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# THE APRC

A primer for constitutional consensus



# The APRC: A primer for constitutional consensus

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# List of Abbreviations

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ACTC	All Ceylon Tamil Congress
APC	All Party Conference
APRC	All Party Representative Committee
BBS	Bodu Bala Sena
CFA	Ceasefire agreement
CPSL	Communist Party of Sri Lanka
CWC	Ceylon Worker's Congress
DJV	Deshapremi Janatha Viyaparaya
DVJP	Desha Vimukthi Janatha Peramuna
DPF	Democratic Peoples' Front
DUNF	Democratic United National Front
DWC	Democratic Worker's Congress
EPRLF	Eelam People's Revolutionary Liberation Front
EROS	Eelam Revolutionary Organization of Students
IRDP	Integrated Rural Development Programme
ISGA	Interim Self-Governing Authority
JVP	Janatha Vimukthi Peramuna
LLRC	Lessons Learnt and Reconciliation Commission
LSSP	Lanka Sama Samaja Party
LTTE	Liberation Tigers of Tamil Eelam
MEP	Mahajana Eksath Peramuna
NPA	National Plan of Action to Implement the LLRC's Recommendations
NUA	National Unity Alliance
PLOTE	People's Liberation Organization of Tamil Eelam
PSC	Parliamentary Select Committee
P-TOMS	Post-Tsunami Operations Management Structure
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
SLMP	Sri Lanka Mahajana Party
TNA	Tamil National Alliance
TULF	Tamil United Liberation Front
UNF	United National Front
UNP	United National Party
UPFA	United Peoples' Freedom Alliance

# Foreword

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It was a privilege to have an invitation from Verité Research to write a foreword to this compilation on the All Party Representative Committee (APRC) process, its final report not made officially public even after a change of government and its political relevance in post-January 8 2015 Sri Lanka.

The APRC was established by then President Mahinda Rajapaksa in July 2006 to find a ‘home grown’ solution to the ethnic conflict. Yet he had not ruled out concluding the long protracted war militarily. With the ceasefire agreement officially withdrawn in January 2008, it was clear the Rajapaksa government would carry out a full blooded military onslaught against the Liberation Tigers of Tamil Eelam (LTTE) in the Vanni. He nevertheless kept the APRC process continuing. The LTTE was convincingly and brutally defeated to end the war in May 2009, leaving a human tragedy in need of massive resettlement, rehabilitation and reconciliation. The conclusion of the war also left the long agitated political solution to the conflict necessary to effectively unite the country.

In such context, the final report of the APRC was handed over to President Rajapaksa in August 2010 with a home-spun answer to the political conflict. The final report provides a new basis for a Constitution consented to by most Southern Sinhala political parties and groups in agreement with some Tamil and Muslim political parties as well. In fact the APRC is the only political effort since independence that proposes a workable, acceptable and a meaningful answer to the protracted and agonising political conflict. The Tamil National Alliance (TNA) was not invited to participate in the APRC process at the beginning. The United National Party (UNP) had an excuse for leaving it aside. A group of dissident UNP members were in the Committee using the label ‘UNP’ with a tagline. Thus the TNA and the UNP were not involved in the political process that deliberated on a ‘consensus’ in the final report—yet it is a ‘consensus’ the two parties will have to contend with, on principle.

Finding a political answer to the conflict – which grew from the right to use the Tamil language officially through the right to have local administration in Tamil areas and then to the right of self-determination – was no priority in post-war Sri Lanka for the Rajapaksa regime and the Sinhala constituency they touted. Nor were issues of the surviving Tamil people, displaced and living with an uncertain future, given due priority by key Tamil players in the conflict including the Tamil diaspora and the international community. The immediate and urgent target was not the plight of the surviving Tamil people and their life in a war torn land, but the Rajapaksas and their regime. Therefore war crimes, crimes against humanity and accountability were prioritised and brought into centre stage against the Rajapaksa regime. This to date has left survivors of the war without answers to their most serious issue of beginning a decent new life in a war-devastated land still left under military occupation and interference.

The Lessons Learnt and Reconciliation Commission (LLRC), appointed by President Rajapaksa in a bid to avoid international pressure and lobbying for war crimes and accountability issues, saw

a political solution to all remaining unsolved ground issues as an unavoidable necessity in moving forward. It said in its final report:

All parties should recognize that the **real issue of sharing power and participating in Government is the empowerment of the people and making the political leaders accountable to the people.** This applies to Sri Lanka as a whole and includes the needs of citizens of all communities, Sinhala, Tamil, Muslim and others. The effective functioning of the democratic system which fulfils these needs, **together with a consensual framework of devolution will, by virtue of attributes and institutions intrinsic to it, also provide the answer to the grievances of minorities** [Final Report of the LLRC, paragraph 8.222. Emphasis added].

Finding a worthy, decent answer to political issues in the hitherto unresolved conflict would nevertheless remain a major hurdle in agreeing for and finalising a new Constitution the Sirisena-Wickramasinghe government promised to draft and has begun with publicity sans public participation. **Power sharing** is an issue that Sinhala political parties, big and small, will not want to seriously engage with in the Southern society, assuming the Sinhala voter to be inherently opposed to any form of 'devolution of power'. They assume the Sinhala voter to be always opposed to devolution of power, popularly and wilfully projected as a dubious route to a 'federal' or a 'separate' Tamil state.

The growth of Tamil nationalism into demanding and waging war for a 'separate' Tamil state evolved precisely because of that pro-Sinhala mind-set of the Colombo Sinhala leaders and a set of Buddhist monks who substituted their sectarian extremism as 'Sinhala opinion'. Yet in all occasions when led from the front, the Sinhala society was not as extremist as political leaders and the media define it. Proof is in the two general elections in August 1994 and December 2001, when the majority of the Sinhala constituency showed their willingness to engage in a dialogue on power sharing. At the August 1994 elections, despite the UNP's accusations that the People's Alliance (PA) led by Chandrika Kumaratunga will pave way for separation, her uncompromised open stand in favour of negotiations instead of a military option lifted the PA vote to 48.9 per cent as against 44.0 per cent polled by the UNP. This was repeated in December 2001 when President Chandrika Kumaratunga and her PA alleged that the UNP, led by Ranil Wickramasinghe, had a secret pact with the LTTE to divide the country. The UNP polled 45.6 per cent as against PA's 37.2 per cent.

Initiating negotiations for numerous political and personal reasons but with no political will on the part of the Colombo Sinhala leadership - as in 1957, 1965, 1984, 1985, 1990, 1995, 2002 and also a post-tsunami effort with P-TOMS - to forge a workable answer in resolving the conflict has left Sri Lanka ethnically polarised through war and racially fired elections that fought for Sinhalese votes. Over the decades since making Sinhala the only official language, the State was made to think and act in Sinhala. This was evident in how all economic activity was given high preference for the South in a state-controlled economy. All employment generating economic projects since 1956 were planned and established in Sinhala areas, except for four that had to go North-East for want of natural resources and perhaps logistics. So were the Integrated Rural Development Programmes (IRDPs), implemented from 1978 with heavy donor funding that excluded the North and East. This discrimination by way of ethnicity was more than evident when the accelerated Mahaweli Development Programme was carried out excluding Tamil areas that could have been included. The

Sinhala thinking of the state and governing parties was proven beyond doubt when Uda-walawe area in the far South was also brought under the Mahaweli Development Authority. Uda-walawe is an area that has no relevance or proximity to the Mahaweli River. In 1967 this area was provided with a comprehensive development programme. Yet, Uda-walawe was brought under the Mahaweli Development scheme to serve Sinhala people in Ratnapura and Hambantota districts.

This ‘Sinhala’ supremacist thinking was also evident in education. While they demand ‘free education’ as the most revered principle in Kannangara Educational Reforms, in practise the education in schools is a total departure from the fundamental principles of Kannangara Reforms.

Kannangara expected education to nurture pluralism through tolerance.

The nationalism that we hope to see established depends for its being on toleration and understanding. Among a people so varied as ours any other kind would produce not national unity but national disruption. And toleration that we ask our own people to apply to each other we would also wish to see applied to other nations. This toleration is in fact a characteristic of our citizens. The communities of the island have for many years lived in peace and amity. We are anxious that the teaching in the new educational structure may be inspired by the same toleration and the same desire for peace among men of all nations. [P/10 - Sessional Papers XX1V, 1943].

With such Sinhala supremacist thinking the more centralised the system was made into, the more alienated the Tamil people became from accessing and sharing state power. Thus the centralisation of power in a Sinhala State compelled them to demand more power for their areas in North-East and eventually to demand a ‘separate’ state.

For Tamil aspirations to be accommodated within a single Constitution in an undivided country, it is thus necessary to devolve power to regional level. What defeats this necessity is the ignorance of the Sinhala constituency. They don’t politically understand they have been completely excluded from socio-economic and cultural life under the ever centralised state. Through 67 years since independence and two Republican constitutions, the centralisation of power has only benefited the Western Province, and Colombo within it that would be turned into a ‘Megapolis’ in years to come.

The Sinhala constituency outside Colombo is a deprived constituency. While the non-school going percentage is 2.6 in the Western Province, it is 7.9 in Uva, 6.2 in Central, 5.1 in Sabaragamuwa and 4.9 in Southern Provinces. The average household income per month which is recorded as Rs. 47,118 in Western Province is only Rs. 23,922 in the East, Rs. 28,717 in Uva, Rs. 31,895 in Central and Rs.32,514 in the Southern Provinces (all data is taken from the Household Income and Expenditure Survey - 2009/2010, Department of Census and Statistics). Numbers from the Sri Lanka Bureau of Foreign Employment show a growing trend in seeking migrant housemaid employment in Batticaloa, Ampara, Puttalam, Kurunegala, Kegalle and Kandy in years 2010 to 2013. Housemaid recruitments to the Middle East stem purely from rural poverty. Economic poverty has to be taken together with the poor cultural life available for people in those provinces. There are no decent and proper libraries, museums and no proper theatre or cinema halls in any of the cities and towns outside Colombo. There is no night life in rural society with public transport going off

the roads with sunset. Rural Sinhala society is a culturally dead society. It has not benefited from the continuous centralisation of power by opposing Tamil demands for power-sharing.

The Sinhala South has not been any better than the North and East though it did not wage war demanding devolution. Yet the Sinhala South too has experienced two savage armed uprisings between 1971 and 1988, by Sinhala youth from rural society. Revolts for better life.

The necessity of devolved power to provinces has only been discussed in terms of Tamil aspirations. It has not been discussed in terms of centralising of power and 67 years of continued failure, or in terms of a functional democracy necessary for poverty alleviation that cuts across ethnic divisions. There has been no discussion on poverty in the South in relation to democratic and accountable governance.

It is therefore important to say all through 67 years since independence, while the state has been turned into a centralised Sinhala State, the rural poor have remained in a colonial past as recorded in the Donoughmore Commission Report tabled in the British Parliament in 1928. It said:

The Commission found that in many provinces, poverty and ill health were the lot of many villages. Many sections of the people had not even decent housing or adequate facilities for primary education. No 'poor law' system for relieving destitution, no system of compensation for injured workmen, no up to date system of factory legislation and no control over hours and wages in sweated trades.

The importance of the APRC final report lies in its 'unofficial' consensus that was ignored by a war-winning president, who was not interested in building on his fortune of winning the war by establishing a 'Nation State' that all ethnic groups would feel proud to claim ownership of. With Sinhala political parties sitting through all deliberations to its end, the APRC's final report does have enough political content on power sharing to provoke a new discourse that would make the south an important ally in demanding power to the provinces. Though the APRC 'consensus' has not been put to test all this while, serious discourse on it is now more opportune despite the delay.

