

**TAMIL UNITED
LIBERATION FRONT**
Towards
**DEVOLUTION
OF POWER
in**
SRI LANKA

MAIN DOCUMENTS

August 1983 to October 1987

321
Tamil
SL/PR

A TULF PUBLICATION

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*Dedicated to the Memory of
Shrimathi INDRA GANDHI
Prime Minister of India.*

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INTRODUCTION

The present volume does not purport to be anything more than a reproduction, in chronological sequence, of the main documents relating to the efforts towards devolution of power in Sri Lanka, since the involvement of India in the process in July 1983. A selective and in a sense one-sided and incomplete set of proposals formulated between 30-8-85 and 19-12-86 were tabled in Parliament by President Jayewardene in February, 1987. The T.U.L.F., as the main participant on the Tamil side from the beginning of negotiations, feels that the whole picture should be presented to the Public, in the interests of truth and historical accuracy. This volume may be regarded as presenting the other side of the picture and complementing the documents published by the Government of Sri Lanka. These documents will help the reader, more than any comment, to understand the efforts of the T.U.L.F., on behalf of the Tamil people, to work out a reasonable scheme of devolution and how those efforts were frustrated by the intransigence, retractions, and somersaults by the Government. Even the two laws passed in Parliament viz. the Thirteenth Amendment to the Constitution and the Provincial Councils Act are, in some important matters, the consequence of Government retractions from positions agreed to in the course of negotiations with the T.U.L.F. It is this attitude of the Government that makes the scheme of devolution as embodied in the two laws inadequate and incapable of satisfying the legitimate aspirations of the Tamil people. The efforts to make the scheme of devolution complete and satisfactory will continue.

Pre-independence efforts of Tamil leadership to obtain constitutional safeguards for the Tamils, Muslims and other minorities were confined to weightage in representation so as to prevent domination by one community over all the other communities. While rejecting this demand of All Ceylon Tamil Congress, the Soulbury Commission provided certain legal safeguards against discriminatory legislation by Article 29 of the Constitution and a certain weightage in representation by a scheme of basing representation to each Province on population and area, the premise being that the Northern and Eastern Provinces will thereby get more representation than the population figures warranted. How the whole scheme, expected to provide weightage to minorities, was totally perverted by the impact of the Citizenship laws within six months of Independence and resulted in preponderant weightage to the Sinhala majority which continues even today is well known. The Sinhalese who are seventy-four percent of the population occupy over eighty two percent seats in Parliament. Article 29 of the Constitution was removed by the 1972 Constitution. Thus ended efforts at safeguards under the unitary Constitution.

The first suggestion that the interests of the Tamils could be safeguarded only under a federal form of Government was openly made by Mr. S. J. V. Chelvanayakam at the reception to the Members of Parliament elected on the Tamil Congress ticket in 1947. When the Tamil Congress split over the voting on the Indian and Pakistani (Citizenship) Bill, federalism became the creed of the section lead by Mr. Chelvanayakam. The Ilankai Tamil Arasu Kadchi (Federal-freedom Party) was formed on 18 December 1949 and became the major political party of the Tamils after 1956 and the demand for the establishment of an autonomous Tamil linguistic state consisting of the Northern and Eastern Provinces within the framework of the Federal Union of Ceylon became the main Political platform of the Tamils.

Although his Sinhala Only Act was a major factor that rent apart the Sinhalese and the Tamils, Mr. Bandaranayake must be given credit for the only genuine effort, on the part of any government of Sri Lanka, to understand Tamil aspirations for autonomy and offer a compromise solution based on devolution of power. The Bandaranayake-Chelvanayakam Pact signed on 26 July

1957 embodied the basic principles on which a solution is attempted even today, after thirty years and after rivers of blood have flowed in the Island. The Pact Provided for the establishment of Regional Councils, with the right given to the one council for the Northern Province to merge, on a voluntary basis, with the Councils of the Eastern Province. This was abrogated in the face of strident opposition fostered by the U.N.P. and the Buddhist clergy.

The officials' Committee headed by Mr. Mahatantila appointed by Mrs. Bandarayake's government in 1960 to report on a scheme of District Councils resulted in an abortion. The draft Bill and the white paper on District Councils prepared by Mr. M. Tiruchelvam in 1968 for giving effect to the solemn promise contained in the Dudley Senanayake-Chelvanayakam Pact of 1965, was abandoned by the U.N.P. government.

Ten years later, after the Tamil demand had moved from autonomy under a federal union to restoration of the independent State the Tamils had prior to European conquest, the U.N.P. government of Mr. J. R. Jayewardene offered District Councils. Although this fell far short of Tamil aspirations and did not purport to be a solution to the ethnic problem, the T.U.L.F. accepted it as a measure of decentralisation which might pave the way for devolution of power. The failure of the government to give adequate powers or funds to the District Councils exposed their total lack of sincerity and landed the country in the crisis of 1983, which necessitated India's involvement and the offer by Shrimati Indira Gandhi of her good offices to work out a solution to the ethnic problem. Although the T.U.L.F., at its convention in Mannar, had taken a decision not to negotiate with the Government of Sri Lanka, in view of India's offer the T.U.L.F. became involved in the process of negotiations and took up the position that if a scheme of devolution acceptable to them was offered by the government they would place it before the people and implement it with their approval.

In August 1983 Mrs. Gandhi sent the veteran diplomat and tried negotiator Mr. G. Parthasarathy as her special envoy to Sri Lanka. The first document in the present volume was prepared by him after discussion with the T.U.L.F. and presented to President Jayewardene as a "non paper". This set in motion the process of negotiation to formulate a scheme of devolution. After four months of intensive negotiations in Colombo and Delhi rounded off with discussions between President Jayewardene and Mrs. Gandhi on 30 November 1983 at Delhi, a set of proposals were formulated as a basis for working out a solution through the All Party Conference. The Prime Minister of India herself took up with President Jayewardene the demand of the T.U.L.F. for the establishment of a single Tamil Regional Council consisting of the Northern and Eastern Provinces. On 1st December Mrs. Indra Gandhi met the T.U.L.F. leaders, and conveyed to them the President's assurance that though he could not include a united Tamil province in his proposals, he would not oppose it in the All Party Conference if the T.U.L.F. raised it. He had further promised her that he would steer through the A.P.C. the proposals agreed upon and see that they are implemented. On the basis of these promises the Prime Minister of India advised the T.U.L.F. to attend the A.P.C. After President Jayewardene returned to Colombo a document marked Annexure 'B' which was different from the proposals agreed upon at Delhi was attached to the invitations to the A.P.C. The T.U.L.F. protested to the government of India and Mr. Parthasarathy had to go to Colombo again to get the original proposals included in the Conference Agenda. This was included as Annexure 'C' and is reproduced as document-II.

The parties represented at the A.P.C. were asked to give their alternative proposals to the Conference proposals. The proposals Contained in Document-III were discussed by all Tamil political parties represented at the A.P.C. and were presented by the C.W.C. It is based on Annexure 'C' but includes the demand for a United Tamil Province as discussed at Delhi and the details of the scheme of devolution including the special rights of the plantation Tamil workers.

The statements made by the T.U.L.F. at the A.P.C. regarding the subsequent proposals by the Government in place of Annexure 'C', which it had abandoned in the face of opposition to it by the Buddhist clergy and even Prime Minister Premadasa and the U.N.P., and at the end of the A.P.C. in

December 1984 are reproduced in view of unjustified claims made by President Jayewardene that the T.U.L.F. had agreed to those proposals at some stage.

The next phase of India's efforts at a solution to the ethnic problem in Sri Lanka started with the election of a new government headed by Prime Minister Rajiv Gandhi in India. Documents VI to IX relate to this phase which came to an end with the collapse of the Thimphu Conference in August 1985. One significant feature of this Conference was the united stand taken by all the Tamil groups which placed four cardinal principles as a basis for the solution of the Tamil problem. The document containing the four principles is marked VI A. The Tamil groups walked out of the Conference in view of ceasefire violations by the Sri Lankan army and the massacre of innocent Tamil civilians at Vavuniya and Sambaltivu.

This was followed by attempts at direct negotiations between the Sri Lankan delegation headed by Dr. H. W. Jayewardene and a team of Indian officials without the participation of any Tamil representatives. It was in this context that Document X was sent by the T.U.L.F. to Prime Minister Rajiv Gandhi in order to impress on the Government of India three fundamental matters on which the Tamil people will not accept any compromise. The Tamil groups rejected the proposals that emerged as a result of discussions between the Sri Lankan delegation and the Indian officials under the guidance of Mr. Romesh Bhandari.

There was a deadlock and the Prime Minister stated that the ball was in the Tamils' Court and they had to put forward an alternative scheme. In response to this request of the Prime Minister and in order that India's efforts at finding a solution may not be frustrated, the T.U.L.F. submitted to the Government of India the proposals reproduced as document XI. The totally intransigent attitude of the Government of Sri Lanka is shown by their complete rejection of the T.U.L.F. proposals by document XII. Representations made by T.U.L.F. to Prime Minister Rajiv Gandhi regarding Trincomalee, the integrity of Tamil Homeland and the covering letter to a full dossier on the genocide that was committed against the Tamils in Sri Lanka between the period April 1984 to May 1985 sent to the Prime Minister of India as requested by him at a meeting with the T.U.L.F., are published at documents XIII to XV. The dossier itself is not reproduced because of its bulk.

The third phase of negotiations started with the arrival in Colombo of a team from India headed by Minister of State Mr. P. Chidambaram in May 1986. The resultant proposals are contained in document XVI. At the request of the Government of India the T.U.L.F. had to undertake the negotiations, with President Jayewardene and the Government of Sri Lanka, of the detailed legal provisions for the scheme of devolution based on the Chidambaram proposals. Two rounds of talks running into over twenty days in July and August were held. Several drafts were prepared as the talks progressed and on 29th August the second round of talks were terminated with the understanding that a third round should be held in Delhi, with the militant groups and the Government of India also participating, in order to finalise the matters which had not been agreed upon between the T.U.L.F. and the Government delegation. Document XVII which is the Seventh Draft prepared by the Sri Lankan Government after discussions with the T.U.L.F. shows that a number of matters are left "to be discussed further" But the same documents, omitting reference to the matters "to be discussed further" were tabled in Parliament by President Jayewardene, so as to give the impression that those were agreed proposals. The detailed response of the T.U.L.F. to these proposals are contained in Document XVIII and were handed over to the Government of India on the 30th September and 4th of October 1986.

The talks that took place between Prime Minister Rajiv Gandhi and President Jayewardene in November 1986 when they met at Bangalore and the various proposals that emerged during those talks including a scheme for the division of the Eastern province into three provinces are in the Sri Lankan Government's publication. The T.U.L.F. was not a party to those talks nor were they consulted. As soon as the details of the trifurcation proposals for the Eastern Province were known the T.U.L.F. sent a letter to the Prime Minister with a map showing the Contiguity of the Northern and Eastern Provinces. The letter is reproduced as document XIX and the maps are given as

appendix I. This was on the eve of the departure of the Indian government delegation consisting of Ministers Shri Natwar Singh and Shri P. Chidambaram to Colombo. Their talks resulted in a new set of proposals in regard to the unit of devolution on 19th December.

There was an escalation of Sri Lankan military action in the Eastern Province accompanied by shelling and strafing from the air. From January 1987 there was an economic blockade of the Jaffna peninsula followed by extensive military operations in the Northern province as well. There was a virtual cessation of negotiations with India and Sri Lanka was bent on an all out military offensive. The T.U.L.F. letter of 6th March to the Prime Minister of India given as document XX was meant to urge on India the necessity for a fresh initiative for a political solution and to stop the genocidal attacks and the economic blockade. A specific request that India should as a humanitarian measure provide food and fuel to the starving Tamil people was made in this letter. The letter of 1st April (XXI) reiterated the above matters.

Events moved fast : the flotilla of boats sent by India carrying food to Jaffna was turned back by the Sri Lankan Navy and India carried out para-dropping of food to the suffering people of Jaffna. The developments that followed this significant action of the Government of India culminated in the signing of the Agreement between the two Governments on 29th July. All Tamil groups were called to Delhi on the 28th July and informed of developments and the contents of the proposed agreement. The reservations to the provisions of the Agreement given by the T.U.L.F. at the meeting with the Prime Minister on the night of the 28th are given as document XXII.

The Indo-Sri Lanka Agreement is reproduced as document XXIII. T.U.L.F. letter dated 3-8-87 drawing Shri Rajiv Gandhi's attention to certain outstanding matters that required resolution is marked XXIV. The Agreement provided that the proposals negotiated between 4-5-86 and 19-12-86 were to be accepted but that residual matters not finalised during the above negotiations were to be resolved between the two governments within a period of six weeks. Although three rounds of talks were held between officials of the two governments a number of issues of fundamental importance were not resolved. The Government of Sri Lanka introduced in Parliament two bills-the Thirteenth Amendment to the Constitution and the Provincial Councils Bill-without giving an opportunity for the resolution of the residual matters as stipulated in the Agreement. The T.U.L.F. submitted to Shri Rajiv Gandhi a detailed letter giving the more important matters on which the Bills were deficient, making them unacceptable to the Tamil people. The T.U.L.F. letter of 28th October 1987 is reproduced as document XXV. There were further discussions between the Prime Minister of India and the President of Sri Lanka on 7th November at New Delhi, and although 'firm assurances' are said to have been given by President Jayewardene to make the necessary changes in the laws, nothing has been done. The scheme of devolution remains inadequate and incomplete.

Madras-5
19-6-88

A. AMIRTHALINGUM,
Secretary-General,
T.U.L.F.

POINTS FOR CONSIDERATION ARISING OUT OF A DISCUSSION WITH TULF

**Handed over to President Jayawardene by Mr. G. Parthasarathy
after discussion with TULF
on 26-8-1983**

1. The Democratic Socialistic Republic of Sri Lanka shall be a Union of States. The Republic may be demarcated into a number of States as appropriate, each of which will have a State assembly and a Council of ministers.

2. The Northern and Eastern Provinces which have been recognised in the Constitution as the area in which the Tamil language shall also be a language of administration and of the courts, shall constitute one State. In order to satisfy the aspirations of the Muslims who form a majority in the Amparai District, the Amparai District may form a separate State.

3. The President, the Cabinet Ministers and the Parliament shall continue to have overall responsibility for all matters not transferred to the States, and generally for all other matters relating to the maintenance of the sovereignty, integrity and security and the progress and development of the Republic as a whole.

4. The Legislatures and the Council of Ministers of the respective States shall be empowered to enact laws or exercise executive powers in relation thereto, on certain specified listed matters including the maintenance of law and order, in the States, the administration of justice, social and economic development, cultural matters and land policy.

5. The State Assemblies and the executive will also have power to levy taxes, cess or fees, relatable to matters assigned to them and mobilise resources through loans, the proceeds of which shall be credited to the Consolidated Fund set up for the particular State, to which will also be credited grants, allocations or subventions made by the Republic.

(5.A) The Republic shall apportion financial resources to the State on the recommendation of a representative Finance Commission appointed from time to time.

6. The judicial power of the State shall be vested in the State High Court. The Supreme Court of Sri Lanka will enjoy appellate and constitutional jurisdiction.

7. The armed forces of Sri Lanka shall adequately reflect the national ethnic position : in areas which are predominantly Tamil, the armed police forces for internal security will be predominantly Tamil.

8. In each State, there shall be a State Service consisting of (a) Officers and other public servants of the State and (b) such other officers and servants who may be seconded to the State. Each State will have a State Service Commission for recruitment and exercise disciplinary matters relating to the members of the State Service.

II

ANNEXURE C

In terms of paragraph six of the President's statement of December 1st, 1983, the following proposals which have emerged as a result of discussions in Colombo and New Delhi are appended for consideration by the All Party Conference. These proposals are in the context of the unity and integrity of Sri Lanka and will form a basis for formulating the Agenda of the All Party Conference.

