and the outright rejection of the Tamil demand for regional power sharing in the 1972 and 1978 constitutions and consequent non-participation of the elected Tamil representatives in the constitution making process, effectively excluded Tamils as a people from the foundations of the state.
3. The denial of the Tamil aspiration to meaningfully exercise self-rule within Sri Lanka (including by unilateral abrogation of the power-sharing agreements signed with the elected Tamil representatives); the programs implemented to weaken the national existence of Tamils through a policy of colonisation and systematic discrimination (particularly in the areas of language, higher education and employment); the violent suppression of the peaceful protests and civil disobedience campaigns; and the killings of hundreds to thousands of innocent Tamils in periodic, communal riots at times carried out with state complicity, eventually led to the call for the creation of a separate Tamil state and an armed struggle.
4. Though the civil war that afflicted all communities ended in 2009, the Tamil aspiration for meaningful self-rule in the North-East of the island (an area Tamils consider as their traditional homeland over several centuries), and to be treated as equals throughout the country, remain as strong as ever. A strong affiliation and consistent demand by the Tamil people for power sharing based on the idea of federal autonomy in the North-East Sri Lanka, a proposition repeatedly mandated in elections, is sought as a means to preserve and prosper as a distinct people in their areas of historic habitation, with full recognition and respect of the uniqueness and aspirations of all other communities living there, in particular the Tamil speaking Muslims.
5. The absence of war and the lessons learnt from it, and the virulent experiences of the society from the authoritarian policies of the recent past have created conditions favourable for political renaissance in Sri Lanka. The political changes of January 2015 and the present coalition government of traditionally antagonistic political parties are a reflection of this reality, and the attempt to write a new constitution to reflect the wishes and aspirations of



all peoples, is an important development consistent with the new thinking. This opens up the opportunity to bring the Tamil people into the constitutional fold, a historic first for the republic.

6. All aspects that are being considered in the constitutional deliberations – abolishing the executive presidency, reforming the electoral system, incorporating Bill of Rights of international standards, ensuring independence of judiciary and other legal institutions, and resolving the national question – are critical to produce a constitution that is vital for good governance, protection of human rights and national reconciliation. However, addressing the Tamil national question through a policy of credible power sharing that promotes Tamil self-governance within united Sri Lanka is the primary focus of this submission.
7. From a Tamil perspective, the new constitution is viewed as the primary means through which the long standing Tamil national question could be addressed. In searching for a political solution, we (GTF) express our solidarity with the political aspirations of the Tamil-speaking Muslims and the upcountry Tamils, and our willingness to work in partnership with the Sinhalese community. Any long-term political solution, in our view, has to significantly rearrange the governance structures of the country to affirm the distinctiveness and empowerment of the different peoples, to affirm their physical safety, and to forge a truly meaningful unity, within a plural, multinational state, where the political majority cannot transpire into an instrument of oppression.
8. The current state structure of Sri Lanka entrenches discrimination and subjugation of the Tamil people through a unitary constitution, the centralisation of power and governance, and majoritarian decision-making. The 13th amendment to the Sri Lankan constitution, enacted as a part of the Indo-Lanka Accord, is the present constitutional arrangement to mitigate this problem, by providing a mechanism to limited empowerment of the people in the regions. It has been proved without doubt during the last 28 years that the 13th amendment is too weak and fragile to be easily undermined by the centre and does not provide a sufficiently comprehensive framework to arrive at a lasting solution to the Tamil national question.
9. It is vital that following the end of the civil war the root causes of the conflict are addressed, and power sharing and genuine devolution of power are important components of such a response. It is equally important to recognize that the Tamil people voted for moderation and engagement at the Presidential and Parliamentary elections in 2015, rejecting strongly antagonistic politics, and also played a decisive role in the 2015 political transformations. Failure to respond adequately to the reasonable demands for decentralisation of power to the regions and equality will only strengthen the emergence of forces of extremism within the Tamil community. Whereas effectively addressing these issues is the best guarantee for peace and against threats to the unity and territorial integrity of the country.