Sinhala extremism is no more a potent force as in July 1983 and July 1987. This was evident when the Bodu Bala Sena (BBS) outfit, which enjoyed state patronage, went on a rampage in 2014. Their efforts in provoking mass agitations against the Muslim people failed to create any interest in society, even after the Aluthgama terror campaign. This was when the Jathika Hela Urumaya (JHU) in the Rajapaksa government began to feel they have lost their Sinhala support base. They eventually cracked up; and there is no more a JHU, with two factions dissolved within the Sirisena-Wickramasinghe government and a third trying to survive in the opposition. A renewed effort by the BBS to mobilise Sinhala extremism failed again, with its leader arrested for the first time and few more Buddhist monks taken into remand custody the next day. The provocation that the BBS and others expected over arrests of Buddhist monks did not happen. The majority within the Sinhala business community, who previously funded Sinhala extremism for want of a bigger local market share, have moved into the global market with better profit margins. They therefore no longer need a 'Cyril Mathew' campaign, making these Sinhala groups politically obsolete.

There is now a far more conducive space for a serious discourse on power sharing that could help dismantle the heavily centralised system for a more decent system of shared power within a new Constitution. One that could allow more than what the LLRC Final Report noted: ‘The effective functioning of the democratic system which fulfils these needs, together with a consensual framework of devolution (that) will, by virtue of attributes and institutions intrinsic to it, also provide the answer to the grievances of minorities.’

It would provide the space in working out an answer for the majority Sinhala rural poor as well. That in fact is what the APRC final report is worthy of.

**Kusal Perera**

**Journalist**

23 January 2016

Colombo





# Introduction

Sri Lanka's perennial 'national question' of how state power should be organised has preoccupied much of its post-independence history. Through years of political instability, including a three decade civil war, successive governments have failed to develop power sharing proposals acceptable to all parties at the negotiation table. In July 2006, former President Mahinda Rajapaksa appointed the All Party Representative Committee (APRC) to develop constitutional reform proposals that would represent a political consensus on power-sharing. The APRC was hence the latest in a long line of state reform attempts that had thus far failed to arrive at a viable resolution to the national question. Such a resolution has since come to be seen as a part of a vital political solution to the ethnic conflict following the end of the war between successive Sri Lankan governments and the secessionist Liberation Tigers of Tamil Eelam (LTTE) in May 2009.

The APRC presented its proposals to Rajapaksa in August 2009, after three years of deliberation among fifteen political parties, formulated with the input from a Panel of Experts appointed to aid the process. Its final report contained a promising set of proposals for power sharing that can represent a viable step towards arriving at a credible post-war political settlement. Yet,

despite high initial expectations and its notable outputs, the APRC process came to an inconclusive and unremarkable demise. Its proposals were never officially acknowledged or published.

In January 2016 Prime Minister Ranil Wickremesinghe moved a resolution in Parliament converting the House into a Constitutional Assembly, thus formally initiating a renewed constitutional reform process. In this context, a re-examination of the APRC's proposals is both timely and relevant. This report is a historical study that aims to:

1. Explain the failure of successive attempts at state reform culminating in the APRC process; and
2. Demonstrate that the proposals of the APRC can represent a valuable starting point for renewed deliberations on constitutional reform.

It is presented in five sections:

**Section I** outlines constitutional reform attempts prior to the APRC by successive governments, spanning from Sri Lanka's early post-independence years to mid-2006 when the APRC was established.

**Section II** provides an outline of the main events with regard to the APRC from its establishment to the release of its report.

**Section III** seeks to explain the repeated failure of state reform attempts in Sri Lanka and how particular historical factors undermined the APRC's proceedings.

**Section IV** discusses the key outputs of the APRC and provides a summary of the proposals contained in the APRC's final report.

**Section V** discusses the continued relevance of the APRC proposals as a sound basis for constitutional reform aimed at resolving the national question.

# I

## Precursors to the APRC

The APRC was the most recently concluded in a long history of attempts to arrive at a viable resolution to the national question. Among the many proposals for state reform put forward prior to the APRC, the following proposals have made the most substantial contributions to the debate on power sharing.

### **The Bandaranaike-Chelvanayakam Pact (1957)**

In 1956, S.W.R.D. Bandaranaike of the Mahajana Eksath Peramuna (MEP) was appointed Prime Minister, after a campaign pledging to make Sinhala the sole official language of the country. The same year the Official Language Act (commonly known as the Sinhala Only Act) was passed, prompting demonstrations by Tamil parties and fears of a violent backlash. Approximately a year later, in July 1957 a series of meetings was held between a government delegation and the main Tamil party, the Federal Party, led by S. J. V. Chelvanayakam. The discussions resulted in a landmark agreement, known as the Bandaranaike-Chelvanayakam Pact.

Signed by then Prime Minister S.W.R.D. Bandaranaike and S.J.V. Chelvanayakam, this was the first agreement to significantly decentralise



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administration to sub-national units. It was a compromise agreement, with Bandaranaike refusing to discuss a federalist system (which was a key objective of the Federal Party) or any measures that would contravene the Official Languages Act.

The agreement provided for:

- A system of Regional Councils with the Northern Province to constitute one region and the Eastern Province to contain two or more regions;
- Two or more councils to amalgamate over common interests subject to ratification by Parliament; and
- Tamil as a national minority language and the language of administration in the North

and East, although Tamil was not granted the status of an official language.

The main opposition party, the United National Party (UNP), subsequently launched a campaign against the agreement, including a march to Kandy led by J.R. Jayawardena. The Buddhist clergy also opposed the agreement. In April 1958, Bandaranaike publicly tore the agreement to shreds.

The Federal Party subsequently threatened to launch a *satyagraha* in protest of the abrogation. In May 1958, a wave of anti-Tamil communal violence erupted, with widespread looting, arson and rioting, in which many Tamils were killed. The riots were the first major instance of communal violence since Sri Lanka's independence. In response, the government declared a state of emergency and proscribed the Federal Party along with the Jathika Vimukthi Peramuna, a Sinhala extremist group.

The Tamil Language (Special Provisions) Act No. 28 of 1958 was introduced in August that year, which allowed for the use of Tamil in education, public service entrance exams and administration in the Northern and Eastern Provinces. The move also prompted a strong nationalist backlash. In September 1959, Bandaranaike was assassinated by a Buddhist monk.

### **The Dudley Senanayake - Chelvanayakam Pact (1965)**

This agreement was signed by then Prime Minister Dudley Senanayake of the UNP and S.J.V. Chelvanayakam on 24 March 1965. Its main provisions were as follows:

- Early action to be taken under the Tamil Language (Special) Provisions Act of 1958 and appropriate regulation to be issued to give effect to the Act;

- The establishment of District Councils, whose powers were to be mutually agreed upon between the two leaders, with the central government retaining the power to give directions to such councils under the national interest; and
- The following order of priority to be observed in the allocation of land under colonisation schemes in Northern and Eastern Provinces: (i) the landless in the district; (ii) Tamil-speaking persons resident in Northern and Eastern Provinces; (iii) to other citizens.

In response, the Sri Lanka Freedom Party (SLFP, then led by Bandaranaike's widow, Sirimavo Bandaranaike) initiated a campaign against 'reasonable use' of the Tamil language, denouncing it as the first step towards the division of the country. Meanwhile, further negotiations between the Federal Party and the UNP proved fruitless and the agreement was never substantially implemented.

After the ethnic war began in the late 1970s, devolution proposals presented by subsequent governments became responsive to the strategic situations in the battle ground in the North. Constructing consensus amongst all the parties for devolution proposals became more challenging as opposition parties in the south found it easy to mobilise people against the government through provoking increasingly militarised ethno-nationalist ideologies.

### **Devolution proposals under the UNP (1984-94)**

#### *1984 – The All Party Conference (APC)*

In 1983, Gopalaswami Parthasarathy, Special Envoy appointed by Indian Prime Minister Indira Gandhi, held discussions with the Sri

Lankan government and the Tamil United Liberation Front (TULF). During these discussions, it was agreed that President J. R. Jayewardene would convene an All Party Conference (APC). A set of proposals that would form the basis for negotiations at the APC was also formulated. These came to be known as the ‘Annexure C’ proposals, and addressed the creation of separate regional councils in the Northern and Eastern provinces of Sri Lanka. However prior to the first meeting of the APC, a different set of proposals was circulated among the participants, known as the ‘Annexure B’ proposals. Later, the Annexure C proposals were also released. This raised doubts among participants of the motives behind the APC and the efficacy of the process.

The conference was inaugurated in January 1984, with the participation of the governing UNP, the SLFP, and other opposition parties such as the Communist Party of Sri Lanka (CPSL), Lanka Sama Samaja Party (LSSP), Mahajana Eksath Peramuna (MEP), All Ceylon Tamil Congress (ACTC), Ceylon Worker’s Congress (CWC), Democratic Worker’s Congress (DWC), and the TULF.

The APC’s discussions took place over the year. The government presented its proposals in the form of a draft 10<sup>th</sup> Amendment to the Constitution, a draft District and Provincial Councils Development Bill and the Local Authorities Bill. These proposals did not, however, contain any meaningful devolution of power and the TULF (which was the key Tamil negotiator) rejected them. The APC was dissolved in December 1984.

### ***1985 – Thimpu Discussions***

The Thimpu talks of July and August 1985 were the next attempt at peace talks between the Sri Lankan government and six Tamil groups, namely the TULF, the LTTE, Eelam Revolutionary Organisation of Students (EROS),

Tamil Eelam Liberation Organisation (TELO), Eelam People’s Revolutionary Liberation Front (EPRLF) and People’s Liberation Organisation of Tamil Eelam (PLOTE). The talks were facilitated by India, and Foreign Secretary Romesh Bhandari played a key role. The Thimpu talks lasted two rounds. The first round was from 8 to 13 July, while the second round took place from 12 to 17 August. The six Tamil groups presented four principles on the concluding day of the first phase of the talks. These proposals were intended to form the basis for any proposals put forward by the Sri Lankan government. These were:

- The recognition of the Tamils of Sri Lanka as a nation
- The recognition of the existence of an identified homeland for the Tamils in Sri Lanka
- The recognition of the right of self-determination of the Tamil nation
- The recognition of the right to citizenship and the fundamental rights of all Tamils in Sri Lanka.

However, Hector Jayawardena, brother of President Jayawardena, whom the president had appointed to lead the Sri Lankan delegation, rejected these proposals outright. On 17 August 1985, the Tamil groups withdrew from the discussion and the talks were adjourned without agreement.

### ***1985 – The Delhi Accord***

Indian Foreign Secretary Romesh Bhandari urged that the discussions be continued in Delhi. The Sri Lankan government was persuaded to allow for an extension of the ‘cessation of hostilities’ (which had previously been negotiated for a period of three months and was scheduled to expire in mid-September). Bhandari continued

to communicate with Tamil groups during these discussions, although he preferred to deal with the TULF alone. The talks led to ‘The Delhi Accord’ or the ‘Draft Framework of Accord and Understanding’.<sup>1</sup> However, the Sri Lankan Cabinet and Parliament did not approve the document on the basis that these proposals could alter the unitary character of the Sri Lankan state and result in the secession of Tamil majority areas from Sri Lanka.

### *1987 – The Indo – Lanka Accord*

On 29 July 1987, the Indian Prime Minister Rajiv Gandhi and the Sri Lankan President J. R. Jayewardene signed the Indo-Lanka Accord in Colombo. The Accord declared that Sri Lanka was a ‘multi-ethnic and multi-lingual plural society’ and endeavoured to provide an institutional framework for the sharing of power between all communities in Sri Lanka. Some of the main provisions of the Accord were to recognise the Northern and Eastern Provinces as a single administrative unit, to hold provincial council elections within three months of signing the accord, and to affirm Tamil and English as official languages along with Sinhala.