(1) The District Development Councils in a Province be permitted to combine into one or more Regional Councils, if they so agree, by decisions of the Councils and approved by Referendum in that district.

(2) In the case of the District Councils in the Northern and Eastern Provinces respectively, as they are not functioning due to the resignation of the majority of Members, their union within each province to be accepted.

(3) Each Region will have a Regional Council if so decided. The convention will be established that the leader of the party which commands a majority in the Regional Council would be formally appointed by the President as the Chief Minister of the Region. The Chief Minister will constitute a Committee of Ministers of the Region.

(4) The President and the Parliament will continue to have overall responsibility over all subjects not transferred to the regions and generally for all other matters relating to the maintenance of the sovereignty, integrity, unity and security and progress and development of the Republic as a whole.

(5) The legislative power of the Region would be vested in the Regional Councils which would be empowered to enact laws and exercise executive powers in relation thereto on certain specified listed subjects including the maintenance of internal Law and Order in the Region, the Administration of Justice, Social and Economic Development, Cultural matters and Land Policy. The list of subjects which will be allocated to the Regions will be worked out in detail.

(6) The Regional Councils will also have the power to levy taxes, cess or fees and to mobilise resources through loans, the proceeds of which will be credited to a Consolidated Fund set up for that particular Region to which also will be credited grants, allocations or subventions made by the

Republic. Financial resources will be apportioned to the Regions on the recommendations of a representative Finance Commission appointed from time to time.

(7) Provision will be made for constituting High Courts in each Region. The Supreme Court of Sri Lanka will exercise appellate and constitutional jurisdiction.

(8) Each Region will have a Regional Service consisting of (a) officers and other public servants of the Region and (b) such other officers and public servants who may be seconded to the Region. Each Region will have a Regional Public Service Commission for recruitment and for exercising disciplinary powers relating to the members of the Regional Service.

(9) The armed forces of Sri Lanka will adequately reflect the national ethnic position. In the Northern and Eastern Regions, the Police forces for internal security will also reflect the ethnic composition of these Regions.

(10) A Port Authority under the Central Government will be set up for administering the Trincomalee Port and Harbour. The area which will come under the administration of the port Authority as well as the powers to be assigned to it will be further discussed.

(11) A national policy on land settlement and the basis on which the Government will undertake land colonization will have to be worked out. All settlement schemes should be based on ethnic proportions so as not to alter the demographic balance subject to agreement being reached on major projects.

(12) The Constitution and other laws dealing with the official language Sinhala and the national language, Tamil, be accepted and implemented as well as similar laws dealing with the National Flag and Anthem.

(13) The Conference should appoint a committee to work out constitutional and legal changes that may be necessary to implement these decisions. The Government would provide its Secretariat and necessary legal offices.

(14) The consensus of opinion of the All parties Conference will itself be considered by the United National Party Executive Committee and presumably by the executive bodies of the other Parties as well, before being placed before Parliament for legislative action.

III

ALL PARTY CONFERENCE WORKING PAPER

**PRESENTED BY
THE CEYLON WORKERS CONGRESS**

(Prepared by all the Tamil Groups participating at the All Party Conference)

FEBRUARY 21st 1984

PART ONE : Preamble

PART TWO : A Scheme of Regional Autonomy—Introduction

The Structure of the System of Regional Councils

The Executive

Powers of The Regional Councils

Local Government

Security

Creation of a Regional Administrative Service

Justice

**PART THREE : Restoration of Citizenship Rights and Administrative Arrangements
and institutions for Tamils of Recent Indian Origin.**

Annexure I : Finances of the Regional Authority

Annexure II : Land Policy

Annexure III : Socio Economic Indicators and Tamils of Recent Indian origin.

PART ONE

It must be recognised that Sri Lanka is a plural society—multiracial, multilingual and multi-religious. Two linguistic groups populate this island—the Sinhala speaking and the Tamil speaking. The Tamil speaking people comprise the Tamils and the Muslims. The distinct peoples who inhabit the country have their own historical foundations and their own cultures. In all civilised societies, all peoples have been given their due place in the government of the country and enjoy equal rights, duties and protection.

Since independence the Tamil speaking people have been systematically denied their due share of government and of the equitable benefits of the process of development. They have at various times sought constitutional arrangements to achieve equality in the context of a plural society, a policy of responsive co-operation intended to secure citizenship to all Tamil speaking people and obtain parity of status for Sinhala and Tamil failed. This resulted in the agitation for a federal form of government which has worked effectively in multi-national countries such as Switzerland, Canada, United States and India. Such a scheme of government was advocated by Mr. S.W.R.D. Bandaranaike as early as 1926 in a lecture entitled "Federalism as the only solution to our political problem".

When solemn pacts and agreements were entered into with heads of governments with a view to securing peace and harmony they were unilaterally abrogated. The demand for a separate state emerged out of this reality. The Tamil United Liberation front and the Tamil Congress have advocated this objective, in the absence of a viable political alternative. Even the United National Party in its Election Manifesto in 1977, acknowledged that the failure to redress the legitimate grievances of Tamils in respect of language, employment, education and land had resulted in the demand for a separate state. However, as a result of consultations and discussions in the past few months a near consensus has emerged on the basis for discussing a durable political solution to the Tamil problem. Since the conference documents reflecting this consensus envisage a scheme of regional autonomy, through the establishment of regional councils, this memorandum seeks to present and further elaborate this scheme as a basis for further discussion.

The Tamils of the North and the East inhabit an area which has been for long recognised and accepted as the Tamil Linguistic Region. Even the 1972 and 1978 constitutions have accepted and

recognised this incontrovertible fact. In the Tamil Linguistic Region, the Tamil language is the mother tongue of 88% of its population, consisting of Tamils and Muslims. It is therefore our contention that the Tamil Linguistic Region in the North and East be constituted into a single regional council.

Within the Tamil Linguistic Region, there are 12% Sinhalese who also have to be given their rightful place in that Region. Even amongst the Tamil speaking peoples special consideration should be given to the rights of the Muslims and the Tamils of recent Indian Origin.

As far as the Tamils of recent Indian origin, who are Concentrated in the plantation areas are concerned, they have distinct problems and disabilities, which also need special consideration.

Actions involving discrimination and oppression of minorities should be prohibited in the interests of ensuring the unity and integrity of the country. This follows from a recognition and acceptance of both the pluralistic nature of Sri Lankan society and the Universal Declaration of Human Rights of the United Nations. The Declaration states clearly in Article 2 :

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

The recognition and acceptance of the inalienable right to self-determination of the various peoples of the island will be the only just way of maintaining unity and integrity in diversity. This country is also a signatory to the international Covenants on Economic, Social and Cultural Rights and on Civil & Political Rights. Both Covenants recognise in Article I :

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social & cultural development."

Multilingualism has been recognised and accepted as an indispensable component of a just, pluralistic society the world over. Canada, Switzerland, and Singapore, are for examples successful models of this truism. Sri Lanka has suffered immeasurably during the last twenty-five years by its refusal to open its eyes to this stark

truth. Even at this very late stage, it is strongly urged that bi-lingualism, on the basis of absolute equality, be accepted as a necessary factor in ensuring the unity and integrity of the island.

Within the framework of the above principles, which are now accepted in the United Nations Charter and by all civilised societies as pre-conditions for orderly development of all its peoples and for their participation in all aspects of national life, we propose an Island-wide scheme of Regional Autonomy. Where national minorities are concentrated in such Regions, suitable administrative arrangements and institutions should be established, to ensure their linguistic, cultural and religious rights and to safeguard their security.

PART TWO

A Scheme For Regional Autonomy

INTRODUCTION

The concept of regional autonomy through Regional Councils is a known method of devolution of power and people's participation. Regional autonomy for the Tamil Linguistic Region may help to redress the grievances of the Tamil speaking people.

It is our contention that grievances in areas such as education, employment, discrimination in land settlement, economic development, cultural development, security and such other matters, can only be resolved on the basis of devolution of power, people's participation and regional autonomy, where such subjects will come exclusively within the purview of the Regional Councils.

It is our further contention that in the sphere of education and employment, merit should be recognised as the main criterion. Due regard should also be given to areas which are considered, at any particular time, as backward areas.

Regional autonomy in the Tamil Linguistic Region, with sufficient safeguards for the Muslims and Sinhalese in that Region, through special administrative and institutional arrangements will meet the approval of all the peoples of the country. Similar arrangements may be effected in other areas of the country where substantial concentrations of minority communities exist in a reasonably defined area.

The Structure of The System of Regional Councils

The structure of this system will have the Regional Councils at the apex. They will be autonomous within their respective Regions.

The Regions will themselves be divided into constituencies. Each constituency will elect a member to its Council. Where there is a concentration of a minority within a Region, the constituencies will be so demarcated as to recognise such concentration, and to give adequate representation for such minority in that Council. The number of constituencies for each Region shall be decided by a de-limitation commission. The de-limitation commission shall be entitled, in appropriate instances, to create multimember constituencies.

The Executive

The Leader of the Party which commands a majority in the Regional Council will be called upon by the President of the country to be the Chief Minister for that Region. This convention shall be firmly established. The Chief Minister will then, from amongst the elected members of the Council, choose the Committee of Regional Ministers. The Chief Minister and the Committee of Ministers shall exercise the executive functions of the Council.

Powers of The Regional Councils

The Regional Councils will be empowered to legislate and exercise executive powers in respect of subjects which shall include, amongst other subjects :

1. Maintenance of internal law and order within the region.
2. Social and economic development.
3. land policy in all its aspects.
4. Cultural matters, including education at all levels and
5. the administration of justice.

The list of Subjects which will be allocated to the Region will be worked out in detail. Some guidelines on these matters however have been provided in the main text and others have been elaborated in the annexures.

The Regional Councils will also have the power to levy taxes, cess or fees, to mobilise resources through loans, the proceeds of which will be credited to a Consolidated fund set up for such Region. There should also be credited to such Fund-grants, allocations or subventions made by the Republic. Financial resources will be apportioned to the Regions on the recommendation of a representative Finance Commission to be appointed from time to time. In the matter of allocation of funds by the Republic, we suggest that the state of

undevelopment or under-development in a Region shall be given due consideration. (for further details see Annexure I)

Land policy pursued by successive Governments have been one of the major problems confronting the Tamil people and has been recognised in the agreements entered into in 1957, 1960 and 1965 and in the Election Manifesto of the UNP in 1977. We propose the following guidelines in relation to Land policy :—

- a. Land Settlement under Irrigation Schemes falling within the Region, and all other forms of Land Use, Land Settlement, and Land Development within the Region must be under the exclusive authority of the Region.
- b. In respect of selection of allottees in the North and East the following priorities will be observed. Land will be given :
 - (i) to the landless people in the District in proportion to their ethnic ratio, as at an agreed date.
 - (ii) to landless Tamil speaking people resident within the Region.
 - (iii) to landless Tamil speaking people in the rest of the country.This principle was accepted in the pact between the United National party and the Federal party in 1965.
- c. In respect of Land Alienation under Major Irrigation Schemes, such as the Mahaweli Diversion project the principle must be accepted that the cumulative percentage of Tamil and Muslim entitlement to the totality of such land throughout the country must be allotted to them in areas within the Northern and Eastern provinces. Such a principle would be equitable.

The President and the parliament of the Republic will continue to have overall responsibility over all subjects not transferred to the Regions and generally for all other matters relating to maintenance of the sovereignty, unity, integrity, security and development of the Republic as a whole.

Local Government

It is urged that the system of village Committees and Town Councils, be created, to ensure the participation of the people in local government at grass-root level. We also suggest

that the system of Urban Councils and Municipal Councils be continued. These local authorities shall be within the purview of the Regional Council. In setting up local government Institutions due considerations should be given to the concentration of ethnic minorities in any particular area within a region.

Security

Recruitment to the Armed Forces of the Republic shall reflect the national ethnic position, and for that reason, shall be on the basis of ethnic proportionality.

We also suggest that the Armed Forces shall form separate regiments composed substantially of ethnic minorities.

In the deployment of the Armed Forces in any area at times of emergencies, the choice of the regiment of the Armed Forces to be so deployed, shall be such as to ensure that there is no repression of any other ethnic group in a Region by any section of the Armed Forces.

The maintenance of internal law and order shall be a Regional function. Accordingly, there shall be a police force within each Region. Recruitment to the Police Force should reflect the ethnic and/or linguistic composition of the Region. Personnel of the Police should be properly trained and fully equipped to deal with all situations normally arising in the maintenance of law and order and the conduct of routine police functions.

Creation Of A Regional Administrative Service

The Statutory provisions in part X of the District Development Council's 'Act No. 35 of 1980 suitably modified could be used as the framework for the creation of a Regional Administrative Service. Following this, provision should be made for :

- a) officers and servants to be directly recruited by the Regional Council, and
- b) the secondment of officers from the national services.

The Regional Executive should appoint a Regional Public Service Commission consisting of three persons of acknowledged integrity who have distinguished themselves in management, administration and the learned professions to advise the Regional Executive in the exercise of their powers of recruitment, promotion and disciplinary

control of the Service. At least one member shall be from an ethnic or religious minority in the Region. The convention should be established that the Executive shall report every case where it does not accept the recommendation of the R.P.S.C. to the Regional Council.

All recruitment should be strictly on the basis of merit except in the recruitment of non-skilled manual labour. In such recruitment preference shall be given to persons who live in the immediate vicinity of the worksite. Appointment shall be open to residents of the region, preference being given to those of the district. Where an examination or interview of the district posts is held for recruitment, applicants shall be examined or interviewed in their language of education.

Every recruit to the service, other than unskilled manual labour, should be required to acquire proficiency in the language other than the language in which he/ she received education before being confirmed in the appointment, to ensure that all members of the service can transact business in both languages.

All interview boards for recruitment and promotion should like the R.P.S.C. include persons of the Ethnic & religious minorities in the Region.

Justice

A High Court and other institutions for the administration of justice shall be constituted in each Region to exercise judicial power within the Region. In addition to its present powers, limited appellate and writ jurisdiction may be conferred on the High Court.

The Regional Council will have the right to alter the territorial jurisdiction of any Court within its Region.

In regard to the Tamil Linguistic Region, provision should be made for special Divisions of the Superior Courts, namely, the Court of Appeal and the Supreme Court, which would ordinarily sit in Colombo, to sit either continuously or at intervals, as the circumstances may require, cases within the Region. Since the records of the cases will, except in exceptional cases, be in Tamil, if the Judges who are assigned the duty of hearing those within the Region are proficient in Tamil, the need to translate the records into any other Language will not arise. At present, there is considerable delay in the disposal of appeals owing to the need to translate the records, first into Sinhala and then into English. The cases, the records of which are not in

Tamil, could be transferred to Colombo for hearing. The decentralisation of the hearing of appeals will help considerably to reduce the delays now experienced in the disposal of appeals. If equality of all persons, which is a fundamental principle of democracy, is to be meaningful, every person should have equal opportunity to be present and to understand and participate in the proceedings of every case in which he is a party before every Court in which the case is heard. The principle of equality will be violated if a case in which a Tamil speaking person is a party is heard only in Sinhala in the Superior Courts.

PART THREE

RECOGNITION OF RIGHTS OF CITIZENSHIP AND ADMINISTRATIVE ARRANGEMENTS AND INSTITUTIONS

FOR TAMILS OF RECENT INDIAN ORIGIN

The Tamils of Recent Indian Origin, concentrated mainly in the plantation areas, are the most economically backward community in Sri Lanka in terms of all socio-economic indicators (see Annexure III). In addition the majority of them do not enjoy the right of citizenship and are not integrated into the normal administrative and welfare structures of the country. They are excluded from the benefits of their own labour despite being the major producers of the country's wealth (see Annexure IV).