10. GTF calls for genuine and open-minded negotiations and eventual consensus among all the major political parties representing various communities to arrive at a political solution that will be incorporated into the new constitution. On our part, we are committed to provide all necessary assistance to support the lead role expected to be played by the elected representatives of the Tamil people in Sri Lanka.

Territorial Decentralisation

11. Political decentralization along territorial lines is emerging as a key element in contemporary civil war settlements. Territorial decentralization recognizes the political and spatial realities on the ground, granting each group a region within a state, mitigates fears of political exploitation and inter group violence and, at least, in part satisfies local demands for greater autonomy. At the same time, decentralization maintains existing external borders, and thus does not challenge the principle of territorial integrity. In effect, territorial decentralization addresses the political insecurities and desire for self-determination that lead to conflict, without dismantling the overall state structure.
12. We believe that territorial decentralization is the only valuable tool in the transition to peace in Sri Lanka. It is a signal of moderation and accommodation by the political majority that can allay minority fears about its likely treatment in the future, and should benefit both the political majority, who gain from sustained territorial integrity and a united country, and the political minority that aims for greater autonomy and local control over cultural, economic, internal security and social policies.
13. The Sri Lankan government that negotiated the Indo Lanka Accord of July 1987, recognised the Northern and Eastern provinces as the areas of historical habitation of the Tamil speaking peoples, who have at all times hitherto lived together in this territory with other community groups, and agreed to permit the adjoining provinces to join to form one administrative unit, requiring a referendum later to decide whether the merger should be permanent.
14. The nine provinces and their present boundaries have colonial origin and are somewhat arbitrary in their construct. Regrouping the provinces and/or revisiting their boundaries should be seriously considered as an option if that would create more meaningful political and administrative units compatible with the current needs of the society.
15. Several countries around the world have generated political systems that bind a distinct, territorially-concentrated people into a larger, non-centralized state while allowing them to maintain their own political identities. Certain characteristics and principles are common to



all such successful power sharing arrangements: a written constitution or basic law stipulating the distribution of powers; diffusion of power among the constituent elements, which are substantially self-sustaining; territorial divisions to ensure neutrality and proportionality in the representation of various groups, interests and government entitlements; and changes requiring the consent of those affected. Such successful systems tend to have a sense of common nationality and promote direct lines of communication between the citizens and their governments.

16. We believe that a precondition for reconciliation and development is the creation of a just and fair society to all, which will in turn provide the necessary environment for economic, social, and cultural rights to flourish alongside state stability. Sri Lanka will not achieve stability and prosperity unless these basic essentials are addressed by the new constitution.

Basic Principles underlying a New Constitution

General Principles

17. The Republic of Sri Lanka is one, free, sovereign and independent state consisting of the institutions of the centre and of the regions, and the institutions shall reflect the pluralist character of the society and exercise power as laid down in the constitution.
18. The multi-ethnic, multi-lingual and multi-religious character of Sri Lankan society as well as the identities and aspirations of its constituent peoples shall be constitutionally recognised.
19. Constitution should recognise the different identified peoples as constituting the country and having an equal stake, a proposition that needs to be included in the preamble which can also state that we are making a new beginning, acknowledging the past.
20. The right of every constituent people to develop its own identity, language, to develop and promote its culture, and to preserve its history, and the right to its due share of state power including the right to due representation in institutions of governance (legislative, administrative, judicial and armed forces) shall be recognized, while also strengthening and promoting the common Sri Lankan identity and peaceful coexistence.
21. The constitution shall be based on the basic constitutional principles and values including sovereignty of the people, participatory democracy and supremacy of the constitution which shall form an unalterable basic structure.
 - a) Supremacy of the constitution and the rule of law
 - b) Representative and participatory democracy
 - c) Human dignity, social justice, advancement of fundamental rights and freedom, including abolition of death penalty

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- d) Racial, religious and gender equality
- e) Non-discrimination
- f) Minimum 1/3rd representation of women at all levels of representative bodies

22. The form of government shall be Parliamentary, with the executive powers exercised by the Cabinet of Ministers.
23. A strong and enforceable Bill of Rights consistent with universally accepted norms and standards shall be incorporated.
24. There shall be separation of powers and an independent judiciary which shall also include a Constitutional Court, and the separation of the judiciary and executive must be ensured.
25. Important institutions shall be independent and accountable. Appointments to these and other High Posts shall be through a transparent mechanism that provides for a national consensus, for example the Constitutional Council.
26. Sinhala, Tamil and English shall remain the official languages.
27. The Republic of Sri Lanka shall be a secular state.
28. The repeal of all politically repressive, anti-democratic or discriminatory legislation and regulations which have been enacted by successive governments since 1947.