The Accord resulted in the 13th Amendment to the Constitution (13A) that sought to grant the



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provinces a degree of autonomy. The Amendment was ratified by Parliament on 14 November 1987 and brought into operation with effect from 26th January 1988. Key provisions of 13A included the following:

- Tamil ‘shall also be an official language’ of Sri Lanka, with English as a ‘link language’;
- The North and East would be merged into one province, subject to a referendum;
- Provincial councils will be elected every five years, with a Governor holding executive powers appointed by the President in each province;
- A ‘Reserved’ list and a ‘Provincial’ list detail the powers of the centre and the provinces respectively while a ‘Concurrent’ list outlines shared powers; and
- Regulations promulgated by the President under the Public Security Ordinance overrule those of Provincial Councils.

However, considerable opposition to 13A, and India’s involvement in particular, permitted only staggered and limited implementation. An organised political campaign by the Janatha Vimukthi Peramuna (JVP) evolved into a second armed insurrection in the south (the first being the failed 1971 JVP insurrection), orchestrated by the JVP-affiliated Deshapremi Janatha Viyaparamaya (DJV, or Patriotic Peoples’ Movement).

### *1989 – The All Party Conference*

With the second JVP insurrection ongoing in the south, presidential elections were held in December 1988 and won by the UNP’s Ranasingha

1. ‘The Process of Negotiations’, *Sangam.Org*, at [http://www.sangam.org/FB\\_PHOTORAW/4.htm](http://www.sangam.org/FB_PHOTORAW/4.htm) [last retrieved 20 March 2016].



Premadasa. The Premadasa period witnessed two tiers of negotiations with the LTTE. First, three rounds of direct talks were held beginning in May 1989. The government delegation was led by then Minister of Higher Education, A.C.S. Hameed. Significantly, this was the only instance when discussions were held in Tamil.

The second tier of negotiations was the All Party Conference (APC) convened by President Premadasa on 13 September 1989, involving 90 delegates from 22 political parties. The LTTE also participated in this Conference as an observer, borne out of the earlier negotiations with the government. The JVP, which had been proscribed by the government, did not participate. At the second session in October, opposition groups pulled out of the Conference, on the grounds that the government was ignoring their proposals.

#### *1991– Mangala Moonesinghe Select Committee*

President Premadasa convened an all-party Parliamentary Select Committee (PSC) that was chaired by the SLFP's Mangala Moonesinghe, to seek a constitutional model that would provide a solution to the ethnic conflict. The Select Committee consisted of 45 members, including representatives from the SLFP, the UNP, the Sri Lanka Muslim Congress (SLMC), the LSSP, the TULF, the MEP, and the CWC among others, as well as other MPs (in their individual capacities) and civic groups. The Select Committee called for written submissions and 253 memoranda were submitted for consideration. However, the two main political parties, the SLFP and UNP did not submit proposals; nor did the LTTE.

The Select Committee was unable to reach a resolution to the question of a merger of the Northern and Eastern Provinces, leading to its demise. Tamil political parties firmly backed a unified politico-administrative unit, which the Muslim representatives were opposed to. Tamil

and Muslim representatives were accordingly unable to reach a consensus on the interests of their respective communities in the North and East. Despite the inconclusive end of the select committee, these deliberations led to cross-party cooperation between some of the Tamil parties and SLMC to develop methods to safeguard Muslims in the North and East.

The Committee's most important contribution to the debate on constitutional reform was through the proposals contained in the 'Option Paper' presented to the Committee by Moonesinghe. This paper proposed the creation of a North-East Regional Council as an overarching bridge mechanism of sorts between the respective provinces, to consist of representatives of separate Northern and Eastern Provincial Councils, with specified powers of its own and a single governor for the Region. The chief ministers of the respective provinces would alternate as the chief minister of the Region.

### **Devolution proposals under the SLFP and cohabitation governments**

#### *1994 October to 1995 April – Peace Talks with the LTTE*

In May 1993, President Premadasa was assassinated and succeeded by D.B. Wijetunge. Parliamentary elections held in August 1994 were won by the SLFP-led People's Alliance (PA). Chandrika Bandaranaike Kumaratunga was elected president soon after, in November 1994. During the period from October 1994 to April 1995, the new government held four rounds of peace talks with the LTTE. The first round took place at Chundikuli, Jaffna in October 1994, when Kumaratunga was still Prime Minister. The second and third rounds of talks were held in January 1995. In 1995, the government presented its 'Union of Regions' devolution

package, which was in effect quasi-federal. Key aspects of the proposals were as follows:

- The ‘region’ was to be the unit of devolution. A region was to be equal to the area demarcated as a ‘province.’ As the Northern and Eastern Provinces were merged to form the Northeast Province at the time as per the Thirteenth Amendment (1987), the North-east was to form a single region. Each region would be represented by a Regional Council.
- Legislative power was to be vested in regional councils, with the exception of subjects that would appear in a reserved list.
- The concurrent list that existed under the Thirteenth Amendment to the Constitution was to be abolished.
- A Governor was to be appointed by the President for each region, with the concurrence of the Chief Minister.
- Executive power would be vested solely in the Board of Ministers.
- The territory comprising the cities of Colombo and Sri Jayawardenapura Kotte will form the Capital Territory, to be administered directly by the central government.
- Regional Councils would have limited fiscal powers and limited powers over foreign borrowing.
- Land would be a devolved subject. State land within a region required for a purpose on the reserved list would be alienated in consultation with the Regional Council.

On 19 April 1995, the peace talks between the Sri Lankan government and the LTTE broke down when the LTTE sank two patrol boats and

shot down two troop transport planes, killing all ninety-seven persons on board. These attacks catalysed the start of Eelam War III.

Yet the devolution package of 1995, after further revisions following negotiations with minority parties, eventually formed the basis of the draft Constitution proposed by the Kumaratunga government. However, when it was presented to Parliament in 2000, the UNP withdrew its support for the proposals. Unable to garner the two-thirds majority in Parliament necessary to pass it, the Bill was withdrawn.

#### *October 1997 – ‘The Government’s Proposals for Constitutional Reform’*

The Ministry of Justice, Constitutional Affairs and National Integration, under Minister G. L. Peiris, published the draft proposals titled ‘The Government’s Proposal for Constitutional Reform’ resulting from deliberations by a parliamentary select committee on constitutional reform. While the UNP participated in the committee’s proceedings, it did not present its own proposals or commit itself to any of the decisions made by the committee. When the committee’s proposals were released, the UNP claimed that it had not agreed to them and published its own counter-proposals instead.

#### *August 2000 – Draft Constitution*

In August 2000, President Kumaratunga presented in Parliament a new Draft Constitution Bill to repeal and replace the existing Constitution. However, a week before the Bill was to be tabled in Parliament, the UNP withdrew support, and therefore the Bill had to be withdrawn. The debate on the Bill was postponed and it automatically lapsed when Parliament was dissolved on 18 August 2000, days before it reached the end of its six-year term.

# Timeline: Precursors to the APRC

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- 1957 The Bandaranaike - Chelvanayakam Pact
  - 1965 The Dudley - Chelvanayakam Pact
  - 1972 First Republican Constitution
  - 1978 Second Republican Constitution
  - 1984 The All Party Conference appointed by J.R. Jayawardene
  - 1985 Thimpu Discussions  
The Delhi Accord
  - 1987 The Indo - Lanka Accord  
The 13<sup>th</sup> Amendment to the Constitution
  - 1989 The All Party Conference appointed by Ranasingha Premadasa
  - 1991 'Mangala Moonesinghe Select Committee'
  - 1995 Union of Regions Package
  - 1997 'The Government's Proposals for Constitutional Reform'
  - 2000 Draft Constitution
  - 2003 Interim Self-Governing Authority (ISGA) Proposals
  - 2006 All Party Conference appointed by Mahinda Rajapaksa  
All Party Representative Committee (APRC)

Elections were held in October 2000 and the PA remained in power. However, it lost its parliamentary majority. In June 2001, the UNP submitted a no-confidence motion to Parliament against Kumaratunga's minority government, which was to be debated in early July. However, Kumaratunga suspended Parliament and issued a proclamation on a referendum to be held in August that year, on the necessity for a new constitution. The referendum was never held – it was postponed, and the proclamation of the referendum was later revoked.

Parliament was dissolved on 10 October 2001, one year after the previous parliamentary elections had been held. General elections were held in December 2001. The PA lost the election to the United National Front (UNF), which consisted of the main opposition UNP, the SLMC, the CWC, the Democratic Peoples' Front (DPF) and the Up-country Peoples' Front.

***February 2002 to November 2003 – The Cease-fire Agreement and the Interim Self-Governing Authority proposals***

On 22 February 2002, a Ceasefire Agreement (CFA) was signed as a prelude to direct peace talks facilitated by the Norwegian government. An international monitoring mission was also established and Japan, the European Union and the USA were co-chairs of the peace process.

The Agreement had been signed by Prime Minister Ranil Wickremesinghe and LTTE leader Velupullai Prabhakaran. Concerns regarding the negotiation process and content of the CFA were

raised by President Kumaratunga, who was particularly critical of the lack of consultation with Parliament, and Wickremesinghe's failure to obtain presidential approval before signing the agreement. The CFA was also widely opposed by Sinhala nationalist groups who viewed the agreement as capitulating to the LTTE and providing formal recognition of its authority, which would ultimately lead to a separate LTTE-governed state.

Several rounds of negotiations were held between the LTTE and government. Meanwhile, although the direct confrontations between government and LTTE's forces ceased, both sides violated the terms of the CFA regarding human rights. In April 2003, after six rounds of negotiations, the LTTE pulled out of peace talks and presented its Interim Self-Governing Authority (ISGA) proposals later that year. The proposals gave the LTTE wide authority in relation to governance of the North and East for a period of five years, during which further negotiations on a permanent political solution would take place. The proposals heightened fears of secession and further undermined the peace process and the CFA.

The ISGA proposals were presented on 4 November 2003. Days after, while Prime Minister Wickremesinghe was in the USA on an official visit, President Kumaratunga declared a state of emergency and took over three key cabinet ministries, including the Ministry of Defence, accusing the UNF government of undermining national security.

# II

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## The APRC Process: Main Events

### **February 2004 - the UPFA comes to power**

With the peace process faltering under the unwieldy cohabitation government and the economy in crisis under the UNF's economic reform package, the SLFP and the JVP announced the formation of the United Peoples' Freedom Alliance (UPFA) in January 2004. The alliance consisted of the following parties: the SLFP, the JVP, the MEP, the LSSP, the Communist Party, the Sri Lanka Mahajana Party (SLMP), the National Unity Alliance (NUA), the Democratic United National Front (DUNF) and Desha Vimukthi Janatha Peramuna (DVJP or National Liberation People's Front).

In February 2004, President Kumaratunga dissolved Parliament and called for general elections once again - the third to be held since 2000. The key contenders were the UPFA, the UNF (consisting of the UNP, the SLMC and the CWC), the Tamil National Alliance (TNA, which included the TULF, EPRLF and TELO) and the JHU. The UPFA won the elections, and in April 2004, Mahinda Rajapaksa of the SLFP was appointed Prime Minister.

However, the ruling coalition collapsed when the JVP withdrew its support in protest of the Post-Tsunami Operations Management Structure (P-TOMS) Agreement. The P-TOMS Agreement was signed in June 2005 between the government and the LTTE to manage responses to the December 2004 tsunami. The Agreement was strongly opposed by the JVP and the JHU. The JVP filed a Fundamental Rights petition against the Agreement, and in July 2005 the Supreme Court ruled that sections of the P-TOMS were unconstitutional.