Within the framework of the principles enunciated in the earlier parts of this working paper, we make the following proposals aimed at meeting the distinct needs of Tamils of Recent Indian Origin :

- (a) Terminating the problem of "statelessness" forthwith by the recognition of the right to citizenship of Tamils of recent Indian origin in order that they may participate fully in all aspects of their human development and in the overall political, social & economic development of the country.
- (b) Ensuring that the Tamils of Recent Indian Origin enjoy a sense of security and provide for their participation in government by establishing suitable administrative arrangements and Institutions, for example the establishment or creation of an administrative district. Grama Sevakas divisions shall be modified so as to comprise estates where Tamils of Indian origin are in the majority. Such Grama Sevakas Divisions could be brought together to form an

A.G.A's Division. Similar arrangement has already been effected and been in existence for many years by the creation of the Sinhala D.R.O's Division now known as the Vavuniya South Sinhala A.G.A's Division in the Vavuniya District. Such A.G.A's divisions could be brought together to form an administrative and/or electoral district. Tamils of recent Indian origin, resident outside such administrative districts envisaged above, other than in the Tamil Linguistic Region, should be entitled to settle in such administrative Districts and pursue their legitimate vocations if they so desire. Likewise such persons should be entitled to settle and pursue their legitimate vocations in the Tamil Linguistic Region.

- c) Supplementing the above administrative arrangements with the creation, at the national level, of a separate Ministry to cater to the needs of the Tamils of Recent Indian Origin and the establishment of a Commission along the lines of the Kandyan Peasantry Commission with a statutory authority which will help plan and implement development projects and programmes and assist in the channelling of resources to this deprived community. Such mechanisms are specially required in view of the severe disabilities and special problems confronting this particular community.

ANNEXURE I

Finances of The Regional Authority

Devolution of power will become a reality only when the Regional Authority has control of assured financial resources for administration and development of functions and subjects assigned to that authority. The necessary financial resources could be secured by the levy of taxes, rates and fees and the mobilisation of loans internally and externally. If however the levy of such taxes, rates & fees are subject to Parliamentary control, it would detract from the autonomy of the regional authority. With the prevailing national tax structure, regional authorities will not be able to raise even a fraction of the required resources by such measures.

The present resources for the national budget are related primarily from taxes on production and expenditure such as turn over taxes, excise duty on liquor and tobacco, import & export duties, corporate

and personal income taxes and from foreign and local loans. These taxes accrue largely from the developed urban areas. The contribution the different regions make will vary widely depending on what each region produces, the size of the population, its percapita income and expenditure and its share of the imports & exports. If the revenue collected on this basis is made the base for resources for the autonomous region, it will be found to be quite insufficient to finance the current and capital expenditure in most regions.

Under the present structure of taxation and methods of collecting such taxes, most regions will be dependent on the central budget. It is therefore important that a satisfactory formula for resource allocation should be agreed upon at the outset as a secure financial base is essential for the exercise of any autonomy. Many complex formulas have been evolved in other countries for such allocation of resources. It is suggested that in our circumstances the following factors should be taken into account :

1. The size of the population.
2. The present expenditure incurred out of the national budget in the region-the allocation should be sufficient to meet the current services and development expenditure.
3. The current level of development of the region. There is wide disparity between regions in development of social & economic infra-structure such as education, health, roads, telecommunications and power. Some regions have vast areas with potential for development.

4. Resource allocation should endeavour to maintain the standards of the more developed areas and reduce the disparities in the backward areas while aiming at improving overall national standards.

5. Contribution made by the Region towards the resources of the national budget.

The produce of some regions has contributed substantially to the national budget but the workers such as plantation labour have not received a fair share of the revenue derived from their industry for their improvement or their social and economic infra-structure.

A representative Finance Commission should be appointed to determine the criteria for allocation of funds and to make specific allocation for each region. Such a Commission should be re-constituted at regular intervals to review any changing

conditions which would justify an alteration of the existing basis and make fresh allocation.

While at the inception of devolution, the regional authority will largely depend on subventions from the central government, each authority should undertake a systematic study of the available resources within its region and also mobilise external resources in order to finance new development projects and to promote self reliance.

ANNEXURE II

Land Policy

The Land policy pursued by successive Governments in Sri Lanka has been one of the major problems confronting the Tamil people. This was recognised in the Agreements entered into by Sri Lankan Prime Ministers with the Federal party in 1957, 1960 and 1965. These Agreements recognised that Land Policy, which includes Land use, Land Settlement, and Land Development, would be a Regional Subject. The Land Development Ordinance in Sri Lanka recognises the preferential rights of people in a region, to land alienated in that region. This provision has not been observed, and land alienation has taken place in violation of this provision. In the 1977 Election Manifesto of the United National party, Colonisation was recognised as one of the major problems confronting the Tamil People, which had driven the Tamil people to pursue a demand for separation and therefore necessitating urgent solution. No solution has been found and even after 1977 in the matter of land alienation, in the Northern province and particularly in the Eastern province, preferential treatment has been given to Sinhala people—Example : Periyavilankulam, Mahadiulwewa—Trincomalee District.

Sinhala — 372 Allotments
Tamil — 165 Allotments
Muslims — 38 Allotments

The Government cannot point to any other instance of Land alienation where the Tamils have received equitable treatment.

In the Land settlement scheme referred to above—over a hundred of the Tamil Allotments were attacked by Sinhala mobs, the houses burnt and people driven out.

Substantial changes have occurred in the demographic composition of the different districts in the Eastern province, as a result of State

aided colonisation in schemes such as Gal Oya in Batticaloa-Amparai Districts, Kantalai, Allai, Morawewa and Padaviya in Trincomalee District.

Past Experience has shown that inter-racial land settlement has never contributed to peaceful co-existence of the different Sinhala and Tamil ethnic groups. The Tamils have been attacked in every one of the above colonisation schemes.

Land Settlement under Irrigation Schemes falling within the Region, and all other forms of Land Use, Land Settlement, and Land Development within the Region must be under the exclusive authority of the Region.

In respect of selection of allottees in the North and East, the following priorities will be observed. Land will be given :

(i) to the landless people in the District in proportion to their ethnic ratio.

(ii) to landless Tamil speaking people resident within the Region.

(iii) to landless Tamil speaking people in the rest of the country.

This principle was accepted in the pact between the United National party and the Federal party in 1965.

In respect of Land Alienation under Major irrigation Schemes, such as the Mahaweli Diversion project the principle must be accepted that the cumulative percentage of Tamil and Muslim settlements to the totality of such land throughout the country must be allotted to them in areas within the Northern and Eastern provinces. Such a principle would be equitable.

The total Land Extent that will benefit under the Mahaweli Scheme is said to be around 900,000 acres. Of this, 300,000 acres are said to be presently under cultivation and are already occupied. A substantial extent of this land is held by Sinhala people.

The balance 600,000 acres will be new land that will receive irrigation facilities afresh. In the Northern and Eastern provinces such land will be within that part of Maduru Oya falling within Batticaloa District, Kandakadu in Trincomalee District and Yanu Oya in Trincomalee District. It is estimated that the total extent of such lands will be around 100,000 acres—perhaps less. The Tamil

percentage of the entire population is 18.16%—while the Muslim percentage of the entire population is 7.12%—totalling 25.28%. This is at least 9.03% in excess of the percentage of Land that will receive irrigation facilities, under the Mahaweli Scheme in the Northern and Eastern Provinces. A part of such land is already occupied. This justifies the totality of such land being given to Tamils and Muslims. This contention is further reinforced by the fact that Tamils and Muslims will not be able to own land under this scheme in the Sinhala areas—ie: outside the Northern and the Eastern Provinces. The selection of allottees for settlement in each Region and maintenance of such schemes shall be done by the respective Regional Council.

ANNEXURE III

Socio-Economic Indicators and The Tamils of Recent Indian Origin

The Tamils of Recent Indian Origin continue to remain the most backward community in terms of social-economic status. The following are some alarming statistics:

INFANT MORTALITY & MALNUTRITION:

- **Highest rate of infant mortality** — 79 per 1000 live births in Nuwara-Eliya Estate Region as opposed to 37.9 for the rest of the country.
- **Highest rate of Chronic malnutrition** 49.2% of all children under five in the Nuwara-Eliya Estate Region as compared to 22.8% nationally.

(Source—UNICEF, 1983)

EDUCATION:

- **Highest rate of Illiteracy** in the Estate Region 43.50% as opposed to 23.40% **ALL ISLAND**
- **Lower rate of Graduates** Graduates 0% as opposed to .3% nationally.
- **Lowest Index of Education Attained** 2.14% as opposed to 4.60% nationally.

(Source: Report on Consumer Finances and Economic Survey 1978/1979)

HOUSING:

- **Least Number of Houses** only 1.3% of people in the Estate Sector own their houses as opposed to 86.6% in the Island rural sector and 55.8% in the Urban Sector—a reflection of the Captive Labour situation in the Estate Region.

(Source: Report on Consumer Finances & Socio—Economic Survey 1978/1979)

EMPLOYMENT:

Much is made of the fact that the Estate Tamils enjoy a 94% Employment rate but this is precisely linked to the Captive Labour situation prevailing in the Estate Sector:

- **Lowest rate of Outward migration**—movement of people from the Estate Sector to other parts of the Island was on 16.4%, while the outward migration from the non-estate rural sector was 40.9% and from the urban sector was 42.7%.
- **Lowest Mean Income** The Mean Income for the Estate Sector is Rs. 300.54, while the All Island Mean Income is Rs. 616.05. The Mean Income of the non-estate rural sector is Rs. 616.90 and the mean income of the Urban Sector is Rs. 823.86. The theory of the “new rich” does not stand muster given these realities.

(Source: Report on Consumer Finances & Socio-Economic Survey 1978/1979)

Given the fact that every socio-economic indicator, shows that the Tamils of Indian Origin are the most backward community, in contemporary Sri Lanka. It is imperative that government accept responsibility for this situation and channel efforts to uplift the conditions of this long neglected community. Such upliftment should not only be in terms of financial commitment but also in the creation of administrative arrangements which will allow the Indian Tamils greater participation in both the life of their community as well as on the national level.

IV

Statement made by Mr. Amirthalingum at the Plenary Session of the All-Party Conference

on Sunday 30th September 1984

For 38 long years the Tamil problem has eluded a solution. Successive Sinhalese governments had recognised the problem and framed solutions, but they remained pious hopes and the relationship between the two nationalities deteriorated. The Tamil people and their leaders adopted every known political method to achieve their rights, but failed. The Tamil people, then took the ultimate step of asking for the restoration of the freedom they lost to the foreigner. In 1977 with unparalleled solidarity and unity of purpose, the Tamil people endorsed the demand of the TULF for a separate State. The strained relationship between the two nationalities resulted in repeated pogroms in 1977, 1979 and 1981, and reached new heights of brutality in the holocaust of June, July and August 1983.

Shortly after the visit of Mr. Narasimha Rao, the Foreign Minister of India, at the height of ethnic violence of July 1983, His Excellency the President sent Mr. H. W. Jayewardene as his special envoy to India. In the course of his discussions with Prime Minister Indira Gandhi, Mr. Jayewardene indicated to her that the President intended to take steps to fully implement the laws relating to District Development Councils, and certain other actions he intended taking in respect of the use of Tamil, the discontinuance of the active part played by the army in Jaffna, and the question of amnesty and release of people in custody. When Mrs. Gandhi told him that perhaps this did not go far enough to meet the aspirations of the Tamil community he told her, "that the President will be prepared to have further discussions of any new proposals provided of course that the unity of Sri Lanka would not in any way be affected". It was then that Mrs. Gandhi offered her good offices to enable a final decision to be reached.

The Tamil United Liberation Front (TULF) at its Mannar Convention on the 23rd of July decided not to have any further talks with the Government of Sri Lanka as it had failed to implement any of the matters agreed upon in the course of the negotiations at the Inter Party Conference from August 1981, to September, 1982. But, When the good offices of the Prime Minister of India to work out a final solution to this problem were accepted by the President, and as the President had agreed to discuss any new proposals, provided that the unity of Sri Lanka was not affected, the Tamil United Liberation Front (TULF) also accepted India's good offices. This was the back-ground to the arrival of Mr. G. Parthasarathi, the special envoy of the Prime Minister of India on the 25th of August 1983.

Mr. Parthasarathi met the President on three occasions, and had long discussions with the members of the TULF. It is well-known that the TULF contested the 1977 Parliamentary Elections seeking a mandate for the establishment of a separate state. At the time we accepted India's good offices we indicated that if a viable alternative to our mandate for a sovereign secular Socialist State of Tamil Eelam, was offered, we were prepared to place it before our party and take a decision in keeping with the wishes of our people.

In the search for a viable alternative the transformation of Sri Lanka into a Union of States in which the Northern and Eastern Provinces shall constitute one state was suggested. On Mr. Parthasarathi's second visit to the Island early in November 1983, he had "five long meetings with His Excellency the President", and new suggestions emerged to provide for greater devolution of powers to the

region. They involved, "the conversion of the present District Development Council scheme into a Regional Council scheme". The members of the TULF had no hand in the formulation of this scheme and it was agreed between the President and Mr. Parthasarathi that "these points will be discussed with the leaders of the TULF and their response will be communicated by Mr. Parthasarathi when His Excellency comes to Delhi". Accordingly Mr. Parthasarathi had several rounds of talks in New Delhi not only with the leaders of the TULF, but also with Mr. Thondaman. After discussions which went on for a number of days, Mr. Parthasarathi conveyed to the President on his arrival in New Delhi the problems which the Tamil leaders had with a few of the tentative proposals. Some of the differences were ironed out and the resultant proposals are those embodied in annexure "C". The main point over which there was no agreement was the merger of the Northern and Eastern Provinces into one region which the TULF insisted was of fundamental importance. We refused to participate in the All Party Conference unless this position was accepted by the Government, but we were persuaded to attend the All-Party Conference and raise the question of the merger of the North and East at the Conference. This is the significant role played by Indian good offices in bringing the TULF to the negotiating table contrary to the decision taken at the Party Convention in July 1983.

When annexure "C" was unceremoniously and ignominiously jettisoned, and the All-Party Conference ceased to be a Conference of all recognised political parties, with a number of parties walking out and some parties walking out and some parties being left out, and became a Round Table Conference to which various groups were brought in, as and when it suited the Government, there was every justification for us to refuse to continue participating in this changed situation. But we continued our search for a peaceful solution through the All-Party Conference. When the deliberations of the All-Party Conference were meandering through various devious paths, the Government pursued a policy of: (1) trying to impose a military solution on the Tamil people by strong repressive action in the North and East; and (2) damaging the long term interests of the Tamil people by altering the demographic pattern of the traditional Tamil areas at the point of the gun. Though it may not be possible to give the details of the Government action on these two matters, I will be failing in my duty by the people we represent if I do not place on

record some of the blatant actions of the Government against the Tamil people during the nine months this Conference had been sitting:

- 1.1 The induction of the Israeli element—whether it is Mossad or Shinbeth, makes little difference—and the mercenary S.A.S.—whether it is present or ex-and thereby internationalising the repression, while insisting it is an internal matter and nobody should intrude with their good offices;
- 1.2 The encouragement of indiscipline among the armed forces and the police, including the commando units in the North and East by covering up and failing to take adequate action against them for unlawful actions committed against innocent Tamil people, such as killing, and injuring them and burning, destroying, stealing and plundering their property. The I.R.A. in the United Kingdom has been carrying out more violent operations, than the Tamil militants in the North and East. But innocent Irishmen were not massacred by the armed forces as heppened at the Chunnakam market on the 28th of March, at Jaffna on the 9th, 10th and 11th of April, at Vavuniya on the 7th and 8th of August, in Jaffna City from the 5th to 15th of August, at Kaithady on 13th August, at Mannar and Manthai on 12th and 13th August, at Pt. Pedro on the 1st September, in the bus at Poovarasankulam on 10th September, and at Mallavi on 5th September.