Power Sharing

29. Power sharing shall be on the basis of self-rule and shared-rule within an undivided Sri Lanka.
 - A. Self-Rule: Based on subsidiarity and maximum devolution to regions/provinces consistent with the unity of the state.
 - B. Shared Rule: Institutions of power sharing at the centre (e.g., regional/provincial representation in a second chamber).
30. The new constitution should generate national and regional institutions which would ensure mutual respect for the basic rights and legitimate aspirations of all the people of Sri Lanka and also bring about active and mutually beneficial cooperation towards the realization of social and economic prosperity for all.
31. Tamil demand for autonomy is not aimed at any form of isolation, but on the contrary for empowerment and to be in a better position to contribute to the collective wellbeing of all.
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This calls for the correct balance between autonomy and interdependence - first to clearly demarcate the division of responsibilities between regional and central governments, and then provide avenues for consultation and mutually beneficial cooperation.

32. As geographic entities, the Northern and Eastern provinces, which have historically evolved as the traditional homeland of the Tamils and the Tamil speaking Muslims, to be incorporated as a single regional unit, "Autonomous Tamil Region" or ATR ('Tamil' referring to the language). (The Tamil and Muslim leaders should work out consensus for this arrangement). The organising of the non-ATR part of the country into relevant regional entities is left open in these proposals.

33. Key recommendations regarding the power sharing arrangements between the ATR with its regional assembly and government, and the central government (of Sri Lanka) are:

- ATR government will exercise administrative autonomy, be vested with appropriate legislative power, and the executive powers exercised by the Cabinet of Ministers.
- A proper division of powers between the central and the ATR governments, which allows to maximise the opportunities for independent and complimentary development, is central to the success of this arrangement. A supplementary charter of principles of economic cooperation, mutual assistance and resource allocation to be developed.
- The unity and commitment that the recent hardships have generated among the Tamil people will spur economic growth and development. Economic development and planning, social and cultural growth, education and health care are areas that can immensely benefit from autonomous powers. A genuine land reform favouring those who farm will unleash great potential for agriculture modernization and raising production. To this end, the ATR government shall have the authority and primary responsibility for the land and ports in its region.
- The ATR government must be given the widest possible powers to restructure the economy in respect of both the public and private sectors, and to generate public and private investment both internally and internationally. Provision must be made for sharing national revenue between the central and the ATR governments, in addition to the regional generation of revenue by ATR. The ATR must be free to raise funds in international financial markets and from foreign governments and to enter into economic protocols, with the support of the centre.



- The responsibility for the maintenance of law and order should be distributed between the central and the ATR governments and each provided with the appropriate instruments for this purpose. The primary responsibility to maintain law and order should be placed in the hands of the ATR government.
- The ATR must be able to play an active role in major decisions of the centre, which because of its pervasive character will have impact on all citizens including those within ATR. These include such matters as currency and central banking, fiscal policy and foreign aid, as well as the formulation of overall national policies and objectives.
- The central government will exercise ultimate powers in respect of foreign affairs and national defence.
- The constitutionally guaranteed structure and functions of the regions and the centre cannot be altered without the consent of the ATR body.
- The ATR government, when promulgating its basic laws, has to assure that social, religious, ethnic and political minorities in the region are not hindered in the exercise of their fundamental rights and in achieving their full potential. The Bill of Rights to be incorporated in the new constitution must be supplemented by adequate provisions to ensure that minorities in any of the regions of the country are not discriminated or impeded in their development.
- Another area of central government control is human or fundamental rights. The central government must be allowed to spell out the fundamental rights of all of its citizens in accordance with international covenants and treaties, and the regional governments must respect those basic rights. However, the regional governments are free to expand (not remove) those rights as long as they respect the declared rights by the central government as the basic rights of the country.

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