### **November 2005 - Mahinda Rajapaksa elected president**

In August 2005, the Supreme Court ruled that Kumaratunga's presidential term ended in November that year, rather than a year later as she had claimed. The issue had been taken up in the courts by the JHU, who along with the main opposition UNP, insisted that elections be called that year. Subsequently, presidential elections were held in November 2005.

The SLFP fielded Prime Minister Rajapaksa as its candidate. During his campaign, Rajapaksa signed agreements with the JVP and JHU,

promising to abolish the P-TOMS Agreement and maintain the unitary status of the country.<sup>2</sup> However, Rajapaksa's agreements with the two groups brought him into conflict with Kumaratunga and some other senior SLFP members, who argued that Rajapaksa's adoption of a hard-line Sinhala nationalist stance was not in line with the more moderate, pro-devolution stance of the SLFP, and that he had violated party policy and discipline by acting without consulting the party.<sup>3</sup> The opposition UNP fielded former Prime Minister Ranil Wickremesinghe as its candidate.

The LTTE enforced a boycott of the polls in areas of the North and East under their control. Rajapaksa secured a narrow victory and was sworn in as president on 19 November 2005.

In his manifesto titled the *Mahinda Chinthana*, Rajapaksa pledged to initiate discussions with all political parties aimed at reaching a national consensus on a political settlement to the conflict within a unitary state, as well as resuming talks with the LTTE. He also pledged to appoint a Council responsible for drafting a new constitution. The national consensus envisaged that the consultative process above and a new draft constitution would both be subject to referendums, and implemented if passed.

### February 2006 - The Geneva talks

Although the CFA remained in force, violence escalated in late 2005 and early 2006, with several attacks reported on security forces personnel, LTTE targets, and civilians. These included the assassination of TNA MP Joseph

Pararajasingham in December 2005 and the killing of five Tamil students in Trincomalee in January 2006, among others.



Courtesy of [www.peaceinsrilanka.lk](http://www.peaceinsrilanka.lk)

The government and the LTTE agreed to participate in a new round of negotiations, the first to be held in three years. Talks were held in February 2006 in Geneva, and the main issue discussed was the implementation of the CFA, which both sides agreed should remain in force.

Negotiations collapsed when the LTTE refused to participate in the second round of talks scheduled for April 2006 in Geneva. The LTTE later backed out of talks held in Oslo in June 2006 despite having initially agreed to participate.<sup>4</sup> The intervening months saw more incidents of violence, including the suicide bomb attack on a civilian bus in Kebethigollewa that left around 60 dead.

### June 2006 - Appointment of the All Party Conference

In 2006 President Mahinda Rajapaksa convened an All Party Conference (APC) to arrive at a political solution to the national question. Fifteen parties took part in the initial stages of the

2. Gagani Weerakoon, 'Mahinda agrees to cancel P\_TOMS deal', *Dailymirror.lk*, 6 September 2005, at <http://archives.dailymirror.lk/2005/09/06/front/01.asp> [last retrieved 20 March 2016]; 'No self-governance, no P-TOMS, no homeland', *Dailymirror.lk*, 14 September 2005, at <http://archives.dailymirror.lk/2005/09/14/front/2.asp> [last retrieved 20 March 2016].
3. 'Continuing saga of the internal battle in the SLFP over policy', *Thesundayleader.lk*, 18 September 2005, at <http://www.thesundayleader.lk/archive/20050918/politics.htm> [last retrieved 20 March 2016].
4. '2002 to 2008: Ceasefire Agreement', *Peaceinsrilanka.lk*, at <http://www.peaceinsrilanka.lk/negotiations/cease-fire-agreement-20028> [last retrieved 19 December 2014].



APC. The TNA was not invited to participate in the conference.<sup>5</sup> This Conference agreed to a proposal to set up an All Party Committee in order to formulate a framework of proposals for the devolution of power within an undivided Sri Lanka, and provide a basis for future negotiations with the LTTE.<sup>6</sup> The respective parties were required to submit the names of their representatives to this committee.

Meanwhile, killings and military attacks continued to take place. In July 2006, the LTTE closed the Mavil Aru sluice gates in Trincomalee, effectively depriving the region's population of their water supply. The government subsequently launched an all-out military offensive to regain control of the sluice gate and the surrounding area, marking the beginning of the final phase of the war.

### **July 2006 – Formation of the All Party Representative Committee (APRC)**

President Mahinda Rajapaksa appointed the APRC on 11 July 2006, for the purpose of formulating a draft proposal for constitutional reform. The president gave the APRC the mandate to evolve a 'home-grown new constitution' that will provide a 'comprehensive approach to the resolution of the national question' and 'allow people to take charge of their own destinies.'<sup>7</sup> Tissa Vitharana, General Secretary of the LSSP and a Minister in the coalition government, was unanimously appointed Chairman of the APRC

at its first meeting.

The main opposition party, the UNP, decided to attend the All Party Conference (APC) but boycott the APRC that was tasked with formulating a broad constitutional framework. According to UNP spokesman Tissa Attanayake, the decision to boycott the APRC was because the party felt that the government was not sincere in seeking the support of the UNP, and that the JVP and the JHU enjoyed disproportionate influence in the APRC, which arguably undermined the voice of political moderates.<sup>8</sup>

The JHU also decided to participate in the APRC, although the party remained opposed to the pursuit of a political solution to the conflict that went beyond what was pledged in the *Mahinda Chinthana*. According to General Secretary of the JHU, Ven. Dr. Omalpe Sobitha Thera, offering a political solution at the time would have disproportionately benefited the LTTE.<sup>9</sup>

Meanwhile, the military conflict escalated in the North and East. In August 2006, in response to a military offensive launched by the LTTE against security forces, the government closed the A9 highway, which was the only land link between the Jaffna peninsula and the rest of the country. The government also was able to regain control of some LTTE-held areas, including Sampur in the East. Despite the ongoing clashes, both sides maintained that they remained committed to the CFA.

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5. Ranga Jayasuriya, 'Will APRC suffer same fate as its predecessors?', *Sundayobserver.lk*, 16 July 2006, at [www.sundayobserver.lk/2006/07/16/fea01.asp](http://www.sundayobserver.lk/2006/07/16/fea01.asp) [last retrieved 22 January 2015].
  6. 'All Party Committee to prepare framework of political solution', *President.gov.lk* (Government of Sri Lanka), 2 June 2006, at <http://www.president.gov.lk/sinhala/html/news/200606/archivejune.htm> [last retrieved 10 February 2014].
  7. *Ibid.*
  8. Ranga Jayasuriya, 'Will APRC suffer same fate as its predecessors?', *Sundayobserver.lk*, 16 July 2006, at [www.sundayobserver.lk/2006/07/16/fea01.asp](http://www.sundayobserver.lk/2006/07/16/fea01.asp) [last retrieved 22 January 2015].
  9. Dasun Edirisinghe, 'UNP to boycott APC advisory Comm. Meeting', *Island.lk*, 11 July 2006 at <http://www.island.lk/2006/07/11/news2.html> [last retrieved 22 January 2015].



## October 2006 – UNP signs Memorandum of Understanding (MOU) with the SLFP

Building consensus between two main political parties remained vital for any attempt of power devolution. By 2006, the opposition UNP was in the midst of an internal crisis over the party's leadership, held by Ranil Wickremesinghe since 1994, despite demands by a group of dissident UNP members that he step down following his defeat in the 2005 presidential election. Faced with defections to the government by its top MPs, the UNP also considered withdrawing their support to the APC if the government continued to accept UNP dissidents.<sup>10</sup>

On 23 October 2006, the UNP signed a MoU with the SLFP, which provided for cooperation between the two parties on four national issues of high priority for a period of two years. These issues included conflict in the north and east, electoral reforms, good governance, economic development, nation building and social development.<sup>11</sup>

Clause 6 of the MoU allowed the leader of the UNP to nominate two of its members to the APRC. The UNP named G.L. Peiris (who was then a member of the UNP) and K.N. Choksy as their representatives.<sup>12</sup> The JVP opposed the nomination of two members from the UNP,

maintaining that each political party participating at the APRC would be represented by a single member. The party dismissed Minister Vitharana's proposal to resolve the issue through a vote.<sup>13</sup> The JHU supported the position adopted by the JVP that there would only be one representative per political party.

The JVP continued to demand the abrogation of the CFA, denouncing the MoU as undermining efforts to militarily defeat the LTTE.<sup>14</sup> The party also filed a fundamental rights petition in the Supreme Court calling for the de-merger of the Northern and Eastern provinces, merged into a single North-eastern province by presidential decree following the signing of the Indo-Lanka Accord in 1987. The court ruled that the merger was unconstitutional and invalid. The region in question, roughly congruent with the area claimed as the traditional Tamil homeland, was thus de-merged into two provinces.

A round of peace talks was also held between the government and the LTTE in Geneva with Norwegian mediation from 28-29 October 2006. However, both sides failed to come to an agreement over key issues, including the LTTE's demand that the A9 highway be re-opened. The government and the LTTE reiterated their commitment to the CFA. No second round of talks was convened.

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10. Santhush Fernando, 'Hit by crossovers, UNP opens doors to Kumaratunga loyalists,' *Sundaytimes.lk*, 29 January 2006, at [www.sundaytimes.lk/060129/news/4.html](http://www.sundaytimes.lk/060129/news/4.html) [last retrieved 22 January 2015].
  11. 'Memorandum of Understanding between the Sri Lanka Freedom Party and the United National Party to Cooperate on Key Issues Vital for the Nation's Well Being,' *Priu.gov.lk* (Government of Sri Lanka), 23 October 2006, at [www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200610/20061023memorandum\\_slfp\\_unp.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200610/20061023memorandum_slfp_unp.htm) [last retrieved 22 January 2015].
  12. Manjula Fernando 'UNP to nominate GL and Choksy to represent APRC', *Dailynews.lk*, 2 November 2006, at <http://archives.dailynews.lk/2006/11/02/pol02.asp> [last retrieved 15 December 2013].
  13. S. Ferdinando, 'JVP opposed MOU provision for 2 UNP members in the APRC', *Island.lk*, 12 November 2006, at <http://www.island.lk/2006/11/12/news4.html> [last retrieved 14 February 2014].
  14. K. Ratnayake, 'Sri Lankan peace talks collapse amid intensifying civil war', *Wsws.org*, 31 October 2006, at <http://www.wsws.org/en/articles/2006/10/sri-o31.html> [last retrieved 15 December 2014].

## December 2006 – Reports of the Expert Panel<sup>15</sup>

The Experts Panel was a seventeen-member panel consisting of a multi-ethnic group of experts appointed by the President to advise and assist the APRC process.

This panel was required to submit recommendations on power sharing and constitutional reform. However, the expert panel failed to reach a consensus and the members of the panel submitted four separate reports. These were:

- The Majority Report (signed by 11 of the 17 members)
- The Minority Report (signed by 4 of the 17 members)
- Two dissenting reports submitted by the remaining two members.

The main difference between the majority report and the other dissenting reports was that the majority report was ready to propose maximum devolution, while the others were not.