I have not exhausted the list of massacres of innocent Tamil people by the armed forces during this period. Practically, every Tamil township has gone through the Baptism of fire. In Chunnakam, Jaffna, Atchuvvely, Vasavilan, Valvettiturai, Vavuniya, Pt. Pedro, Mannar, Adampan, Murungan, Mankulam and Nedunkerny several hundred shops and houses have been burnt and totally destroyed by the guardians of the law. If Sinhalese people or members of the police or armed forces are killed by the militants, their families are compensated. We don't grudge them that. But when innocent Tamils are killed unlawfully by the police or the armed forces, their dependants are not given any relief whatsoever.

I am glad that at least in Mannar where the majority of shops burnt by the army, belonged to Muslims the Government has agreed to pay compensation. But in all the other towns I

mentioned where houses and shops belonging to the Tamils were burnt by the armed forces, no compensation is paid. This is justice in Sri Lanka.

1.3 The coastal areas in the North are fired at from the sea. A number of trees, houses, animals and human beings have been hit. Last week a pregnant woman, named Kalawathi, sleeping in her house two miles from the sea coast, was killed, and her husband injured by one of the shells or large bullets fired from the ships of the Sri Lanka Navy. The Government keeps on quibbling that there are no canons on their ships. There may be no canons, but there must be some guns on these ships projectiles fired from which are causing death and destruction to innocent people in the Northern coastal areas, but the Government is continuing the firing of hundreds of shots from the Naval ships practically every night for the last two months.

1.4 Fishermen in the North are starving. The Minister for National Security had a Conference and told them that they could fish within seven miles from the coast. I know of cases in Mathagal, Myliddy, and Marisankoodal, where fishermen have been killed, boats made to disappear, engines thrown into the sea and poor fishermen mercilessly beaten up within one mile from the coast. The fishermen are frightened to go out to fish and their families are reduced to destitution. I am reliably informed that there is a new order banning the Northern fishermen from going out to sea between the hours of 6 p.m. and 6 a.m. which in effect means no fishing at all in the Northern waters.

1.5 Funds for development are transfered to defence expenditure in the North. There was hardly any allocation for development, except the decentralised budget allocation of 2½ million rupees for each electorate. Orders have gone not to fill up even the pot holes on roads and use that money for killing innocent Tamils.

1.6 The indiscriminate arrest, transport under humiliating conditions to distant places, like Galle, continued detention and inhuman torture of hundreds of innocent youths continues unabated inspite of protests by us, the mothers of the youths, and human rights organisations.

I must also refer to the deliberate policy of driving out Tamils and setting Sinhalese that is being pursued in Vavuniya, Mullaitivu and Trincomalee.

2.1 Lands were given out on special lease to big firms during the National Government in 1965. The Dollar farm and Kent farm were two of these. About 300 Indian Tamil families who had fled to Vavuniya as refugees after the pogrom against Tamils in 1977 were settled in these farms by charitable organisations, like the TRRO and SEDEC. They have now been driven out by the army and the police, and Sinhalese prisoners from Anuradhapura are being settled on the lands developed by these refugees. The criminal actions of these prisoners have become a sources of danger to the neighbouring Tamil villages also.

2.2 Special roads and bridges have been constructed by the army from Padaviya across Periya Aru to the villeges of Kokuthoduvai, Thanduwan, and Unchalady, and also to the Dollar farm and thousands of Sinhalese families are being moved into this area. The villagers in the area are being driven out at the point of the gun. This operation is being carried out under the supervision of the civilian co-ordinator for Vavuniya, Mannar and Mullaitivu. While we are talking here of the iniquity of the policy of colonisation in the past, the Government is carrying out a policy of driving out Tamils and settling Sinhalese on the traditional Tamil lands in the Northern Province. Is this proof of the bonafides of the Government to do justice to the Tamils? This can only be compared to the action of the Israelis in occupied Palestine.

2.3 In Kappathurai in Trincomallee, Indian-Tamil families have been driven out from lands given to them on permits by the Government Agent and Sinhalese are being settled there. There is a move to convert the Tamil school there into a Sinhalese school.

2.4 We have information that army men are intimidating Tamil Grama Sevakas in Trincomalee to register migrant Sinhalese fishermen as voters and delete Tamil names from the voters lists. It is claimed that by the time the Trincomalee bye-election is held, the Sinhalese voters will become the majority. If, while we are talking peace at the Conference attempts are being made to alter the demographic pattern to our disadvantage and doctor the voters' lists, does the Government expect us to continue to keep quiet, while the ground is being cut under our feet?

This is the setting to this Plenary Session of the Conference. At the Sessions of 2nd September 1984, Your Excellency told the Conference that Government's proposals will be placed by you before the Conference on 21st September, and Your Excellency responded to a query by Dr. Colvin R. de Silva, and stated that they will be definite proposals of the Government. The much awaited proposals are now out in the paper submitted by Your Excellency. But, to our utter disappointment, many important matters are still left to be worked out or discussed or settled. Has not this question been examined from every conceivable angle? There is little new that can be said.

We have indicated our view that we regarded the scheme of Regional Councils contained in the proposals submitted by the Ceylon Workers' Congress (CWC) as a reasonable basis for a settlement of this problem. From our mandate for an independent State, we agreed to a Union of States within the framework of a united Sri Lanka. The President suggested Regional Councils. Though it may not fully satisfy the aspirations of the Tamil people, we were willing to recommend it to our people subject to the unit being the Tamil linguistic region consisting of the Northern and Eastern Provinces, with devolved legislative and executive powers over specified listed subjects, including the maintenance of internal law and order in the Region, the administration of justice, social and economic development, cultural matters and land policy.

The present proposals are based on District Development Councils as the unit and only permit Inter-District Co-ordination and collaboration in defined spheres of activity. There is no provision

to devolve any legislative or executive power to this co-ordinating unit. There is no indication that this unit will be a legal person. The members of this unit are not to be directly elected by the people. The attempt to link devolution to the second chamber is only calculated to defeat the objective of devolution.

In the report of Committee "A" internal law and order and justice are exclusively reserved by the Government. The proposals contained in His Excellency the President's report is a total reversal of what was agreed upon in the Delhi proposals on all the matters mentioned above. There is no indication that our proposal for a Tamil linguistic region as the basic unit of devolution is being considered at all. The Government is refusing to compromise on the stand it took at the beginning of the Conference that the unit should be District Council, and no more. For all these reasons the TULF rejects these proposals as being totally unacceptable to the Tamil people.

While we have indicated a willingness to consider reasonable alternatives in order to achieve negotiated settlement, the intransigent stand of the Government on District Councils as the Unit and the actions of the Government in trying to impose a military solution and alter the demographic pattern of our area to our permanent disadvantage, make us feel that the proceedings of this Conference are an exercise in futility.

The TULF has no option but to carry on its struggle for the liberation of the Tamil people, for the preservation of the integrity of their traditional homelands, and for justice and human rights by all non-violent means.

V

Statement Issued by Mr. A. Amirthalingum, Secretary-General, T.U.L.F. After the All Party Conference

on 21st December, 1984

In response to an invitation from President Jayawardene dated 28th December 1983, the T.U.L.F. agreed to attend the All Party Conference summoned for the 10th of January 1984, on the basis of certain proposals "to enable them to arrive at an acceptable solution to the present problems facing the Tamil community in Sri Lanka." When those proposals were abandoned, the T.U.L.F. would normally have withdrawn from the Conference. But, we continued to participate and pursue the search for an acceptable viable alternative to our demand for an independent State of Tamil Eelam. Mrs. Indira Gandhi, the late Prime Minister of India, who "offered her good offices to enable a final solution to be reached" and her Special Envoy Mr. G. Parthasarathy played a very big part in persuading the TULF to continue the negotiatory process. In view of certain aspersions cast by some people on India's role in this matter, it behoves me to place this fact on record. India has been the biggest factor working for a peaceful political solution.

In the very first statement we made at the Conference, we indicated that though we were elected on a Mandate to work for a separate State, if an acceptable and viable alternative is offered, we were willing to recommend it to our people. Even in the face of a total absence of positive response on the part of leading Government Members — even when the major Sinhala Opposition party avoided the responsibility by walking out — we continued to participate because of our Party's commitment to non-violence an integral part of which is the path of negotiation. We indicated that a solution based on a Tamil Linguistic region, consisting of the Northern and Eastern Provinces, granting regional autonomy to the Tamil nation as contained in the proposals placed before this Conference by the Ceylon Workers' Congress may be one we could recommend to the Tamil people. We also said that the regional body should be, "empowered to

enact laws and exercise executive powers in relation thereto on certain specified listed subjects, including the maintenance of internal law and order in the Region, the administration of justice, social and economic development, cultural matters and land policy".

A careful study of the provisions of the draft bills placed before the Conference will convince anyone that they fall far short of the regional autonomy indicated above. When we accepted the scheme of District Development Councils in 1980, it was clearly understood that it was not meant to be an alternative to our demand for a separate State. It was hoped that it may help to solve some of the pressing problems, like colonization, and ease tensions thereby creating the climate for a solution to the larger political question. The total failure of the Government to work that scheme in the proper spirit has largely contributed to the present situation. The repetition of the provisions of the same law in the present draft is totally unacceptable to the Tamil people. The bills do not embody a proper scheme of devolution or autonomy. Devolution to the larger unit should be done by the Constitution and that unit may delegate any functions to the smallest unit. I am surprised that even these meagre and inadequate provisions are being opposed by some responsible persons.

We have endeavoured both in the All Party Conference and in informal discussions outside to work out a peaceful solution. Time is running out. The Tamil areas are under virtual seige. Normal life has come to a stand-still. Death, arson, rape and looting, stalk our areas. Starvation is staring the poor people in the face. This is the grim reality of the situation in the Northern and Eastern Provinces. We are constrained to state that the two Bills before this Conference do not embody any scheme of autonomy which could be accepted by the Tamil people, or their accredited representatives the Tamil United Liberation Front.

VI

Need for a new initiative on Sri Lanka Tamils Problem

2nd Jan. 1985

SHRI RAJIV GANDHI,
HONOURABLE PRIME MINISTER OF INDIA,
NEW DELHI

Your Excellency,

On behalf of the Tamils of Sri Lanka I wish to convey our heartiest congratulations on your magnificent victory and best wishes for a long and glorious stewardship of the country. May Mother India grow in strength and prosperity under your dynamic Leadership.

The problem of the three million Tamils in Sri Lanka has reached an impasse during the last two weeks, with President Jayawardane suddenly announcing the winding up of the All Party Conference, and his cabinet deciding, six days later, to drop the proposals, which he placed before the Conference. We are back in the same position in which we were in August 1983 when, in the wake of genocidal violence unleashed against the Tamils, the late Prime Minister Shrimati Indra Gandhi offered her "good offices to enable a final solution to be reached". Through the efforts of her Special Envoy Shri. G. Parthasarathi, President Jayawardane agreed to certain proposals in November 1983, as a basis for a solution. But when the All Party Conference was summoned he abandoned those proposals. Consequent to further initiative by Shrimati Gandhi, he sent through his Minister for National Security certain new proposals. These were discussed by him with the Late Prime Minister, Shri. Narasimha Rao and Shri. Parthasarathi. Two draft bills were placed before the All Party Conference on 14th December, 1984. Though the bills did not embody a proper scheme of devolution

and fell far short of the minimum that could have met the aspirations of the long-suffering Tamil people, we continued to have talks with President Jayawardane and some of his Ministers in an effort to evolve an acceptable solution. The President had fixed further talks with us for the 10th and 11th of January. The decision of Sri Lanka Cabinet on 26th December 1984 to abandon these proposals brings to nought all the efforts of India for over one and a half years.

Democracy and representative institutions are dead as far as the Tamils of Sri Lanka are concerned. As a result of the Sixth amendment to the Constitution, passed at the height of the ethnic violence, four fifths of the Tamil members of Parliament have lost their membership; the District Development Councils, Municipal councils and the Urban councils in the seven Tamil districts have ceased to function. Civil administration in these districts has been subordinated to the armed forces and Army co-ordinating authorities are supreme. Under the guise of putting down "Terrorism" the rule of law has been suspended as far as the Tamil people are concerned. Indiscriminate arrests, tortures, and mass killings of innocent Tamils are carried on by the armed forces. During the last four months over four hundred innocent Tamils—men, women and children have been shot dead by the Service personnel. Several hundreds have been injured. Army men have entered thousands of Tamil homes, plundered valuables, molested and even raped Tamil women. Hundreds of Tamil homes and business places have been burnt down. Whereas in 1983 murder, arson, looting and rape were committed, mostly

against Tamils living in the Sinhalese majority areas, by organised gangs of Sinhala hoodlums, with the connivance, assistance and some times active participation of the Sinhala Police and Armed forces, the same acts of violence, with much more sophisticated weapons, are to-day being carried on by the armed forces, mainly against Tamils living in the Tamil majority Northern and Eastern provinces. Foreign agencies like Mossad have been inducted in the process. Normal life in these provinces has come to a stand still. Repeated curfews, prohibited zones, security zones, cordoning and searches have brought economic activities to a halt. Prices of essential consumer goods have shot up, malnutrition is rampant, and starvation deaths are occurring among the poorer sections of the Tamil populations in these areas. This is the grim picture of life in the Northern and Eastern provinces of Sri Lanka.

The hope of a political settlement, which may bring the present state terrorism in the Tamil areas to an end, has receded completely. It was the offer of

offices by the late Prime Minister and her continued good concern in working out a final solution that ensured the security of the Tamil people from genocide and encouraged the negotiatory process. we are deeply thankful for the firm statement you were pleased to issue in December and the speeches you made indicating India's concern at the atrocities perpetrated against Tamils in Sri Lanka. The present impasse calls for a new initiative by India whose good offices have been accepted by both, the Sri Lanka Government and the Tamil people. We have no help but India and the helpless Tamils look upto you for their redemption from oppression and genocide.

With kind regards,

Yours sincerely,

A. AMIRTHALINGUM

Secretary—General,

TAMIL UNITED LIBERATION FRONT

VI-A

Statement made by the Delegation of the Tamil people consisting of PLOT, EPRLF, EROS, LTTE, TELO, TULF at the Thimpu talks — 13-7-1985

It is our considered view that any meaningful solution to the national question of the Island must be based on the following Four cardinal principles :—

- (1) Recognition of the Tamils of Sri Lanka as a distinct nationality ;
- (2) Recognition of an identified Tamil homeland and the guarantee of its territorial integrity ;
- (3) Based on the above, recognition of the inalienable right of self-determination of the Tamil nation ;
- (4) Recognition of the right to full citizenship and other fundamental democratic rights of all Tamils, who look upon the Island as their country.

Different countries have fashioned different systems of Governments to ensure these principles. We have demanded and struggled for an independent Tamil State as the answer to this problem arising out of the denial of these basic rights of our people. The proposals put forward by the Sri Lankan Government delegation as their solution to this problem is totally unacceptable. Therefore, we have rejected them as stated by us in our statement of 12th July, 1985. However, in view of our earnest desire for peace, we are prepared to give consideration to any set of proposals in keeping with the above principles that the Sri Lanka Government might place before us.

VII

Some vital matters affecting the very existence of the Tamils of Sri Lanka

26th JULY 1985

Shri RAJIV GANDHI,
Prime Minister
NEW DELHI.

Dear Prime Minister,

On behalf of the Tamil people of Srilanka we wish to congratulate you on the successful conclusion of the negotiations with the Akali Dal and the glorious vindication of India as the foremost democracy upholding the principles of secularism, justice and equality among all sections of the people. The accord will go down to history as a masterpiece of statesmanship and a shining example for the solution of the problems of minority nationalities. We hope you will be able to persuade the Government of Srilanka to adopt the same principles of justice, equality and statesmanship in solving the Tamil problem which has eluded solution for the last two years, despite all efforts by India, since the late Prime Minister Shrimati Indira Gandhi offered her good offices to work out a final solution to the problem, in AUGUST 1983.