UNP leader Ranil Wickremasinghe expressed his support for the majority report at the early stages, and announced that it could form the basis for discussions with the SLFP to arrive at a southern consensus.<sup>16</sup>

The JVP, which was the third largest political party represented in Parliament at the time,

refused to continue its participation in the APRC process on the basis that it was not interested in formulating a political package based on a federal concept. The JVP accused a section of the panel of experts of favouring the LTTE's demand for a separate state in the North and East, on the basis of the experts' support for reforms based on far-reaching devolution.<sup>17</sup>

The Rajapaksa government distanced itself from the Expert Panel report and attempted to woo back the JVP to the APC.<sup>18</sup>

## January 2007 – ‘Main Proposals to Form the Basis of a Future Constitution’ and suspension of MoU between SLFP and the UNP

In January 2007, Vitharana presented to the APRC a report titled ‘Main Proposals to Form the Basis for a Future Constitution of Sri Lanka’, commonly referred to as the Vitharana Proposals. While he claimed that these proposals were a synthesis of the Majority and Minority reports, they in effect adopted the proposals of the Majority Report. The report proposed ‘one, free, sovereign and independent State’, a parliamentary form of government at the centre, a bicameral legislature and safeguards against secession.

Meanwhile a large group of UNP members led by the party's deputy leader Karu Jayasuriya crossed over to government ranks, arguing that the MoU signed between the UNP and the SLFP was ineffective without the UNP's cooperation with

15. D.B.S. Jeyaraj, ‘Remembering the APRC expert panel ‘majority’ report’, *dbsjeyaraj.com*, 19 December 2011, at <http://dbsjeyaraj.com/dbsj/archives/3311> [last retrieved 11 December 2013].

16. ‘Petty games of President and Mangala's battle for survival’, *The Sunday Leader*, 17 December 2006, at <http://www.thesundayleader.lk/archive/20061217/politics.htm> [last retrieved 20 March 2016].

17. Dasun Edirisinghe, ‘JHU believes JVP will return to APRC’, *Island.lk*, 23 December 2006, at <http://www.island.lk/2006/12/23/index.htm> [last retrieved 20 March 2016].

18. ‘Mahinda talks with JVP, Re-entry to APC on the cards’, *Nation.lk*, 17 December 2006, at <http://www.nation.lk/2006/12/17/news2.htm> [last retrieved 20 March 2016].

the government.<sup>19</sup> A smaller number of SLMC MPs also defected.<sup>20</sup> The defections granted the government a majority in Parliament.

President Rajapaksa swore in a new Cabinet that included dissidents of the UNP. When news of the crossover became official, UNP Chairman Rukman Senanayake in a meeting with President Rajapaksa made it clear that accepting the group of dissident UNP MPs would spell the end of the MoU.<sup>21</sup>

UNP Leader Wickremasinghe told his party supporters that President Rajapaksa had violated Article 8 of the MoU and that the only way the MoU could be resuscitated was for President Rajapaksa to rectify what he called his ‘mistake’ of accepting dissident UNP MPs and conferring ministerial portfolios.<sup>22</sup>

### **March 2007 – Resistance to the APRC**

UNP MP Ravi Karunanayake opposed the proposal for his party to re-join the APRC and stated that they had withdrawn because of the government’s unilateral abrogation of the UNP-SLFP MoU.<sup>23</sup> He further claimed that the government did not genuinely want the support of the UNP, but rather wanted the support of some of its members only; nevertheless they would provide the necessary support in

Parliament if the government opted to pursue an agreeable negotiated settlement.

Meanwhile, the security forces continued to make advances in the East. Alongside its military crackdown on the LTTE, the police carried out the eviction of ‘non-resident’ Tamils from the north and east living in areas of Colombo in busloads in June 2007 on the grounds that they posed a threat to security. The Supreme Court ordered an end to the expulsions following a petition filed by a local civil society organisation.<sup>24</sup> By July 2007, the military had gained control of Thoppigala, the last LTTE base in the East, bringing the area under government control for the first time in 13 years.

### **August 2007 – Proposals for a New Constitution<sup>25</sup> and withdrawal of the UNP**

On 13 August 2007, roughly a year since the APRC’s appointment, the Chairman of the Committee Tissa Vitharana submitted its draft proposals for a new constitution, agreed upon by thirteen political parties, to the President for his input.

The UNP had set a deadline of 15 August 2007 by which they would re-join the APRC if the committee released their main proposals for devolution. However, the APRC did not submit

19. ‘UNP dissidents ‘joining on Sunday’, *Bbc.co.uk/Sinhala* (BBC Sinhala), 26 January 2007, at [http://www.bbc.com/sinhala/news/story/2007/01/070126\\_wijesekara\\_dissidents.shtml](http://www.bbc.com/sinhala/news/story/2007/01/070126_wijesekara_dissidents.shtml) [last retrieved 20 March 2016].

20. ‘Crossover today, MoU ends’, *Sundaytimes.lk*, 28 January 2007, at <http://www.sundaytimes.lk/070128/News/101news.html> [last retrieved 20 March 2016].

21. ‘US tried to save MoU, but failed’, *Sundaytimes.lk*, 4 February 2007, at <http://www.sundaytimes.lk/070204/News/101news.html> [last retrieved 20 March 2016].

22. *Ibid.*

23. ‘The Govt. scored in words and lost in Dollars’, *Island.lk*, 1 March 2007, at <http://www.island.lk/2007/03/01/features4.html> [last retrieved 20 March 2016].

24. ‘Sri Lanka: Supreme Court stops eviction of Tamils from capital’, *ReliefWeb.int*, 8 June 2007, at <http://reliefweb.int/report/sri-lanka/sri-lanka-supreme-court-stops-eviction-tamils-capital> [last retrieved 20 March 2016].

25. Zacki Jabbar, ‘SLMC, UNP MP to reveal APRC Final Report’, *Island.lk*, 19 July 2010, at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=2479](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=2479) [last retrieved 20 March 2016].

its proposals within this time. The UNP then withdrew from the APRC on the grounds that the government had no desire to find a lasting solution to the ethnic problem.<sup>26</sup>

Meanwhile, the SLFP and the MEP, both parties in President Rajapaksa's ruling coalition, demanded that the APRC's proceedings be adjourned until Rajapaksa met with the UPFA's representatives in the Committee. The ruling coalition had proven unable to reach a consensus on the appropriate level of devolution, with both the JVP and the JHU openly critical of the extent of devolution the APRC was contemplating, while more moderate leftist alliance partners adopted a more accommodative stance.<sup>27</sup>

### **January 2008 – Interim proposals by APRC to President<sup>28</sup>**

On 16 January 2008, the government announced the formal abrogation of the 2002 CFA. The Sri Lanka Monitoring Mission, established by agreement between the Norwegian and Sri Lankan governments was also terminated.

Days after the CFA's abolition, President Rajapaksa presented a four-page document titled 'A Political Proposal: The Way Forward' to the members of the APRC. This proposal was based on the 13<sup>th</sup> Amendment as a means of resolving the ethnic conflict. The President expressed that

this should form the basis of the APRC report.<sup>29</sup> The President also requested that the APRC produce an interim report, which the Committee hurriedly produced.<sup>30</sup>

The APRC submitted a four-page report titled 'Action to be taken by the President to fully implement the Relevant Provisions of the Present Constitution as a prelude to the APRC Proposals'. This interim report was released with much publicity.

These proposals announced the full implementation of the relevant provisions in the present Constitution, in order to achieve maximum and effective devolution of powers to the provinces in the short term.<sup>31</sup> Recommendations included the full implementation of the 13<sup>th</sup> Amendment to the Constitution, Provincial Council elections in the East, and the establishment of an interim Provincial Council in the North.

### **February 2008 – The JVP challenges the APRC**

Somawansa Amerasinghe, leader of the JVP, expressed the party's intention to challenge the proposals of the APRC, on the basis that these proposals were the beginning of a move to introduce federalism and ultimately merge the Northern and Eastern provinces.<sup>32</sup> The party maintained that they would not vote in

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26. 'UNP withdraws from APRC,' *Dailymirror.lk*, 6 September 2007, at <http://archives.dailymirror.lk/2007/09/07/news/02.asp> [last retrieved 20 March 2016].
  27. J.S. Tissainayagam, 'APRC demonstrates the south's inability to meet Tamil aspirations', *Sundaytimes.lk*, 26 August 2007, at <http://www.sundaytimes.lk/070826/Columns/telescope.html> [last retrieved 20 March 2016].
  28. 'APRC Proposals to President,' *Priu.gov.lk* (Government of Sri Lanka), 24 January 2008, at [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200801/20080124aprc\\_proposals.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200801/20080124aprc_proposals.htm) [last retrieved 20 March 2016].
  29. 'President's proposals to the APRC: The report the govt. wanted kept out of The Leader', *Thesundayleader.lk*, 13 January 2008, at <http://www.thesundayleader.lk/archive/20080113/spotlight-1.htm> [last retrieved 20 March 2016].
  30. Namini Wijedasa, 'APRC final report yet to see the light of day', *Sundaytimes.lk*, 28 July 2013, at <http://www.sundaytimes.lk/130728/news/aprc-final-report-yet-to-see-the-light-of-day-54746.html> [last retrieved 20 March 2016].
  31. 'APRC Proposals to President', *Priu.gov.lk* (Government of Sri Lanka), 24 January 2008, at [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca200801/20080124aprc\\_proposals.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca200801/20080124aprc_proposals.htm) [last retrieved 20 March 2016].

support of the 2007 budget unless the APRC was dissolved.

### **February 2009 – Formal invitation to the TNA<sup>33</sup>**

The war was at its height by early 2009. On 2 January, government forces had captured the de facto LTTE capital Killinochchi in the Northern Province. In February 2009, state media quoted Vitharana as saying a formal invitation would be dispatched by the APRC, inviting the TNA to take part in deliberations to add their input to the process that would lead to a new constitution, with more powers to the periphery. However, the TNA turned down the invitation to join the APRC.

### **May 2009 – War comes to an end with the defeat of the LTTE**

On 18 May 2009, the military reported the death of LTTE leader Velupillai Prabhakaran. The final stages of the war and the associated humanitarian crisis saw large scale loss of life, with reports of grave violations of rights by both sides, including accusations of indiscriminate shelling by government forces and the use of civilians as human shields by the LTTE.

### **August 2009 – APRC report presented to President Rajapaksa**

The final report of the APRC was handed over to President Rajapaksa in August 2009. However, it was neither acknowledged by Rajapaksa nor made public. Vitharana reported that Rajapaksa

promised to respond to the proposals; however, no such response materialised.<sup>34</sup>

### **January 2010 – Rajapaksa’s dismissal of the APRC’s proposals**

In January 2010, President Rajapaksa went on to win his second term as president, contesting against common opposition candidate and war-time commander of the army Lieutenant General Sarath Fonseka. Following his defeat, Fonseka was arrested for offences allegedly committed during his military service, in what was widely seen as a politically motivated move.

Rajapaksa dismissed the recommendations made by the APRC on finding a political solution for the country’s ethnic problem. Despite the existence of the APRC report that had not been released to the public or acknowledged by the government, Rajapaksa stated that a generally accepted solution had not yet been suggested, and he will put forth ‘his own solution to the problem’ following the upcoming parliamentary elections.<sup>35</sup>

Parliamentary elections were held in April 2010, and the UPFA secured a landslide victory, winning 144 out of the 225 seats in parliament.

### **July 2010 – ‘Unofficial’ release of final report**

In July 2010, UNP MP R. Yogarajan (previously a member of the CWC, which he represented during the APRC’s proceedings) attempted to table the report in Parliament. However, this

32. K.T.Rajasinghan, ‘JVP Plans to Challenge APRC Proposals Legally’, *Asiantribune.com*, 14 February 2008, at <http://www.asiantribune.com/?q=node/9623> [last retrieved 20 March 2016].

33. ‘TNA to be invited for APRC’, *Dailynews.lk*, 11 February 2009, at <http://www.dailynews.lk/2009/02/11/news16.asp> [last retrieved 20 March 2016].

move was opposed by Government members on grounds that Yogarajan had no authority to table the report without the approval of the Chairman of the APRC.<sup>36</sup>

Yogarajan and SLMC member Nizam Kariapper compiled the final report based on the final draft discussion papers presented by the APRC's Chairman, and amendments made during its meetings, with the assistance of the proceedings recorded in the Hansard. This report has since appeared in the public domain.

The final composition of the APRC comprised fifteen parties. These parties were:

- Lanka Sama Samaja Party
- Sri Lanka Freedom Party
- United National Party (Democratic Group)
- Communist Party of Sri Lanka
- Ceylon Workers' Congress
- Sri Lanka Muslim Congress
- National Unity Alliance
- Jathika Hela Urumaya
- Mahajana Eksath Peramuna
- Upcountry Peoples Front
- All Ceylon Muslim Congress
- National Congress
- Western Peoples Front
- Eelam People's Democratic Party
- Tamil Makkal Viduthalai Puligal

34. 'APRC Report Unacknowledged', *The Sunday Leader*, 27 July 2010, at <http://www.thesundayleader.lk/2010/07/27/aprc-report-unacknowledged/> [last retrieved 20 March 2016].

35. Charles Haviland, 'President rejects APRC proposals', *Bbc.co.uk/Sinhala* (BBC Sinhala), 15 January 2010, at [http://www.bbc.co.uk/sinhala/news/story/2010/01/100115\\_mahinda\\_tamil.shtml](http://www.bbc.co.uk/sinhala/news/story/2010/01/100115_mahinda_tamil.shtml) [last retrieved 20 March 2016].

36. 'APRC report tabling bid thwarted', *Daily News*, 21 July 2010, at <http://archives.dailynews.lk/2010/07/21/pol03.asp> [last retrieved 20 March 2016].







# III

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## Explaining Constitutional Procrastination

Notwithstanding multiple assurances by political leaders, the ability of political parties to reach consensus on power sharing has been compromised by two inter-related factors: ideology and expediency. The interaction of ideology and political expediency, that has persistently impeded previous attempts at constitutional reform, also served to undermine the APRC process.

### Ideology

The most salient feature of Sri Lanka's politics is the pre-eminence of ethno-religious nationalism in the practices of both the state and society, which can be traced back to the country's colonial and post-independence experiences. The Sinhala-Buddhist nationalist revival of the late 19<sup>th</sup> and early 20<sup>th</sup> century saw the island cast as the rightful homeland of the Sinhalese people and custodian of Buddhism, the religion practiced by an overwhelming majority of its population.

Moreover, Sri Lanka's path to independence did not encounter a populist anti-colonial movement

that bridged ethnic, religious and class cleavages.<sup>37</sup> In the absence of the mobilisation of such an inclusive, islandwide national identity, ethnic identities remained politically salient as the country gained independence.<sup>38</sup> Anti-colonialism was articulated through the language of majoritarian Sinhala nationalism, which quickly gained currency among local elites as the key mobiliser of public opinion in post-independence Sri Lanka. This logic manifested in the Citizenship Act of 1948, which disenfranchised the country's Indian Tamil population clustered in plantations, and the Official Languages Act of 1956, which made Sinhala the country's sole official language, further alienating minority communities.

The centrality of the unitary territorial Sri Lankan state in popular imagination has meant that minority self-determination through federalism is seen as undermining its fundamental character. This non-negotiability of the character of the state forms the key point of contestation in the country's political landscape. Sri Lanka's Constitution continues to embody a centralised state within which a 'foremost place' is given to

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37. David Rampton, 'A Game of Mirrors: Constitutionalism and Exceptionalism in a Context of Nationalist Hegemony', in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Colombo: Centre for Policy Alternatives, 2013).

38. David Rampton, 'Deeper hegemony: the politics of Sinhala nationalist authenticity and the failures of power-sharing in Sri Lanka', *Journal of Commonwealth and Comparative Politics*, 49:2 (2011): 245-273.

Buddhism. Numerous attempts at state reform have repeatedly floundered or been abandoned, unable to arrive at a meaningful re-imagining of the Sri Lankan state in a form that is broadly acceptable to all parties.

Moreover, the lack of a substantive re-imagining of the country's national identity has also generated tensions within the Sinhalese political elites. In the absence of an organic populist anti-colonial movement, Sinhalese elites have been placed in a perpetual contest for nationalist authenticity in the eyes of the Sinhala-Buddhist constituency. The Buddhist clergy retains a powerful influence in political life; the widely unpopular Indo-Lanka accord even saw the Sinhala nationalist JVP recruit Buddhist monks in support of its armed insurrection. Indeed, one of the JVP's five recruitment classes (*panthi paha*) expounded the deceptive nature of independence under the *kalu suddha* (a derogatory reference for perceived Westernised elites) political class. The position of the JVP further reflects the entrenchment of Sinhala nationalism as the most potent ideological force in Sri Lankan politics. Despite the JVP's self-image as a radical alternative movement, it remained within the dominant paradigm that characterised Sri Lanka as primarily by and for the Sinhalese people.

The outbreak of war itself introduced new dynamics to the political arena, in which questions of state power were negotiated. Political bargaining came to run parallel to a violent conflict over the control of large swathes of the Northern and Eastern provinces. As attempts at negotiation and state reform were repeatedly abandoned or ended in political stalemate, they failed to generate any decisive alteration in the trajectory of the conflict. With deadlock in the political arena, the battlefield became the preferred arena for negotiations on the national question.

## Expediency

In the absence of any substantive consensus on how the state could be reimagined in a more inclusive form, the main political actors in the south have resorted to mutually antagonistic behaviour as they vie for favour among the Sinhala-Buddhist constituency, where their capacity for populist mobilisation is the strongest. Political pragmatism in this context dictates three forms of behaviour observable in both of the main southern parties, the SLFP and the UNP:

1. When in power, ruling parties are compelled to attempt addressing the unresolved grievances of the minorities to retain their legitimacy as the government of a multi-ethnic but conflict-ridden state. Parties tend to shift to the centre to govern and contend with issues such as economic development and foreign relations, which require a degree of moderation in their political posturing. Hence ruling parties are pushed to engage with minority parties through negotiations or offers of reform packages aimed at delivering a political solution to the ethnic conflict.
2. When in the role of the opposition, parties are induced to undermine the government's attempts at arriving at a political solution by mobilising Sinhala nationalist sentiment, where the greatest political returns can be accrued. In the face of nationalist backlash, ruling parties are then driven to abandon initiatives aimed at devising a political solution, leaving the party that eventually replaces it to develop new proposals for reform. Thus the role of opposition parties is generally limited to that of 'spoilers', rather than 'potential ruling parties'. Hence there is a lack of incentives to move beyond pragmatic agendas and commit to a wider public good in the form of a permanent political solution to the ethnic conflict.

3. During the period of war, devolution resolutions were viewed through the dominant Sinhala nationalist lens as a strategic instrument to isolate the LTTE from moderate Tamil groups and international sympathisers. This instrumental approach towards devolution created suspicion amongst Tamil militants over the proposals presented by the Sri Lankan government and All-Party Conferences dominated by Sinhalese voices.

Ethnic outbidding among southern political actors has undermined numerous attempts at devising a political solution. Such attempts have typically, triggered a nationalist backlash, prompting their abandonment in the face of popular protest and even armed insurgency.

The dynamics of ethnic outbidding persisted in the run up to the Mahinda Rajapaksa presidency and the APRC process. The period was marked by a string of aborted negotiation attempts, from the Peoples Alliance's Draft Constitution (2000) to the UNF's Ceasefire Agreement (2002-04). Both prompted nationalist protest – from the JVP in the former and the JHU in the latter – which were strongly opposed to the internationalisation of the peace process and the UNF's economic policies. The increasingly vocal nationalist resistance to negotiations and a political solution was fuelled by the LTTE's ISGA proposals in 2003 and the P-TOMS arrangement following the 2004 tsunami disaster, which the JVP challenged in court. With stalemates in both the political and military arenas and the UNF-negotiated CFA enduring only in name, the Rajapaksa government abandoned the 'liberal peace' approach of the past decade (focusing on negotiation and constitutional reform) in favour of a military solution. It was within this context that the APRC came into being in mid-2006

– to devise a political solution to the conflict alongside the renewal of the military offensive against the LTTE.

The APRC's deliberations spanned three years, and involved seventeen experts and fifteen political parties. In keeping with the recurring pattern of abortive reform attempts, the APRC was also subject to political deadlock and mutual suspicion among parties. Notwithstanding high initial expectations, partisan politics undermined the APRC's proceedings, including the government's failure to uphold the SLFP-UNP MoU, and the events that followed. The JVP and the JHU initially opposed the move to allow two UNP members: G.L. Peiris and K.N. Choksy, both of whom were seen as relatively more amenable to devolution of power. Nevertheless, the government permitted the UNP dissident MPs to make their own group submission to the APRC, through a recognised political party.<sup>39</sup>

Notably, the JVP and JHU did not oppose the UNP dissidents' submission of proposals despite having protested the move to initially allow two UNP members to participate in the APRC. Nor did other members of the APRC oppose this. This raises the possibility that those who initially opposed the inclusion of two UNP members did so to stymie what they saw as undue influence over the APRC's final recommendations of participants more inclined towards greater devolution. Dissidents on the other hand, who had pledged their support to the President at the time of their cross-over, were more inclined to follow the new (unitarist) SLFP line that the JVP and the JHU supported. Hence partisan politics trumped the necessity for meaningful deliberation and debate on power-sharing within the APRC.

39. Sandun A Jayasekera, 'UNP reformists outline devolution proposals', *Dailymirror.lk*, 23 May 2007, at <http://archives.dailymirror.lk/2007/05/23/front/06.asp> [last retrieved 20 March 2016].



# IV

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## Outputs of the APRC: Overview of Recommendations

The APRC process produced four key documents. Among the seventeen-member Panel of Experts, eleven were signatories to the first, titled Report 'A' which subsequently came to be known as the Majority Report. Four of the panellists signed another report, known initially as Report 'B', which has come to be known as the Minority Report. This report was critical of the positions expressed in the Majority Report (the remaining two members submitted their own reports, each also providing a dissenting view to the positions set out in the Majority Report).

Inter-alia, the Majority Report recommended that executive actions of the president be subject to judicial review; that a Constitutional Court be established outside the main court system; that the emergency powers of the president over the provinces be subject to judicial and parliamentary control; that a second chamber of Parliament consisting of provincial representatives be established; that there be two different vice presidents from two different communities and from a different ethnicity to that of the president, who will

hold office for three years each, and that one vice president be the (non-voting) chairman of a second chamber of Parliament, while the other would head the High Posts Commission.<sup>40</sup>

The Minority Report challenged several aspects of the Majority Report. It opposed the merger of the Northern and Eastern provinces on the grounds that the demarcation of provincial boundaries on the basis of ethnic and linguistic commonality could lead to secession. It also opposed devolution of powers over policing and land, and the establishment of a constitutional court outside the existing court system on the grounds that doing so could heighten the risk of external influences on this court.<sup>41</sup> In short, the concerns raised through the Minority Report alleged that the recommendations set out in the Majority Report jeopardised the territorial integrity and therefore, the national security of Sri Lanka. This difference in opinion between the signatories to the two reports is significant to note, in that it captured the essence of the opinion divide on the national question, that is, the

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40. Report A (Majority Report) of the Panel of Experts in Rohan Edrisinha, Mario Gomes, V.T. Thamilmaran and Asanga Welikala (ed), *Power Sharing in Sri Lanka: Constitutional and Political Documents 1926-2008*, (Colombo: Centre for Policy Alternatives, 2008).