We are relieved to note your categorical answer at the Press conference in Madras on July 16, in response to a question regarding the statement of Srilanka President that there is a change of policy in India on the Tamils issue after you became the Prime Minister. You refuted it with the unequivocal assertion that "there have been no changes in our policy at all". We thank you most sincerely for it. In an interview to the 'GENTLEMAN' magazine in its July issue President JAYAWARDENE has stated that "For the first time, the Central Government of

India has said that it is not for the separate State Eelam, that it is not for combining the northern and eastern regions into one province, that it is not for autonomy being granted to any particular region. Moreover, that it will even send military aid to a democratically elected Government here if asked".

In this connection we wish to point out that Shrimathi Indira Gandhi always took up the position that the Srilankan Tamils' problem should be solved within the frame work of a "UNITED" Srilanka. She never used the expression "UNITARY CONSTITUTION OF SRI LANKA". The present constitution of Srilanka was framed and adopted by the present parliament in 1978. After the Tamil people had given a mandate to the T. U. L. F. for the restoration of their separate state, in order to pre-empt any possible settlement, the Government deliberately introduced the clause entrenching the Unitary character of the constitution providing by that it can be changed only by a referendum. The Tamil people never accepted this constitution, as we stated in Parliament before we walked out at the beginning of the debate on the constitution. President Jayawardene cannot take shelter behind a constitutional impediment he imposed upon himself to deny the Tamil people a just solution to their problem. The constitution of Srilanka enacted and adopted by a permanent racial majority and rejected ab initio by the Tamil people, cannot even remotely be compared to the Constitution of India, fashioned by the people of India at a constituent assembly and accepted by all of them.

The fundamental basis for any solution to the Tamil problem will be the recognition of the right of the Tamil people to rule themselves in their homeland. Serious inroads have been made into these homelands by a policy of planned colonization with Sinhalese, carried out by successive Sinhala Governments since independence, in the teeth of opposition by the Tamil people and in violation of solemn undertakings given by Prime Ministers, on the same pattern as Israeli settlements in occupied Palestine. The Government is seeking to take advantage of this and divide the traditional Tamil home land into two, thereby paving the way for the destruction of the Tamils in the Eastern Province. In spite of the claim by President Jayawardene, we are confident that you will not regard this as a just method of solving the problem. The Tamil people will never accept a bifurcation of their territory. Shrimathi Indra Gandhi herself took up this question with President Jayawardene in November 1983.

The composition of the Indian polity is such that no single group, linguistic or otherwise, can impose its will on the others and seek to destroy the others. The situation in Srilanka is different. Seventy four percent of the population are Sinhalese and can, in the absence of adequate constitutional safeguards, set at nought any scheme of Government that may be granted to minority nationalities. It may be relevant to state here that up to date no scheme of Government worth considering has been put-forward by the Srilankan Government.

Linguistic states is the basis of the Indian Union. Even your Punjab accord provides for the redrawing of state boundaries enabling Hindi speaking villages which are contiguous to be included in the state of Haryana, while Chandigarh and some adjoining areas are to be included in Punjab. If the Government of Srilanka is genuine in its desire

for a solution of the Tamil problem they should agree to the same principles being adopted and all contiguous traditionally Tamil speaking areas in the Northern and Eastern Provinces being included in one unit. The Northern & Eastern Provinces have been traditionally recognised as Tamil speaking areas from the days of British rule. The preservation of the integrity of these areas as the homeland of the Tamil people was the basis of the agreements and pacts between the Tamil Leaders and the major Sinhala parties in 1957, 1960 & 1965. Both the 1972 & 1978 constitutions recognised that the Northern & Eastern provinces formed part of a linguistic entity for purposes of administration and as the Language of the Courts. There is no sanctity attached to Provincial boundaries created by the British and the Srilanka Government itself has overridden these boundaries when it suited them. President Jayawardene is trying to cling on to these boundaries in the case of Northern and Eastern Provinces because it suits him in order to avoid giving in to the legitimate demand of the Tamils to safe-guard the integrity of their homeland.

While we remain deeply appreciative of and grateful for your efforts to find a solution to the problem of the long suffering Tamil people in Srilanka, we are apprehensive of some recent developments and we have placed some vital matters affecting our very existence before you. We are confident these will receive your earnest consideration

With sincere regards,

Yours faithfully,

M. SIVASITHAMPARAM

President

TULF

A. AMIRTHALINGUM

Secretary-General

TULF

VIII

Statement made by Mr. Amirthalingum at the Thimpu Conference

ON 13th AUGUST 1985

The statement made by Dr. H. W. Jayawardene, Leader of the Sri Lankan Govt. Delegation on the 12th August 1985 calls for our response on a number of points. The statement that has just been read sets out the reply of the six groups (EPRLF, EROS, LTTE, PLOTE, TELO & TULF) which compose the Tamil delegation here. Regarding the four basic principles we placed before this conference on the 13th July 1985, I do not want to amplify that statement further.

At the very beginning of the statement the Leader of the Sri Lankan delegation refers to our statement of 13th July 1985 as a statement "made on behalf of six groups representing the interests of certain Tamil groups in Sri Lanka". This statement amounts to challenging the credentials of the delegation with whom the government delegation is supposed to negotiate. If you do not accept our legitimacy or right to speak on behalf of the Tamil people, what is the value of negotiating with us? As if to rub it in further, towards the end of the statement, in dealing with our fourth principle, namely, the right to full citizenship of all Tamils, he makes the following categorical statement. "We do not acknowledge the right or the status of any person present here to represent or negotiate on behalf of all Tamils living in Sri Lanka." He refers to the fact that there are certain other organisations representing the plantation Tamils whom he refers to as Indian Tamils. The denial of citizenship rights to one million plantation Tamils in 1948 by passing the three citizenship laws is the first major blow struck against the Tamil nation. All the troubles that the Tamil people were subjected to subsequently stem from this first fatal blow. These citizenship laws affect all Tamil speaking people

irrespective of their origin. I am sure, the Leader of the Govt. delegation must be aware of the hardships underwent by Tamils and Muslims outside the Northern & Eastern Provinces, particularly in Colombo and surrounding areas under the Finance Act. They were called upon to prove their citizenship in order to register their deeds of transfer for property they had bought with their hard-earned money. People with Sinhalese names were not subjected to this hardship. Everyone with Tamil or Muslim name had either to establish his citizenship which was not always easy or to pay 100% stamp duty. Representations were made and an Officials' Committee was set up as early as in 1964 to remove this hardship under which all Tamil-speaking persons suffered. During the period 1965 to 1970 when we of the Federal Party and the Tamil Congress were members of Mr. Dudley Senanayake's National Government, we tried to get the report of that Officials' Committee implemented. But we could not succeed. It will thus be seen that the impact of the citizenship laws is on the total Tamil-speaking people and not on any one section of them. I am not seeking to challenge the position of the various trade unions functioning among the plantation workers particularly of the Ceylon Workers' Congress and its leader, Mr. Thondaman. I wish to remind the Govt. delegation that at the time the TULF contested the 1977 Parliamentary Elections the President of the TULF was Mr. Thondaman, the leader of the plantation workers and the CWC. It was under his presidentship that the TULF got the mandate for the Tamil Eelam in the 1977 Elections. Though he moved away from the TULF after 1978 the connection of the TULF has not thereby ceased with the plantation workers. The problem of

statelessness and the hardship of doubtful citizenship are issues of intimate concern to the total Tamil-speaking population and our right to take up that question at this conference cannot be denied.

As for the first statement that "the six groups represent interests of certain Tamil groups in Sri Lanka", I wish to refute this statement most emphatically. The six groups present at this conference, namely, TULF and the five militancy groups are fully representative of the Tamil nation. The TULF has earned a right to represent the Tamil people by being the accredited representatives duly elected by a preponderant majority and the five groups of freedom fighters by their valiant struggle for the liberation of the Tamil people, their sacrifice and suffering have earned a right to represent the Tamil people. The statement of the leader of the Government delegation on this point calls for an explanation.

Mr. Jayawardene referred to the fact that the Government of Sri Lanka has already announced at the All Party Conference its intention to grant Sri Lankan citizenship to the outstanding number of 94,000 persons who fall into the stateless category. As one who was a participant of the All Party Conference I am fully aware how the Government got the Maha-Sangha delegation to give its blessings to this proposal. But that was not the first occasion that this promise was made. The period of operation of the Sirimavo-Shastri Pact came to an end in October 1981. Shortly after that President Jayawardene made a statement in India and gave a promise to the Government of India that all those who were not registered as citizens of India up to that date will be granted Sri Lankan citizenship. It is now four years since this promise was made, not one stateless person has been registered as a Sri Lankan citizen in terms of this promise. The Government of Sri Lanka is lavishing its promises but it has been our bitter experience that very few of these promises are kept. The problem of statelessness that afflicts a section of the Tamil nation in Sri Lanka is a running sore in the body politic and therefore if the Tamil national Problem is to be solved, this long standing problem must be finally solved. We make this demand and we state that we are entitled to make this demand at this conference.

Mr. Jayawardene in the final paragraph of his statement has delivered a homily to us that "the use of violence to achieve political goals is totally against the ideals preached by the great sons of

India, particularly Gautama, the Buddha and Mahatma Gandhi and must be renounced". Ironically he proceeds to say, "We in Sri Lanka had tried to follow these ideals." It is absurd for the representative of a Government of a country whose reputation stinks to high Heaven for the atrocities perpetrated against the Tamil people, for the murders & rapes committed against the innocent Tamil civilians, should make the claim that they have tried to follow the ideals of Mahatma Gandhi. He has in his statement advised us "whatever form of agitation is used to continue any programme to attain political goals must be non-violent and follow the Buddhist and Gandhian method of 'satya kiriya' or 'Satyagraha'".

If there is anyone in this whole conference who is qualified to speak on the use of non-violent means, on following the path of 'satyagraha' for achieving political goals, I can humbly make that claim. I have participated in all the non-violent struggles that were carried on during the last three decades for winning the rights of the Tamils. I have been jailed five times and I have been beaten by the police & army eight times. On the very first occasion on the 5th June 1956, on the day the 'Sinhala only' Act was introduced in Parliament, we performed satyagraha outside parliament. We exposed ourselves to the sun and rain and sat there on the Galle Face Green. Government set up hoodlums to attack us. We were beaten up with sticks, pelted with stones, stripped and trampled. I still carry two scars on my head caused by the 'non-violent' stones which the Sinhala patriots threw at the Tamil Satyagrahis. When I walked into parliament with my clothes drenched in blood and a handkerchief tied round the gaping wound on my forehead, the then Prime Minister Mr. Bandaranaike remarked 'honourable wounds of war'. To him, it was a joke. Non-violent satyagraha was treated as a joke by the Prime Minister of the country. But the satyagrahis were not the only victims of violence on that occasion. Tamils on the roads in Colombo were pulled out of their cars & buses and beaten up. Mr. Sivasithamparam reminds me that one of those beaten up on the roads of Colombo on the occasion was no less a person than the present Chief Justice of Sri Lanka, Mr. Sharvananda. He was not one of the satyagrahis. Then why was he beaten up? Because he was a Tamil. This is the reply that the Tamil people get for the first attempt at non-violent satyagraha against an inequity perpetrated on them. Tamil villagers in distant Amparai were attacked and killed by the Sinhala colonists the same night and the Chairman of the Galoya Development Board and all

the Tamil officers under that project had to be evacuated to the circuit house as refugees when they were attacked by the Sinhala colonists in that area.

In spite of our being treated with violence in return for our non-violent campaign, we continued in the path of non-violence. In 1961 against the move to make Sinhala the language of administration in government offices even in the Northern and Eastern provinces, we started a mass satyagraha movement. We carried on that movement from 20th February 1961 to the 17 of April 1961 when the Government declared an emergency, brought out the army, arrested the leaders and took them to the army camp at Panagoda and unleashed violence on the poor satyagrahis. Even women satyagrahis were taken to remote uninhabited areas and left there in the dead of night. The males there were beaten up. Even Mr. Sivasithambaram who was then there was a victim of the assault. I along with my wife were taken and locked up with 74 of my colleagues for six months. But throughout this massive campaign we carried on in spite of grave provocations by the police and the army not even one incident of violence on the part of the Tamil people could be reported. We paralysed the entire administration in the five capitals in the Tamil area for 57 days and the veteran Gandhian, Sri Rajagopalachari wrote in 'Swatantra' that not even during Gandhiji's movement was there such perfect observance of the precept of non-violence. I would tell the Leader of the Government delegation that it does not lie in the mouth of the Government to preach to us on the virtues of a non-violent struggle.

In response to these non-violent struggles and agitations, pacts were signed by Governments with Tamil leaders, promises were made but hardly ever kept. Solemn pacts were lightly broken. Tamil people were treated to mob violence, police violence and violence by the armed forces. On innumerable occasions when Tamils agitated in a non-violent way, innocent Tamils all over the country were treated with brutal violence in 1956, 1958, 1961, 1977, 1979, 1981, 1983, and almost continuously thereafter. It was this continued violence that the Tamils were subjected to coupled with the failures of the governments to honour promises given in response to non-violent agitations, that led to the emergence of violence among the Tamil youths. It will thus be seen that violence on the part of the Tamil youths is the effect of Sinhala violence over a long period of nearly three decades. You are trying to make the cause namely, violence by Government and Sinhala

mobs into the effect and the effect, namely, the violence by the Tamil freedom fighters into the cause. I would tell the leader of the Government's delegation that this homily on non-violence to us is misplaced.

Mr. Jayawardene referred to the various meanings of the word 'nation' and 'nationality'. In the statement made on behalf of the six groups today we have given our definition and the meaning we attach to the word 'nation'. The claim that the Tamils are a nation is not something that is being made for the first time now. Immediately after the independence in the wake of the passing of the citizenship laws and launching of the major attack on the existence of Tamil people as a political entity, our late leader Mr. S. J. V. Chelvanayakam formed the Federal party to safeguard the rights of the Tamil people. At the inaugural meeting of that party on the 18th of December 1949 he categorically stated that the Tamils are a separate nation and are entitled to the right of self-determination. At the first national convention of the Federal Party held in Trincomalee on 14th April 1951 the following resolution was adopted :

In as much as it is the inalienable right of every nation to enjoy full political freedom without which its spiritual cultural and moral stature must degenerate, and in as much as the Tamil speaking people in Ceylon constitute a nation distinct from that of the Sinhalese by every fundamental test of nationhood, firstly that of a separate historical past in this island at least as ancient and as glorious as that of the Sinhalese, secondly by the fact of their being a linguistic entity entirely different from that of the Sinhalese, with an unsurpassed classical heritage and a modern development of language which makes Tamil fully adequate for all present day needs, finally by reason of their territorial habitation of definite areas which constitute over one-third of this Island, this first National Convention of the I.T.A.K. demands for the Tamil-speaking nation in Ceylon their inalienable right to political autonomy and calls for a plebiscite to determine the boundaries of the linguistic states in consonance with the fundamental and unchallengeable principle of self-determination".

When we speak of the Tamil nation we refer to the entirety of the people in this country to whom the mother tongue is Tamil. There may be differences of

religion, there may be Hindus, Muslims, or Christians, there may be differences of origin but the concept of Tamil nation overrides these petty differences. Thus it will be seen that the idea that Tamils are a nation has been accepted by the Tamil people since independence. When we claim to be a separate nation, it does not necessarily mean that we claim to be a separate state. Even at the time when we wanted the establishment of an autonomous state with a Federal Union, we made the demand on behalf of the Tamil nation. People who are familiar with political institutions in the world over where multi-national states, confederations, federations, & Unions of republics and states abound will not to equate the claim of nationhood with a claim for a separate statehood.