41. *Ibid.*

competing agenda of the devolutionists versus the nationalist unitarists.

The third report of significance was the APRC's interim report titled 'Action to be taken by the President to fully implement the Relevant Provisions of the Present Constitution as a prelude to the APRC Proposals'. The APRC produced this report on the basis of a proposal by former President Rajapaksa, that the 13<sup>th</sup> Amendment should form the basis of the committee. This report hence re-introduced 13A to the centre of the constitutional reform debate where it has since remained. The interim proposals endorsed full implementation of the existing constitutional provisions to achieve effective devolution of powers to the provinces in the short term.

The fourth and most significant output of the APRC was its final report (known as the Vitharana Proposals), unofficially released by R. Yogarajan, who represented the CWC in the APRC's deliberations and Nizam Kariapper of the SLMC. It was compiled by Tissa Vitharana, based on the deliberations and contents of the Panel of Expert's reports but was closer in its outlook to the content of the Majority Report than the Minority Report.<sup>42</sup>

While maintaining the unitary framework of the state, the APRC proposals envisaged a more pluralistic state granting significant devolution of power to the provinces, central and provincial legislatures, constitutional supremacy enforced by a Constitutional Court, judicial review of executive actions, and guaranteed civil, political, social and group rights. Hence the APRC imagined a unitary, undivided and broadly inclusive state with power shared between the centre and the provinces. (See Annex I for a comparison of the proposals on thirteen key issues made by three of the four outputs mentioned above: the Majority

report of the Experts Panel, the interim report of the APRC and the final report of the APRC).

A summary of the APRC's proposals on key features of the state are listed below:

**Nature of the state:**

The Republic of Sri Lanka is a unitary State, with an undivided and integrated state structure where the state power shall be shared between the Centre and the Provinces.

**Form of government:**

A Parliamentary form of government at the Centre comprising the House of Representatives elected by the People, and the Senate elected by the provincial legislatures.

**The Senate:**

Each Province is to be represented by seven senators, making a total of 63 Senators elected by members of provincial legislatures. An additional ten Senators are to be elected by two Community Councils (one for Indian Tamils and one for Muslims living outside the North and East) and the President is to nominate two persons to represent any unrepresented groups.

**Power sharing:**

Power shared at three tiers of government i.e. central, provincial and local government, with a separate list of powers for each tier. The concurrent list shall be abolished.

At the end of the President's next term, the new President shall be elected by both Houses of Parliament. There shall be a Vice President, who shall not be a Member of Parliament and shall belong to a community distinct to that of the President, elected by both Houses of Parliament. The office of the

42. *Ibid.*, p. 777.



Vice President shall be rotated among all communities other than the community to which the President belongs at the time of electing the Vice President.

**Unit of devolution:**

The unit of devolution shall be the Province.

**Community councils:**

Two community councils shall be appointed to serve the development needs of Indian Tamils and Muslims living outside the North and East.

**Individual and group rights:**

The Constitution shall have a comprehensive Bill of Rights that guarantees not only civil and political rights but also group, social, economic, cultural, women's and children's rights.

**Buddhism:**

The state shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while according to all religions the rights guaranteed by Articles 10 and 14(1)(e) of the 1978 Constitution.

**Languages:**

The National Languages, Sinhala and Tamil, shall be the Official Languages of Sri Lanka. English may be used for official purposes.

**Constitutional supremacy:**

The supremacy of the Constitution shall be recognised and protected by a Constitutional Court. All acts of commission or omission of the Centre and of the Provinces inconsistent with the Constitution shall be void. The holder of the office of President should have personal immunity for any executive action taken by him as long as he holds office. However, all executive actions of the

President should be subject to judicial review. Legislation, whether national or provincial, shall be subject to post-enactment judicial review by the Supreme Court.

**Safeguards against secession:**

The Provinces and local authorities shall be constitutionally mandated to preserve national unity and the indivisibility of the Republic. The Centre is granted emergency power to intervene in the Provinces in the event of a 'clear and present' danger to the unity, territorial integrity and sovereignty of the State and in cases where the Provincial authorities request the intervention of the Centre.

**Electoral system:**

A mixed electoral system that combines first-past-the-post (FPTP) on an electorate basis and proportional representation (PR) on a party basis shall be established. The system shall ensure that the system of proportional representation prevails. Moreover, there shall be two ballot papers per elector: one to choose the electorate representative and the other to choose the party of his choice, on a district (or national) proportional representation basis.

**Land:**

Every Province shall succeed to all other State land within the Province, subject to the rights of persons in lawful possession or occupation of such land. A Provincial Government shall be entitled to exercise rights in or over such land, including land tenure, transfer and alienation of land, land use, land settlement and land improvement.

Priority in land settlement schemes and alienation of state land in a province shall be accorded first to needy persons of the District, then of the adjoining Districts within



the Province, and then to needy persons of the Province (paying attention to the needs of all the communities, particularly the minorities of the District and of the Province) and lastly to needy persons outside the Province. The selection of the allottees shall be the responsibility of the Province. The alienation of State land under inter-provincial irrigation schemes, like the Mahaweli scheme, shall be on the basis of the national ethnic ratios (1981 census).

The distribution of allotments in schemes shall be done as far as possible so as not to disturb very significantly the demographic pattern of the Province concerned and in accordance with the principles of ensuring community cohesiveness in the Province.

#### **Defence, national security and law and order**

Defence and national security, shall be subjects reserved exclusively for the Central Government.

Police powers shall be devolved on the Provinces as specified, but be reserved exclusively for the Central Government in the Capital Territory and, in addition, to areas expressly provided for in the Constitution.

#### **Local government:**

Powers of local authorities i.e. Pradeshiya Sabhas and Municipal or Urban Councils shall be increased; local authorities would not have legislative power, but would have power to make by-laws in respect of specified subjects.

#### **Independence of judiciary and public service:**

A Higher Appointments Council shall be appointed to ensure the independence of the state services and that of the judiciary at the national level, and a Provincial Higher Appointments Board shall be appointed at the provincial level.

# V

## The APRC Proposals: A Promising Resolution

The final report of the APRC was submitted to former President Rajapaksa in August 2009, within months of the government's military defeat of the LTTE. However, the APRC's proposals have not been officially acknowledged or released to the public - despite its promise as a viable step forward in post-war reconciliation and peacebuilding. Over seven years since the end of the war, a credible political solution to the national question has not materialised.

Contrary to early pronouncements on the need for devolution even further than required under the 13<sup>th</sup> Amendment, the former government actively pursued further centralisation of state power, as evidenced by the enactment of the 18<sup>th</sup> Amendment to the Constitution in 2010 and the Divi Neguma Bill of 2012. Indeed, the JHU (then a constituent party in the UPFA) went as far as to state that the defeat of the LTTE invalidated the APRC, as it was initiated at a time when the LTTE was a formidable military actor, which was no longer the case.<sup>43</sup> In this view, the elimination of the LTTE was equated to a resolution of the country's ethnic crisis, despite the vital national question over state power remaining unaddressed.

Meanwhile the previous government pursued other avenues with the aim of reconciliation, such as the Lessons Learnt and Reconciliation Commission (LLRC) appointed in 2010, and a Parliamentary Select Committee appointed to devise a solution to the national question. Neither of these resulted in creditable progress towards meaningful constitutional reform.

The LLRC report, published on 16 December 2010, affirmed that devolution of power must form the basis of a political solution to the ethnic conflict. It recommended that the government launch a meaningful political process with the engagement of minority political parties to arrive at a consensus on devolution. According to the government's National Plan of Action to Implement the LLRC's Recommendations (NPA), this task was to be transferred to the Parliamentary Select Committee (PSC) appointed in October 2011 'to recommend and report [on] political and constitutional measures to empower the people of Sri Lanka as one nation'.

The PSC was to have a membership of 31 representatives and propose relevant political and

43. 'APRC does not represent all parties - Warnasingha', *Nation.lk*, 28 June 2009, at <http://www.nation.lk/2009/06/28/inter1.htm> [last retrieved 20 March 2016].

constitutional measures within six months of its appointment. Former President Rajapaksa also stated that the recommendations of the APRC would form the basis for discussions at the PSC.<sup>44</sup> However, a number of key parties including the TNA, UNP, the JVP, as well as smaller leftist parties boycotted its proceedings on the grounds that the government was not genuinely committed to devising an appropriate political solution. Furthermore, despite the APRC's recommendations being named as the basis for its discussions, the Chairman of the APRC and then senior Minister Tissa Vitharana was excluded from the PSC process. The PSC failed to progress beyond its early impasse and did not produce any known proposals on constitutional reforms or other identifiable outputs.

The anti-climactic conclusion of the APRC process also led many to conclude that the exercise was no more than a tool to placate the international community – particularly India<sup>45</sup> – and provide the government the time and space to pursue its military solution to the ethnic conflict. For instance, former Foreign Minister Rohitha Bogollagama and then Special Envoy to the UN Human Rights Council in Geneva, Mahinda Samarasinghe, both cited the APRC as evidence that the government was working on a political solution. Bogollagama was addressing fellow foreign ministers on the sidelines of the Commonwealth Heads of Government Meeting

(CHOGM) in Kampala, Uganda, while Samarasinghe was speaking at the 10<sup>th</sup> session of the UNHRC in Geneva. In January 2007, the government also presented the Vitharana proposals to Pranab Mukherjee, India's External Affairs Minister.

The pressing need for state reform, now associated with a political solution to the country's ethnic conflict, is widely accepted. A survey on the level of support for the APRC's preliminary proposals, carried out in March 2009 as the war drew to a close, indicated that the Committee's proposals as a package of reforms were broadly acceptable among the Sinhalese and Tamil communities.<sup>46</sup> Among the Sinhalese respondents, 59 per cent were in favour of the APRC proposals as a package of reforms.<sup>47</sup> Religious rights were given the highest priority by the Sinhalese respondents, followed by fundamental rights and language rights. Among the Tamil respondents, 82 per cent were in favour of the APRC proposals as a package of reforms.<sup>48</sup> The APRC's proposals of language rights, fundamental rights and the judiciary were identified as the Tamils' top three priorities.<sup>49</sup>

A follow-up survey carried out in March 2010 that included a sample from the Northern Province showed increased support for the APRC proposals. This time, 80 per cent of Sinhalese respondents<sup>50</sup> and 83 per cent of Tamil

44. 'MR Says APRC Will Be Basis for PSC', *Dailymirror.lk*, 27 June 2013, at <http://www.dailymirror.lk/31540/mr-says-aprc-will-be-basis-for-psc> [last retrieved 20 March 2016].

45. D. B. S. Jeyaraj, 'APRC in quandary as Jan. 23 deadline nears', *Nation.lk*, 20 January 2008, at <http://www.nation.lk/2008/01/20/newsfe1.htm> [last retrieved 11 April 2016].

46. Colin Irwin, *The APRC Proposals and 'Winning the Peace'* (June 2009).

47. *Ibid.* 25 per cent considered the reform package 'acceptable', 21 per cent found it 'desirable' and 13 per cent considered it essential.

48. *Ibid.* 41 per cent considered them 'essential', 27 per cent considered them 'desirable' and 14 per cent considered them 'acceptable'.