The Leader of the Government delegation states: "The Government recognises the whole of Sri Lanka as the homeland of every member of every community" and he goes further and says that "The constitution of Sri Lanka guarantees to all communities throughout Sri Lanka however small their numbers may be in any part of the Island their rights in respect of culture etc." I wish to ask him in the face of the situation that has arisen several times in Sri Lanka when tens of thousands of Tamils in Colombo and various other places had to be huddled into refugee camps and transported by cargo boats to the Northern and Eastern parts, how can he seriously urge that the whole Island is the homeland of every member of every community. In 1983 Government admitted that 135,000 Tamils were in refugee camps and had to be transported. The Government could not enable them to live in their homes. They had to be transported to the North and East which is their homeland. If the whole Island is their homeland, why had they to be transported to the North and East? Like driving animals into sanctuaries, you had to drive the Tamils into certain parts of the country but we do not want to be herded like animals. We want to live like human beings with dignity and with the right to rule ourselves in our homeland. The Government delegation has rejected the idea of a homeland for the Tamil people. Mr. Jayawardene has given certain figures of the distribution of population in the various districts. They are seeking to claim that in the Trincomalee and Amparai districts the Sinhalese form the single largest community. This is where our demand that the integrity of our homeland must be preserved becomes vital. Let us for a moment consider what the position in the eastern province was at the time independence was

granted to Sri Lanka. In round figures the Sinhalese were about 30 thousand in the whole province that is in the Trincomalee and Batticaloa districts which included the present Amparai district. The Tamils were 135 thousand and the Tamil-speaking Muslims were 110 thousand. What is the position today? According to the 1981 census the Sinhalese in the three districts of the Eastern Province totalled to 243 thousand. The Tamils are a little more than 400 thousand and the Muslims are 315 thousand. Whereas the increase in the Tamil and Muslim population is less than three fold the increase in the Sinhala population is eight-fold. This is the result of the systematic planned colonisation carried out by successive Governments after independence. On the same pattern as Israeli settlements in the occupied Palestine, calculated to make the Tamils and Muslims minorities in their own homeland. Mr. Sambandan who will follow me will deal fully with this whole problem of colonisation in the Eastern Province. The Tamil people had protested against it from the very beginning. As early as April 1951 at the first national convention of the Federal Party the following resolution was adopted :

"Inasmuch as a Tamil-speaking people have an inalienable right to the territories which they have been traditionally occupying this first national convention of the I.T.A.K. condemns the deliberately planned policy and action of the Government in colonising the land under the Galoya Reservoir and other such areas with purely Sinhala people as an infringement of this fundamental right and as a calculated blow aimed at the very existence of the Tamil-speaking nation in Ceylon."

In the teeth of opposition by the Tamil people and their representatives this planned policy of colonisation was carried out and it was one of the main issues of conflict between the Sinhala and the Tamil peoples over the last three decades. Dr. Jayawardene had said that "The Tamil's homeland demand involves special reservation for Tamils in respect of land settlements schemes in the Northern and the Eastern Provinces of Sri Lanka." He goes further and says: "that these areas happened to be the areas in which major settlement schemes are foreshadowed in future." In other words, he was given us notice that the Government will pursue this ruthless policy even in the future. This colonisation which has been carried out in the Eastern Province over the last thirty years is in violation of solemn agreements and pacts entered into with the

Tamil leaders by successive Sinhala Governments. Prime Minister Bandaranayake entered into a pact with Mr. Chelvanayakam in 1957. The SLFP led by Mr. C.P. de Silva entered into an understanding with the Federal Party in 1960 and the UNP under Prime Minister Dudley Senanayake entered into a pact with Mr. Chelvanayakam on 24-3-1965. I will only deal with the agreement in respect of the lands in the Northern and Eastern Provinces that the UNP signed with the Tamil leader. President Jayawardene himself was a party to it and at the time this agreement was signed at Dr. M. V. P. Pieris's house he was the person who suggested that the document be typed and signed by the two leaders. This is what that pact says;

"The Land Development Ordinance will be amended to provide that citizens of Ceylon be entitled to the allotment of land under the Ordinance. Mr. Senanayake further agreed that in the granting of land under colonisation schemes the following priorities be observed in the Northern and Eastern Provinces.

- (a) Land in the Northern and Eastern Provinces should in the first instance be granted to landless persons in the District.
- (b) Secondly - to Tamil - speaking persons resident in the Northern and Eastern Provinces, and
- (c) Thirdly - to other citizens in Ceylon. Preference being given to Tamil citizens in the rest of the Island.

(Sd.) DUDLEY SENANAYAKE
24-3-1965

(Sd.) S. J. V. CHELVANAYAKAM
24-3-1965

I want to ask the Government delegation here 'is the UNP disowning the pact and the promise contained in the pact with regard to colonisation schemes in the Northern and Eastern Provinces?' Your present statement is a total reversal of the policy accepted there. If that is the case, how do you expect us to trust you and enter into any agreements with you now? The question of the integrity of our homeland is one on which there can be no compromise. It is not as if there is no land for the Sinhalese people. Under the Mahaweli Development Scheme, the President himself when he was Prime Minister announced in Parliament in 1978 that 900 thousand acres will become irrigable. Of this

900 thousand acres, 300 thousand acres are said to be land already under cultivation. 600 thousand acres of virgin land is to be brought under cultivation under Mahaweli Scheme and to be distributed among colonists. Of this 600 thousand acres, not more than 100 thousand acres fall in the Tamil areas. Dr. Jayawardene had said that we are trying to corner 30% of the land for 12.6% of the population. As already said in the Election Manifesto of the TULF, we have categorically stated "When we speak of the 'Tamil nation', we referred to the entirety of the people in this country whose mother-tongue is Tamil." The Tamil-speaking people are over 25% of the population. It would be admitted by all fair minded persons that it will not be possible for Tamil colonists to hold land in the Sinhala areas. He will be turned out or killed, his house will be burnt and his crops destroyed or looted. In this climate, are we unfair in asking that the entire land that becomes irrigable under Mahaweli scheme in the Northern and Eastern Provinces which, as I have pointed out, is only one-sixth of the land to be alienated, be granted to the Tamil people. The position of the Tamil people on this matter has been fully placed before the Government. For the Leader of the Government delegation to come before this conference and ask 'what are your grievances?' as if they are unaware of it, is not a frank attitude to take. A full memorandum on the land policy has been submitted by Mr. Thondaman of the Ceylon Workers' Congress who is a Minister in their own Government along with his proposals at the All party Conference. In that memorandum he has stated "if the Tamils of the plantation districts are to be allotted lands under colonisation schemes, it should be done in the Northern and Eastern Provinces." He fully agrees that they will not be able to hold it in the other seven Provinces. So, when we ask the land in the Northern and Eastern Provinces be given to us, it is for the entire Tamil speaking people who are nearly 26% of the population. Our demand that 16 or 17% of the land be given to the 26% of the population cannot be considered unjust or unfair by anyone with a sense of justice. The integrity of the homeland is vital for the very existence, for the survival of the Tamil nation and there can be no solution except on the basis of an acceptance of this demand. I come finally to the reference Dr. Jayawardene has made to the T.U.L.F and the mandate it got in the 1977 General Elections. In July 1979 President Jayawardene wrote a letter to me on the same lines quoting certain figures. It would be relevant for

me to read out the reply I sent to him. "When one calculates the percentage of votes obtained by a party in a country one cannot take it district by district and say that the party did not get a mandate in a particular district. If that is done, one may justifiably say that the UNP did not get a mandate to draft a new constitution not only from the Jaffna, Vavuniya, Mannar, Trincomalee, Batticaloa and Amparai districts (i.e. all the districts in the Northern and Eastern Provinces) but even in certain other districts, for instance, Nuwara Eliya district where the UNP polled only 43.54% of the votes. I think the correct thing to do will be to take the entire area from which the mandate is sought as one unit as was done in the case of Scotland and that of Wales in Great Britain. Therefore, the entire Northern & Eastern Provinces should be taken as one unit in calculating the percentage of voters that voted for Tamil Eelam.

"In this connection one has to take into account not merely the votes cast for the TULF but also the votes cast in favour of other candidates who had openly declared and campaigned on the basis of Tamil Eelam as their objective. The votes polled by (1) Mr. Kasi Anandan at Batticaloa who was also a TULF candidate but contested on the FP ticket because Mr. C. Rajadurai had been given the TULF ticket, (2) Mr. V. Navaratnam at Kayts whose plank was that his party was the first to demand a separate state, (3) Mr. P. Veeravagu in Pt. Pedro (4) Mr. V. Kumaraswamy in Chavakachcheri and (5) Mr. V. Chandrasegari in Mullaitivu should undoubtedly be counted as votes for Tamil Eelam. It will be found that the votes in favour of a separate state in the entirety of the Northern and Eastern Provinces total 445,395 while the votes against total 389,190. Thus 53.53 per cent of the total votes polled had been in favour of freedom for Tamil Eelam, which is significantly higher than the 50.84 percent mandate obtained by the UNP in 1977 or the 49% mandate obtained by the UF in 1970, both of which parties drafted and adopted altogether new constitutions on the strength of these mandates. It should also be remembered that the votes cast against the TULF include over 75,000 Sinhalese votes, the vast majority of whom were settled in

these areas after independence. It is thus patent that well over 60% of the Tamil-speaking voters of Tamil Eelam have opted for freedom. The completely democratic character of the TULF demand will be seen from the fact of the party is pledged to establish "an autonomous province with the right to secede on the basis of the right of self-determination" in the areas of Tamil Eelam where the Muslims are in a majority. If there is any doubt with regard to the mandate the surest way to settle it will be to have a referendum in the area concerned, as was done in Scotland and as is to be done in Quebec. Your Excellency will recall interrupting my speech during a debate in Parliament in 1977 with the remark "Why do you think I will not give you self-determination?" (Hansard Vol. 24 No. 10 (II) Col. 2254 of 1-12-77). The right of self-determination is exercised by the vote and that is what the Tamil nation did in July 1977."

In the 1970 Elections, the United Front under Mrs. Bandaranaike got 49% of the votes but they claimed it as a mandate to declare Sri Lanka a Republic and to draft and adopt a new constitution. In the 1977 elections the UNP got 50.84% of the total votes cast. In fact, in the seven districts of the Northern and Eastern Provinces and in the Nuwara Eliya district they failed to get a majority. But they claimed this 50.84% as a sufficient mandate to draft and adopt a new constitution jettisoning the old constitution. If 49% and 50.84% are regarded as sufficient to be considered a mandate from the people is not 53.53% obtained by the TULF and the candidates supporting the demand for an independent state of Tamil Eelam sufficient to be regarded as a mandate and adequate indication of the will of the Tamil people to liberate themselves from the oppressive rule under which they were suffering?

If the Government and the Sinhala people are genuine about solving the Tamil national problem, they should understand the aspirations of the Tamil people. There should be a change of heart among them. And it is only on the basis of recognition of the right of Tamil people to rule themselves in their homeland that a solution can be worked out.

IX

Statement made by Mr. R. Sampanthan, Member of T.U.L.F. Delegation at the Thimpu Conference

ON 13th AUGUST 1985

The statement of the Leader of the Sri Lankan Government's delegation in response to the four basic principles enunciated by the Tamil delegation as a basis for the resolution of the Tamil National Question, while on the one hand, stating the position of the Sri Lankan State, a position based upon the perpetuation of majority Sinhala Rule, a position totally unacceptable to the Tamil people and resisted, from prior to, and after independence, and while on the other hand, repeating the oft repeated verbal assurances of sweet reasonableness, assurances which the Tamil people have regrettably come to regard through sheer experience as unworthy of any credence whatever, fails to indicate any appreciation of, or sensitivity to, the injustices, inequalities, the immense losses and sufferings which the Tamil have been subjected to, and which the Tamils continue to bear day in and day out. More importantly the statement indicates a lack of earnestness on the part of the Sri Lankan State to pay any heed whatever to, or any attempt to heal in any way, the most grievously wounded feelings of the Tamil people. More than one year after the concept of devolution of power found acceptance, with the Sri Lankan Government, it finds itself unable to place even before this conference, a genuine and credible scheme of devolution, and its sheer incapacity to do so, has been constrained to place before this conference in July, at which the Tamil people are represented by all Tamil Liberation Organisations, a scheme none other than that totally unacceptable scheme eventually placed before the All-Parties Conference and rejected not only by the

T.U.L.F. but by even the other Tamil delegations that attended the said conference.

The Sri Lankan Government delegation comprising largely of learned members of the legal profession, no doubt authorised by the State to negotiate on its behalf, nevertheless, not forming any part of the State apparatus, are clearly placed in the most unenviable position, of having to contend with the Sri Lankan State's unwillingness to suggest to the Tamil delegation, any proposal that would constitute a genuine reconciliation between the sovereignty of the Sri Lanka State on the one hand, and the basic principles enunciated on behalf of the Tamil delegation, the legitimacy and validity of which enunciation has already been dealt with.

No measure of advocacy on behalf of the Sri Lankan State can either convince the Tamil people, or for that matter, any section of the right thinking international community, who are aware of the pathetic plight of the Tamils, that the Tamils can any longer continue to live within a State structure that is based upon the rule of the permanent numerical majority of the Sinhala people. To illustrate what I have said I wish to merely advert to one indisputable fact. The 1947 Parliament had 101 members, 95 elected and 6 appointed to represent minority interests not already represented. 33 of the 101 members were non-Sinhalese, 20 of the said 33 were Tamils. There are in Parliament today 168 members, 67 more than in 1947, only 32 of whom, one less than in 1947, are non-Sinhalese members with yet only 20 of them being

Tamils while the balance 136 as opposed to 68 in 1947 are Sinhalese. The Tamil representation in the 1947 Parliament was 20, it continues to be static at 20 in the 1985 Parliament (16 of us are no longer there) and in fact take the view that it is of no use to be any longer there, while Sinhala representation which was 68 in the 1947 Parliament has now doubled itself and stands at 136. This is democracy at work in Sri Lanka. I do not propose to go into the questions of how this happened, or why this happened or into the numerous injustices and inequalities, which have been perpetrated on the Tamil people and which, you learned gentlemen, I sincerely wish, would not seek to perpetuate. I would only ask you gentlemen to ask yourselves in your wisdom, whether you would ever be a willing party to continue within a State structure that is constituted on the permanent racial majority of a particular people, (quite apart from everything else that has happened to the Tamils) if you were Tamils yourselves.

Sri Lankan leadership for whatever reason, have not been able to keep their assurances in relation to the Tamil people. This again, is an incontrovertible fact. From the national level, we have now moved to the international level, but this deficiency on the part of the Sri Lankan leadership persists. The Tamil people can never be expected to pay the price for this deficiency on the part of the Sri Lankan leadership. We as a people are facing annihilation, we are deeply conscious of that but there can be no surrender. We demand that we be afforded the right to live with a sense of equality with dignity and self-respect which certainly cannot be within the existing State structure.

Certain statistics have been placed before this conference by the Leader of the Sri Lankan Government delegation yesterday. He has stated that these statistics were based on the 1981 census I regret to have to point out that the Leader of the Sri Lankan delegation has been misled in regard to the figures in respect of the Trincomalee district. I wish to now give the correct figures in respect of the Trincomalee district based on the 1981 census.

Sri Lankan Tamil	—	33.77%
Sinhala	—	33.62%
Sri Lankan Moor	—	28.97%
Indian Tamil	—	2.63%
Others	—	0.98%

Since the figures in respect of the Trincomalee district have had to be raised in this way, I shall now proceed to give the conference the figures pertaining to the district from 1827 Well-nigh 160 years ago.

The religious composition of the Trincomalee district as at 1827 was as follows:—

1. Hindus	—	74.02%
2. Moors	—	16.93%
3. Christians	—	7.73%
4. Buddhists	—	1.30%

(All Hindus and most Christians were Tamils. All Moors were Tamil speaking, and Buddhists were Sinhalese.)

The next census on the population basis was in the year 1881 and I shall now give you the figures as from 1881. The Ethnic group here in below referred to as Muslims are Tamil speaking.

1881

1. Tamil	—	64.84%
2. Muslim	—	25.88%
3. Sinhala	—	4.21%
4. Others	—	(Burgher Malay etc. 5.00%)

1891

1. Tamil	—	66.48%
2. Muslim	—	24.96%
3. Sinhala	—	4.30%
4. Others	—	4.24%

1901

1. Tamil	—	60.01%
2. Muslim	—	29.03%
3. Sinhala	—	4.22%
4. Others	—	6.71%

1911

1. Tamil	—	57.90%
2. Muslim	—	32.64%
3. Sinhala	—	3.82%
4. Others	—	4.94%

1921

1. Tamil	—	54.48%
2. Muslim	—	37.65%
3. Sinhala	—	4.38%
4. Others	—	3.45%

After 1921 there was no census till 1946 on account of hostilities due to the out break of the Second World War. In the census in 1946 and thereafter the figures were as follows:-

1946

1. Tamil	—	44.51%
2. Muslim	—	30.58%
3. Sinhala	—	20.68%
4. Others	—	4.22%

1953

1. Tamil	—	44.70%
2. Muslim	—	34.10%
3. Sinhala	—	18.22%
4. Others	—	2.62%

1963

1. Tamil	—	39.10%
2. Muslim	—	30.79%
3. Sinhala	—	28.90%
4. Others	—	2.62%

1971

1. Tamil	—	38.15%
2. Muslim	—	32.05%
3. Sinhala	—	28.80%
4. Others	—	0.98%

1981

1. Tamil	—	36.41%
2. Muslim	—	28.97%
3. Sinhala	—	33.62%
4. Others	—	0.98%

One would see from the above figures that the Sinhala population from 1827 upto about the 1930's, for over a period of a century, varied from 1 to under 5%. The changes in the Tamil and Muslim population were no doubt attributable to varying rates of natural increase, it being well known that the Muslims produce faster than the Tamils. The increase in the Sinhala population in 1946 to 20.68% was due to the outbreak of the Second World War, and was caused by the temporary exodus of the indigenous Tamils (Trincomalee was bombed during the War) and the influx of Sinhalese labour for various essential war services. The first census after the cessation of the war in 1953 witnessed a decline in the Sinhala population to 18.22%, the Sinhalese who had come into Trincomalee for essential services during the war were departing to their home districts.

It is common knowledge that State-aided colonization in the Trincomalee district commenced in the early 1950s. The changes that have occurred in the demographic composition of the Trincomalee district, by reason of State-aided colonization to the prejudice of a people who have long inhabited the district, constitute the basis for the rational that State-aided Sinhala colonization of districts-termed traditional Tamil districts - for the reason that the Tamils have traditionally inhabited in the large, such districts should not be pursued.

This principle was accepted by Prime Minister Bandaranayake in 1957 when he accepted that "in the matter of colonizations schemes the powers of the regional councils shall include the power to select allottees to whom land within their area of authority shall be alienated and also power to select personnel to be employed for work on such schemes".

In 1965, Prime Minister Dudley Senanayake accepted that in the selection of allottees the following guidelines would be adopted :—

"The land development ordinance will be amended to provide that citizens of Ceylon be entitled to the allotment of land under the ordinance. Mr. Senanayake further agreed that in the granting of land under colonization schemes the following priorities be observed in the Northern and Eastern provinces:

- (a) Land in the Northern and Eastern provinces should in the first instance be granted to landless persons in the district.
- (b) Secondly, to Tamil speaking persons resident in the Northern and Eastern Provinces.
- (c) Thirdly, to other citizens in Ceylon, preference being given to Tamil citizens in the rest of the island."

Neither Prime Minister Bandaranayake nor Prime Minister Dudley Senanayake nor President Jayawardene who partook actively in the 1965 Accord were oblivious to factors relevant to this question when such agreements were arrived at.

At this stage I wish to raise certain questions with the Sri Lankan Government delegation. Is it not clear that when Prime Minister Bandaranayake in 1957 accepted that colonization should be a regional subject, he agreed that the Tamils in the

Northern and Eastern Provinces had a specific interest in preventing the alteration of the demographic composition of their areas. May I also ask whether it was not clear when Mr. Senanayake agreed that in the matter of colonization schemes the second preference should be given to Tamil speaking persons resident in the Northern and Eastern Provinces, he was accepting the position that the Tamils who had long inhabited these Provinces, and who lived in substantial numbers in these provinces, had a specific interest in these areas and that this interest should be recognised. Likewise, when in the third preference, Tamil citizens in the rest of the island were to be given preference to other citizens was not the same principle that I have just mentioned again recognised. These are facts from which one cannot run away. There is nothing curious about the reference to traditional Tamil homelands. I state emphatically that the above principles were accepted by two popular Prime Ministers of Sri Lanka because it was considered by them that the Northern and Eastern Provinces were the traditional homeland of the Tamil people.

Further on the question of colonization, was the united National Party in the dark, when it specifically undertook in its 1977 election manifesto to remedy the grievance of the Tamil people pertaining to colonization which it accepted was one of the main grounds for the emergence of the demand for a separate State,

On the question of the traditional Tamil homeland, it must be remembered that both in the 1972 and 1978 constitutions special provision was made for the use of Tamil as the language of administration in the Northern and Eastern Provinces. Was this not done because it was accepted that the Tamils - the Tamil speaking people resided in very substantial numbers in these two provinces, in which Provinces they had in fact been residing for several centuries, if one might say so from the dawn of history. These are indisputable facts and have to be faced. I would earnestly appeal to the Sri Lankan Government to give its rightful consideration to these facts. I would like to ask the Leader of the Sri Lankan Government delegation what the Tamils living in other parts of the country do when they are beaten up by the Sinhalese. Is it not a fact that when they are so beaten up they run to the Northern and Eastern Provinces because these Provinces are the homeland of the Tamil people in which the kith and kin of these victims live. I

would ask you gentlemen, how you would react, if you were Tamils, if you were seated on this side of the Table. Would not your reactions be the same as ours.

I would also like to give the conference the population figures in respect of the Eastern province in 1946 just before the country became independent. Out of a total population of 279,000 the Sinhala population was under 30,000. The substantial increase in the Sinhala population in the rest of the Eastern Province too is attributable to the implementation of planned State-aided colonization schemes.

Some of the points urged by the leader of the Sri Lankan Government delegation have been far from convincing and not at all reassuring. We shall await his further response on this matter, but let me state on behalf of the Tamil delegation, that Land Settlement and Colonization is a fundamental question to the Tamil people, on which is dependant their very existence and survival-it does not admit of any compromise to their detriment. I have dealt with the extent to which the political power of the Tamils has been eroded in the State structure of the country, as of today, when only two Sinhala members are elected to Parliament from the Eastern Province and none from the Northern Province. One need hardly emphasize the further irretrievable damage that would ensue from the pursuit of the present policies pertaining to Land Settlement and State-aided Colonization.

The Leader of the Sri Lankan Government delegation has referred to the rights of all citizens to settle in all parts of the country and to the whole country being the homeland of all people. Since most of you gentlemen are lawyers I shall refer to the plight of some leading lawyers and well-known citizens who lived in other parts of the country. May I ask you what happened to Mr. K. V. Nadarajah, leading lawyer in Badulla, who was once the Member of Parliament for Bandarawela. Was not Mr. Nadarajah's house burnt and was he not driven out? What was the fate of Mr. S. Nadarajah a leading lawyer and one time Crown-Proctor at Anuradhapura? Was not his house burnt? The fate of more humble Tamil citizens has been much worse. Have they not been attacked during every racial pogrom from 1956. One knows that in many Sinhala districts hardly a Tamil lives today, even if some do live, they live in great fear, prepared and ready to run away to the

Northern or Eastern Provinces at the shortest notice. In this situation, can it be seriously refuted by anyone that the Tamils look upon the Northern and Eastern Provinces as their homeland.

The Leader of the Sri Lankan Government delegation has also chosen to advert to the results of the 1977 General Election, when the United National Party, for whatever reason scored an unprecedented victory in the country, except, in the 19 electorates in which the Tamils were predominant - the United National Party having to be content with just one seat by a bare majority, while the Tamil people unequivocally pronounced their verdict - the Tamil United Liberation Front emerging victorious in the other 18 seats. Since 1977 other elections have taken place in which the Tamil United Liberation Front was a contestant. In the 1981, District Development Council Elections in the Trincomalee district, in a direct contest with the governing party, the T.U.L.F. emerged victorious polling an absolute majority in the whole district. In the Trincomalee city elections in 1977 and 1983 - the T.U.L.F. emerged victorious on each occasion most convincingly, if I might say so trouncing the ruling party which was its major opponent. Why do we have to confine ourselves to the 1977 Elections, why cannot we look at the results in elections which have taken place after 1977. Let me go further back upto 1947 and analyse the results at the elections and by-elections to Parliament from the Trincomalee district between 1947 and 1977. Out of 23 members elected to Parliament during the said period, 14 members were from the T.U.L.F. or its precursor the Federal Party and in 1947, the Tamil Congress, the precursor of the Federal Party, while only nine members whether it be from the United National Party or the Sri Lanka Freedom Party or as independants were returned to Parliament during the said period. A Sinhala member was elected for the first time in the Trincomalee district in 1977 when an unusually large electorate was carved out so as to encompass pockets of Sinhala population created largely by State-aided colonization, so as to ensure the return of only a Sinhala member. Tamil representation was effectively minimised in that way. At the 1982 Referendum, when the Government proposed the extension of the term of Parliament, the T.U.L.F. opposed the extension of the term of Parliament and the Trincomalee district at the Referendum rejected the call for the extension of the term of Parliament. All you gentlemen are aware that after the Referendum the Government held by-elections on the basis of certain

criteria. On the basis of this criteria certain members of the ruling party were called upon to face by-elections. However, a member of the ruling party from the Trincomalee district to whom this criteria applied continues to remain in Parliament even today because of the exemption granted to him, only to him, from the criteria laid by the ruling party for the holding of by-elections. The exemption was granted to him perhaps because he came from the Trincomalee district, and because the Government was not prepared to face a by-election in the Trincomalee district.

It is not without significance that even before the racial holocaust of July 1983 the Tamil people in Trincomalee as from 2nd June 1983 were already facing the most violent aggression from the Sinhala Armed Forces, the Sinhala Police and the Sinhala populace. This situation continues in Trincomalee with further havoc being unleashed against the Tamils. The purpose of such aggression is undoubtedly to bring about the total destabilization of the Tamil population in the Trincomalee district. In the month of July 1983 Tamils from Refugee Camps in Trincomalee were forcibly transported in Ceylon Transport Board buses under compulsion by the Armed Forces at dead of night and removed to the plantation sector where some of the infants had even died. Some of these persons were born and bred in Trincomalee, others who had come to Trincomalee as refugees from the plantation sector had lived in Trincomalee for several years, some for decades. In the months of May and June 1985, around 3500 houses of Tamils - an accepted official estimate - in around 28 Tamil villages in the Trincomalee district were destroyed by the Armed Forces and Government Armed Sinhala thugs known as home guards - all fire arms issued to the Tamils on licenses had been withdrawn earlier - and the killing of Tamils continued. Only as late as 9th August, 8 Tamils in a Refugee Camp in the village of Thiriyai were shot dead by the Armed Forces while they were peacefully engaged in playing cards. Amongst the victims were the Principal of a school, the President of the Cooperative Union in the village and a retired Grama Seveka - village headman,

Is this the type of equality that you have referred to in the course of your statement. The Sri Lankan State by its actions has lost its capacity to govern the Tamil people. The Tamil people resent the rule of the Sri Lankan Government and do not accept it.

The Tamil people have been driven to their present position. The Liberation fighters, our young brothers who are seated at this table have taken to arms because the Sri Lankan Government gave them no other choice - it was their last resort. Many of them have given of their University education. Some of my young friends at this table have done so in order to be able to win justice for the Tamil people. Tamil young men were never known to be prone to violence, they were regarded as the most disciplined and orderly men in Sri Lankan society, committed to the pursuit of their education or actively engaged in agriculture or industry and as persons greatly committed to the welfare of their families. The blame lies fairly and squarely at your doorstep. You are responsible for the present position. You cannot run away from this.

The Tamil people were driven to demand separation. The Federal Party for many years opposed the cry for separation. In fact I remember that in 1961 when the famous Mr. C. Suntharalingam on the cry for separation contested a by-election in Muthur in the Trincomalee district the Federal Party nominated a candidate against him and Mr. Suntharalingam lost his deposit. Likewise, the Federal Party opposed many others who stood for election in the Northern Province on the cry for separation and they were all defeated. Eventually even the Federal Party was compelled by the actions of successive Governments to adopt the demand for the restoration of the sovereignty of the Tamil people.

We the Tamils have come to this conference to

see what you have to offer us. We have strong reservations. Let me be frank, we have strong reservations, even, as to whether a settlement if arrived at will be properly implemented. We nevertheless consider it our duty to meet you, to discuss with you and to consider what you have to offer us. It is our firm view that no acceptable solution that can meet the legitimate and valid aspirations of our people can be evolved within the existing State structure. It is important that this be borne in mind, and that the Government responds to this view of the Tamils in an adequate manner. We have not come here to resolve questions like education, employment, or to be in a position to obtain a bridge here, a road there or some electrification scheme. We have come here to see whether you would submit before this conference a formula which as I have said before would reconstitute the structure of the Sri Lankan State in such a manner that there would be a reconciliation between the concept of the sovereignty of the Sri Lankan State and the principles enunciated on behalf of the Tamil delegation at this conference. I would earnestly request you to approach your task at this conference in this spirit.

It is the duty of the Government to end the turmoil and the bloodshed that prevails in the country. It would be no use asking anyone to lay down arms or asking that training camps be closed down unless the Government is able to come up with genuine and credible proposals that take adequate cognisance of Tamil aspirations. Let me assure you that on our part we shall give our earnest and serious consideration to such proposal.

X

Three Matters of Fundamental Importance

Sept 9, 1985

SHRI RAJIV GANDHI
PRIME MINISTER OF INDIA
NEW DELHI

Dear Prime Minister,

We are deeply grateful for the time and pains you have been devoting to formulate a working paper for the solution of the Tamil problem in Sri Lanka. We were relieved to read your characterisation of the document formulated at New Delhi last week as a "Starting paper." There are certain matters of fundamental importance to the very existence of the Tamil people in Sri Lanka, which the Sri Lankan Government delegation had not agreed to. We would like to place before you brief statements concerning three of those matters in which the Tamil delegation can never compromise:-

1. The Integrity of the Tamil home-land

The Northern and Eastern Provinces have been traditionally recognised as Tamil speaking areas from the days of British rule. This was the position at the time of the British conquest of the Maritime Provinces of Ceylon. Sir Hugh Cleghorn in a report to the Colonial office in 1799 stated as follows:-

"Two different nations, from a very ancient period, have divided the Island. First, the Sinhalese in the Southern and Western parts, from the river Walawe to that of Chilaw; and secondly, the Malabars in the Northern and Eastern districts" ("Malabars" is used to refer to the Tamils.)

Throughout British rule and even after independence the Northern and Eastern Provinces have been treated separately for administration e. g.

recruitment of Divisional Revenue Officers, Assistant Commissioners of local government, local government clerical service etc., For all these purposes the Northern and Eastern Provinces were treated as a separate unit.