49. *Ibid.*

50. Colin Irwin, *War and Peace and the APRC Proposals* (May 2010). Among Sinhalese respondents, 20 per cent considered them 'essential', 38 per cent considered them 'desirable' and 22 per cent considered them 'acceptable'. Among Tamil respondents, 42 per cent considered them 'essential', 24 per cent considered them 'desirable' and 17 per cent considered them 'acceptable'.

respondents supported the APRC's proposals. In addition, 80 per cent of Up-country Tamils and 88 per cent of Muslim respondents were in favour of the APRC proposals in 2010.<sup>51</sup>

Thus the APRC proposals form a widely acceptable basis for a constitutional reform. More

recent initiatives, such as the LLRC and the PSC process discussed above have made poor progress towards consensus on the appropriate measure of power sharing. The final report of the APRC remains one of the most promising and relevant set of proposals put forward to date in this regard.

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51. *Ibid.*



# Conclusion

Notwithstanding multiple attempts, successive governments have failed to arrive at a resolution of Sri Lanka's all-important 'national question'. Various reform proposals have been put forward over the years, only to be withdrawn or abandoned. This report has pointed to two inter-related factors that have historically undermined progress towards state reform in Sri Lanka:

1. The influence of majoritarian Sinhala-Buddhist ideology in defining the limits of acceptable reform of the Sri Lankan state; and
2. The practice of ethnic outbidding by southern political parties to mobilise their Sinhala majority constituency against power sharing proposals put forward.

While both factors identified above featured in its proceedings, the final output of the APRC was notable as a far reaching, inclusive and widely acceptable set of proposals on power sharing. Yet,

despite its promise the APRC's final report never received official endorsement and its substantial contribution to deliberations on power sharing has effectively been dismissed.

The proposals contained in the APRC's final report warrant further consideration than they have been afforded thus far. The ongoing constitutional reform process has presented an important opportunity to revisit the APRC's proposals. As the product of extensive discussions across a wide cross-section of political parties, the APRC process has laid much of the groundwork upon which renewed deliberations can take place.

One step forward would be for the government to formally publish the APRC's final report as a precursor to meaningful dialogue with minority political parties. As a sound basis for further negotiation, the APRC's proposals have a vital role to play in securing a long overdue resolution to Sri Lanka's national question.





# Annex 1

## Overview of Recommendations: the Majority Report, Interim proposals and Final Report

	Majority Report	Interim Proposals	Final Report
<b>State</b>	<ul style="list-style-type: none"> <li>i. Does not define the State in any particular way.</li> <li>ii. Provides that reference may be made to the State as consisting of 'institutions of the Centre and of Provinces which shall exercise power in the manner provided for in the Constitution'.</li> </ul>		<ul style="list-style-type: none"> <li>i. Defines the State as a 'Unitary State' - i.e. undivided and integrated state structure where state power shall be shared between the Centre and Provinces.</li> </ul>
<b>Constitution</b>	<ul style="list-style-type: none"> <li>i. Constitution to be supreme</li> <li>ii. Constitutional Court - specialised Court, outside the hierarchy of courts set out in the Constitution, to deal with constitutional matters</li> <li>iii. Comprehensive Bill of Rights to guarantee civil, political, group, social, economic, cultural and children's rights.</li> </ul>		<ul style="list-style-type: none"> <li>i. Constitutional Court to deal with Constitutional Matters - will be part of the existing Court structure but separate from the Supreme Court.</li> <li>ii. Comprehensive Bill of Rights that guarantees civil, political, group, social, economic, cultural, women's and children's rights.</li> <li>iii. Provides for specific provisions to be included in the Bill of Rights - among which there is: <ul style="list-style-type: none"> <li>- Inherent Right to Life</li> <li>- Special provisions relating to children's rights</li> <li>- Recognition of Human Rights Commission in the Constitution.</li> </ul> </li> </ul>
<b>Devolution</b>	<ul style="list-style-type: none"> <li>i. Devolution of powers to the provinces.</li> <li>ii. Subjects and functions to be categorised under National or Provincial sphere, with a provision for a Concurrent List consisting of a minimum of subjects and functions.</li> <li>iii. Subjects and functions in Concurrent List to be deemed as subjects and functions in the Provincial List of the unit/s of the North-East - so as to act as a safeguard against possible intrusions by the Centre into areas of provincial competence.</li> </ul>	<ul style="list-style-type: none"> <li>i. Implementation of 13<sup>th</sup> Amendment and adequate funds to be provided by Government to facilitate effective functioning of the Provincial Councils.</li> <li>ii. To hold elections in the Eastern Province immediately.</li> <li>iii. Interim council (reflecting the ethnic character of the province) to be established for the Northern Province - to aid and advise the Governor in the exercise of executive powers, and to function until Provincial Council Elections are held in the Province.</li> </ul>	<ul style="list-style-type: none"> <li>i. Appropriate unit of devolution to be the Province.</li> <li>ii. Provincial legislatures to elect the Senate which will be one of the components of the Parliament at the Centre - thus allowing provinces to play a role in national legislature.</li> <li>iii. Subjects to be divided into the National and Provincial List. National list subjects to be reserved for the Centre, while Provincial List subjects to be reserved for the Provincial legislatures.</li> <li>iv. Increased powers to local authorities, i.e. Pradeshiya Sabhas and Municipal or Urban Councils.</li> </ul>

	Majority Report	Interim Proposals	Final Report
<b>Executive</b>	<ul style="list-style-type: none"> <li>i. Executive power to be exercised by the President and two Vice Presidents (VPs)</li> <li>ii. VPs to belong to two different communities distinct to that of the President.</li> <li>iii. President - to have personal immunity for executive actions, but these actions can be subject to judicial review.</li> </ul>		<ul style="list-style-type: none"> <li>i. Executive powers to be exercised by the President.</li> <li>ii. President to be elected by both Houses of Parliament.</li> <li>iii. One Vice President, who is not a MP and belongs to a community distinct to that of the President, elected by both Houses of Parliament (this office is to be rotated among all communities other than the community to which the President belongs at the time of electing the Vice President).</li> <li>iv. President to have personal immunity for any executive action taken by him while in office - however, executive actions will be subject to judicial review.</li> </ul>
<b>Legislative Powers</b>	<ul style="list-style-type: none"> <li>i. Second Chamber comprising of representative from the Provinces - to be involved in national legislature.</li> <li>ii. Members of second chamber to be elected by the respective provincial legislatures on a proportional representation basis.</li> </ul>		<ul style="list-style-type: none"> <li>i. Parliament at the Centre comprising of House of Representatives elected by the People and the Senate elected by the provincial legislatures.</li> <li>ii. Legislative power to be exercised by People at a referendum, by Parliament and by Provincial Legislatures</li> <li>iii. Legislation to be subject to post-enactment judicial review by the Supreme Court which shall have the power to declare such legislation void to the extent of it being inconsistent with the Constitution.</li> </ul>
<b>Land Powers</b>	<ul style="list-style-type: none"> <li>i. Provinces to have control over State land within the Provinces, while Centre to have control over state land controlled or used by Central Government and its institutions.</li> <li>ii. National Land Commission - to formulate national land use policy and make recommendations to the Central and Provincial Governments.</li> </ul>		<ul style="list-style-type: none"> <li>i. State land used or assigned to the Central Government will be succeeded by the Centre.</li> <li>ii. State land used by or assigned to the Provinces, to be succeeded by the Provinces.</li> <li>iii. Land and Water Commission (LWC) with equal representation of the Central Government and Provinces, and with equitable representation of all the major communities - to formulate national land use policy and national plans relating to inter-provincial irrigation, water supply, and hydropower projects.</li> </ul>
<b>Police Powers</b>	<ul style="list-style-type: none"> <li>i. Police powers to be devolved to the Provinces - but shall be reserved by the Centre for the Capital Territory, strategic institutions/installations and any specified institutions such as port, harbour or airport (if provincial police are unable to provide security).</li> <li>ii. Two police services - National Police Service and Provincial Police Service.</li> </ul>		<ul style="list-style-type: none"> <li>i. Police powers to be devolved to the provinces except in instances, powers have been exclusively reserved for the Central Government in the Constitution.</li> <li>ii. Sri Lanka Police Service to be divided into the National Division; and a Provincial Division for each Province.</li> </ul>

	Majority Report	Interim Proposals	Final Report
<b>Minorities</b>	<ul style="list-style-type: none"> <li>i. Establishment of an Autonomous Zone Council to address the concerns of the Tamils of Indian origin.</li> </ul>		<ul style="list-style-type: none"> <li>i. Specific measures to meet the aspirations of the Muslims and the Indian Tamils.</li> <li>ii. Establishment of two Community Councils - one for Indian Tamils and one for Muslims, outside the North and East, to serve the development needs of the members of the communities.</li> </ul>
<b>Administration of Justice</b>			<ul style="list-style-type: none"> <li>i. Institutions administering justice - Constitutional Court, Supreme Court, Court of Appeal, Provincial High Courts and other Courts, tribunals and institutions established by the Constitution or by law.</li> <li>ii. Constitutional Court - to deal with matters relating to Constitutional Law</li> <li>iii. Independence of Judiciary to be ensured through the Higher Appointments Council.</li> </ul>
<b>Language</b>	<ul style="list-style-type: none"> <li>i. To improve Chapter IV of the Constitution to better address the needs with regard to languages.</li> <li>ii. Sinhala and Tamil to be official language and languages of administration, while Sinhala, Tamil and English to be national languages.</li> <li>iii. Persons to be entitled to communicate and transact business with any state institutions, police or peace officer, receive official documents - in any of the national languages.</li> <li>iv. Sinhala to be the language of record in administrative matters in all provinces except the North and East.</li> <li>v. All three languages to be used in proceedings of the Supreme Court and Court of Appeal.</li> </ul>	<ul style="list-style-type: none"> <li>i. Enactment of laws to provide for full implementation of Chapter IV of the Constitution.</li> <li>ii. Recruitment of Tamil speaking police officers/ members to deal with Ministries, Government Departments, statutory corporations and all other public bodies - to ensure that Tamil speaking members of the public, throughout the country, are able to transact business in their own language in police stations.</li> <li>iii. Mobile 'Clinics' with Tamil speaking officials to engage in problem solving/ Interpreters, translators and other relevant facilities in all Courts of Law.</li> <li>iv. Similar steps for Sinhalese minorities in the North and East.</li> </ul>	<ul style="list-style-type: none"> <li>i. Sinhala and Tamil to be the Official languages of Sri Lanka, while English may be used for official purposes.</li> <li>ii. Persons to be entitled to conduct their business, and be educated in either official language, and in English language.</li> <li>iii. Administrative services, administration of justice, notifications and enactment of laws, public records - to be published in both Official Languages with translation in English.</li> </ul>
<b>Emergency Powers</b>	<ul style="list-style-type: none"> <li>i. Emergency powers to be maintained by the Centre to intervene in Provinces in the event of a 'clear and present' danger to the unity, territorial integrity and sovereignty of the state.</li> </ul>		<ul style="list-style-type: none"> <li>i. The Constitution is to provide for clear instances in which emergency powers can be used by the Centre to intervene in the Provinces and cases where Provincial authorities could request the intervention of the Centre. These powers are to be subject to judicial and parliamentary control.</li> </ul>

	Majority Report	Interim Proposals	Final Report
<b>Finances</b>	<ul style="list-style-type: none"> <li>i. Expenditure responsibilities of the Provinces vis-à-vis the Centre - to be clarified.</li> <li>ii. Adequate revenue to be made available to discharge expenditure responsibilities.</li> <li>iii. Finance Commission - to be institutionalised to address issues on expenditure between Centre and Provinces.</li> </ul>	<p>Finances in respect of special projects undertaken by the Centre in the Provinces, if they are on subjects within the purview of the Provinces, to be routed to the respective Provincial Administrations.</p>	<p>Maintain two consolidated funds - for revenues of Central Government and revenues received by Provincial Administration.</p>



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