Under the Constitutions of 1972, and 1978 the Northern and Eastern Provinces were recognised as a single linguistic entity where in the Tamil language shall also be used as the language of Administration, for the conducting of business by local authorities and in the courts of original Jurisdiction. These two Provinces are predominantly Tamil speaking. The Northern Province is 97% Tamil speaking and in the Eastern Province 75% of the population have Tamil as their mother tongue. In the combined Northern and Eastern Provinces the Tamil speaking people form over 86 percent of the population. In the same way that India has solved its multilingual problem by creating linguistic states the Tamil linguistic area i. e., the Northern and Eastern Provinces should be made into one unit.

The preservation of the integrity of these areas at the homeland of the Tamil people was the basis of the agreements and pacts between the Tamil leaders and the major Sinhala Parties in 1957, 1960 and 1965.

The preservation of the Northern and Eastern Provinces as the Tamil homeland is intimately linked to the security of the lives and property of Tamil people. After every wave of violence several thousands of Tamils have returned to these areas and sought permanent settlement there. After the island-wide violence against Tamils in 1958, 1977, 1981, and 1983 the Government had to transport hundreds of thousands of Tamils who had sought refuge in camps, by ships or in convoys overland to

the Northern and Eastern Provinces. Since 1977 as a result of repeated pogroms against Tamils in the Sinhala areas over 2,00,000 Tamils from the Plantation areas and several thousands from other areas have become permanent residents of the Northern and Eastern Provinces.

When the Tamils in these areas became targets of attack by the Sinhala Armed Forces they started fleeing across the sea to South India. The influx of Tamil refugees into India did not take place prior to 1983 because all the refugees from the other seven provinces were able to live in safety in these two provinces. The refugees in India can go back only to these two Provinces and if they are to be rehabilitated and enabled to live in safety the creating of a unit consisting of these two Provinces with adequate powers in the hands of the Tamils is essential. A substantial number of these refugees are youths between the age of 18 and 30. They have to be rehabilitated on a planned basis over the entire Tamil homeland and not in one province. The Sinhala Government will never do this and the return of these refugees to their 'homes' will prove elusive.

Historically the Northern and Eastern Provinces have been predominantly populated by the Tamil people. In 1921, according to the Government Census, Tamils constituted an absolute majority of every district in Northern and Eastern Provinces viz., Jaffna, Mannar, Vavuniya, Trincomalee and Batticaloa districts. (The present Amparai district was part of the Batticaloa district till 1960). In the entirety of the Eastern Province the Sinhala population was less than 5 per cent. State sponsored colonisation of the Tamil areas with Sinhalese has resulted in the erosion of the territorial base of the Tamils. (This is dealt with fully in the section on land policy). However, Tamils today constitute 92.5 percent in the Northern Province and 42.1 percent in the Eastern Province and 68.70 percent of the Northern and Eastern Province taken together. The balance 18 percent of the 86 percent of Tamil speaking people are Muslims. Given the chance the vast majority of the Muslims will throw in their lot with the Tamils and if devolution of power to the Tamil linguistic unit becomes certain, suitable arrangements with the total support of the Muslims in the Eastern Province can be made. Their leaders from the Province have assured us of this. Fear of reprisals against Muslims in the other seven Provinces (Who are two-thirds of the total Muslim population in the Island) is what stands in

the way of their openly identifying themselves with the Tamils.

The vast majority of the people of these two Provinces have democratically signified their desire that these areas be treated as the Tamil homelands, in the elections to the District councils in 1981. The T.U.L.F. got an absolute majority of the votes cast in the Jaffna, Vavuniya, Mannar, Mullaitheevu, Trincomalee and Batticaloa districts. The only exception was the Amparai district which is most affected by Sinhala Colonisation. The absolute majority that the T.U.L.F. got in the Trincomalee District is an indication that a majority of the Muslim voters also had made common cause with the Tamils. In the Batticaloa district more than two-thirds of the voters voted for the T.U.L.F. in the District Development Council Elections. In the Trincomalee district elections were held to elect 23 members to Parliament since 1947. 14 of these members were from the Tamil Parties, three from the U.N.P., three from the S.L.F.P. and three were independents with Tamil support. It was only in 1977 that a Sinhalese member of Parliament was elected from the Trincomalee district for the first time. In addition to all these reasons Trincomalee has to form part of the Tamil linguistic unit for reasons of geographical contiguity.

Dr. H.W. Javawardene stated at the Thimpu Conference, on 12th August 1985 that the Northern and Eastern Provinces "Would in effect cover approximately 30 percent of the land area and 60 percent of the sea-Coast of Sri Lanka." In evaluating the land mass which should equitably constitute the Tamil Homeland, we should have regard to the fact that the entirety of this land is in the dry zone and is substantially undeveloped. Even in this area a substantial percentage of the irrigable and developed land has been settled with Sinhala people (e. g. Padaviva, Allai, Kantalai, Pavatkulam, Mahavilankulam and Gal-oya schemes.) On the other hand no Tamils have been settled in any of the irrigation schemes outside the North and East. In the Amparai District the major part of the irrigable land has been settled with Sinhala people. It has become almost impossible for the Tamils to own property or to earn a living outside the North and East. The Northern and Eastern Provinces are economically backward and do not enjoy the infrastructure and the resources of the rest of the country. Thus it will be seen that no prejudice is caused to the Sinhala people by the incorporation of the two Provinces into a single unit.

II. DEVOLUTION OF POWER IN RESPECT OF LAND

The statement is intended to be a response to the draft paper, prepared by the Sri Lankan Government Delegation, on the Devolution of power in respect of Land, and also amplifies the Tamil point of view.

INTRODUCTION :

I. Land has been one of the major areas of friction. Its history relates back to the early 1950s, when major colonisation schemes commenced. Its origin is of a much earlier date, than other areas of friction. Policies pursued hitherto, have endangered the very existence of the Tamils. Their survival is almost wholly dependent upon a just resolution of this question.

II. Sharing of power, through Devolution, would mean that Power is transferred to the Devolved Unit in respect of specified subjects. This, in effect, means that certain subjects will come under the authority of the devolved unit. In respect of a devolved subject, unless there be valid reason why a specified functional area has to be retained by the Centre, functions related to a devolved subject should not be withheld from the devolved unit. The subject has such, should be devolved.

III. Sharing of power through Devolution, also means, that, in regard to the Power transferred, such power would be independently exercised only by the devolved unit and that the Centre would not have the right to exercise such power, nor to monitor review or revise the exercise of such power by the devolved unit.

These basic tenets have to be observed if the irksome question relating to Land is to be resolved through the means of Devolution of Power. It would be a frivolous exercise to approach this question otherwise.

IV. Any attempt to sustain the supremacy of the majority nationality, by the allocation of Natural Resources on a preferential basis, to the deprivation of the minority nationality, and, in such a manner, as to erode the political rights and interests of the minority nationality, even in parts of the country in which such minority nationality has well recognised and indisputable claims, is unjust, and cannot be accepted. Rational and Equitable

principles have not been followed hitherto in the matter of the sharing and management of National Resources, particularly in relation to Land.

V. The overall development plan of the devolved unit would encompass the management and utilization of its natural resources, in appropriate time-frames based on objective and scientific criteria, in the best interests of all the people who live within its area of authority and the country as a whole. While the devolved unit should have its own institutions of study and research, guidance and suggestions based upon study and research at the Central level would certainly receive the consideration of the devolved unit in the formulation of its over-all development plan.

VI. The principle, that people at the local level should have priority consideration, in respect of entitlement to state land is contained in the Land Development Ordinance. The State of Sri Lanka has consistently violated this principle, and acted in breach of the provisions of the Land Development Ordinance.

VII. It would be the responsibility of the devolved unit to sponsor and finance development programmes that would benefit all sections of its society. It must be expected that the devolved unit would not fail in this regard, and that it would act without consideration of race, religion, or caste.

In its formative years the devolved unit could be trusted to act in a principled way. It should not be assumed that the devolved unit would follow the unprincipled practices of the Sri Lankan State, which has led to the grave situation prevalent in the country today.

With due regard to the above, the following proposals are made :-

Powers of the Devolved unit. other institutions within territorial limits of Devolved unit. ordinances, and Laws pertaining to Land, and Statutory functions.

I. Broadly speaking, the devolved unit should have command over the natural resources within its area of authority, Considering, the Grievance in relation to Land Alienation, authority over land is a pre-requisite not merely to the removal of one of the most vital areas of friction, but is also, basic to

planned socio-economic development, by the devolved unit within its area of authority.

II. The main devolved unit should be vested with power over land, within its area of authority. (It may, in the exercise of its discretion, entrust functions pertaining to land and other allied matters to other institutions within its area of authority.)

III. All powers pertaining to Land in all its aspects, including Land Settlement under all irrigation schemes, and other forms of Land settlement, falling within the territorial limits of the devolved unit, and all other forms of Land use, including land development, and land acquisition, within the said territorial limits will be a devolved subject.

IV. In regard to a devolved subject there can be no assignment of functions by the Centre to any other institutions within the territorial limits of a devolved unit nor any separate allocation of funds to any such institution, for any purpose related to a devolved subject.

V. Allocation of funds by the Centre in regard to devolved subjects, will be only to the main devolved unit. All funds, will be credited to the Consolidated fund of the main devolved unit. Such main devolved unit may in its discretion assign to any other institution, within its territorial limits, such funds as may be necessary for the performance of any function entrusted by such unit of devolution to the said institution.

VI. Classification of settlement schemes based upon extent is unnecessary in the context of land in all its aspects being a devolved subject.

VII. All statutory functions presently performed by the Minister for Lands and Land Development, the Land Commissioner, the Government Agent, Land Officers, and other statutory functionaries within the territorial limits of the devolved unit under all existing laws should be devolved.

VIII. At the Thimpu Conference in July 1985, the subject "State Land and Fore-Shore" was added by the Sri Lankan Government Delegation to the subjects and functions that should be exclusively reserved by the Government. (Added to Annex-I-Report of Committee-A). This formulation is totally unacceptable. Power over Land is generally a devolved subject, for e.g. In the Constitution of India "Land, that is to say, rights in or overland,

land tenures,.....transfer and alienation of agricultural Land, Land improvement and agricultural loans, Colonisation" is a State subject. This principle should be followed.

IX. Along with the subject of land in all its aspects as stated above, there should be devolved subjects such as Agriculture, Agrarian services, Irrigation, Animal Husbandry and Housing which are related to the planned and efficient utilization of land. These subject are generally devolved subjects. Statutory functions presently performed by functionaries in the above subject areas, under different statutes shall be devolved.

Land Grants

I. The extent of land in the Northern and Eastern Provinces vested in the Land Reform Commission under the land Reform Law is not substantial, and constitutes only a minor fraction of the land vested in the Land Reform Commission throughout the Country. Nevertheless, the functions performed by the Central Minister should be devolved, and such Land should be vested in the Devolved Unit.

Non-Statutory Functions

I. Non-statutory functions related to Land and the other subjects above referred to are ancillary to the main functional areas, and would therefore inevitably fall within the purview of the subject devolved. No special enumeration of Non-statutory functions is required. Once a subject is devolved, all non-statutory functions related to that subject, shall come within the authority of the devolved unit

National Settlement Schemes

I. The phrase "National Settlement Schemes", is new. Hitherto, Land settlement has taken place either under minor or major irrigation schemes, based upon the extent of land that would benefit under a particular irrigation scheme. The expression "National Settlement Schemes", and the introduction of the element of the "National Ethnic Ratio" is not in keeping with the understanding that has prevailed hitherto, in regard to Land Settlement.

II. It is in violation of the principle accepted in the Bandaranayake—Chelvanayakam Pact, that in the matter of colonisation schemes, the powers of

the regional councils shall include the power to select allottees to whom lands within their area of authority shall be alienated and also power to select personnel to be employed for work on such schemes.

III. It is also in violation of the principle accepted in the Dudely Senanayake—Chelvanayakam Pact that in the granting of land under colonization schemes in the Northern and Eastern Provinces. Tamil speaking persons resident in the Northern and Eastern Provinces and Tamil citizens in the rest of the island were entitled to certain priorities.

IV. The above pacts did not distinguish between minor or major irrigation schemes, and since the bone of contention at the time of the making of the pacts were the major colonization schemes, then, in the process of implementation, the expression "Colonization Schemes" clearly referred to the matter in issue at that time.

The effect of the non-observance of these pacts to the Tamil people has been most detrimental. The increase in the Sinhala population in the period since independence in the Eastern Province has been 883.13% from 27,556 to 243,358, while the island wide increase in the Sinhala population during the same period has been 237.70% from 4,621,507 to 10,985,666.

The increase in the Tamil population in the Eastern Province during the said period has been 302.40% from 136,059 to 411,451. while, the increase in the Muslim population in the same period has been 288.94% from 109,024 to 315,021.

(The figures are based on the census of the year 1946 the year prior to independence, and the year 1981, the last available census).

V. The United National party in its election manifesto of 1977 identified "Colonization" as one of the major grievances of the Tamil people which had led to the demand for a separate state, and undertook to remedy this grievance.

VI. Throughout, the long history of the issue of Colonization the expression "National settlement Schemes", and the element of the "National Ethnic Ratio" were never in usage. On the contrary, though not implemented what was accepted was the principle of preference for Tamil Speaking persons in

respect of land in the Northern and Eastern Provinces. The present proposal of "National Settlement Schemes" and the element of "National Ethnic Ratio" would institutionalise the hitherto resisted violation of this principle.

VII. The Tamil people contend that the concept of "National Settlement Schemes" and the element of the "National Ethnic Ratio" will further adversely alter the demographic composition of the Northern and Eastern Provinces. The implementation of this concept, through whatever formula, would in effect mean all land for the Sinhalese in the rest of the country and the "National Ethnic Ratio" or at the best, some slight improvement thereon, in the Northern and Eastern Provinces. This is just not acceptable.

VIII. The Tamil people do not accept the introduction of the element of the "National Ethnic Ratio" in so-called "National Settlement Schemes". The Tamil people oppose the introduction of the concept of "National Settlement Schemes" or the element of the "National Ethnic Ratio" in the Matter of Land settlement within the territorial limits of the devolved unit.

IX. The Mahavelli Development Scheme is the only major irrigation scheme comparable with irrigation under inter-state rivers, in other countries, and is intended to benefit lands in several parts of the country. In view of the utter impossibility for Tamils to hold land in any Land Settlement Scheme outside the Northern and Eastern Provinces, the Tamils had enunciated the principle, that in respect of Land alienation under irrigation schemes, such as the Mahavelli Scheme, the cumulative percentage of the Tamil and Muslim entitlement to the totality of the land that would benefit under such a scheme throughout the country should be allotted to them in areas within the Northern and Eastern Provinces. Previous experience of the manner of implementation of Colonisation schemes in the Northern and Eastern Provinces also compelled the Tamil people to enunciate the above principle. It is the contention of the Tamil people, that the above principle which is just by any standard, would also ensure that the demographic composition of the Tamil areas is not further eroded through Land Settlement under the Mahavelli Diversion Scheme. (Vide:- Separate paper on Mahavelli Ganga Development Scheme.)

X. The Principle enunciated above, in respect of land settlement under that Mahavelli Development Scheme should be observed in the Eastern Province. In the unlikely event of any land in the Northern Province benefiting under the Mahavelli Development Scheme, at a future date, observance of the same principle would be feasible, and should be ensured on a consideration of the total extent of Land receiving irrigation facilities under major irrigation schemes in all parts of the country. The commencement date for such consideration and the definition of the expression "Major Irrigation Schemes" in this context should be determined by mutual agreement.

XI. Since Land in all its aspects, would be a devolved subject, implementation of Land Settlement Programmes under the Mahavelli Diversion scheme within the Territorial limits of a devolved unit would be within the ambit of a devolved subjects.

XII. Implementation of the Mahavelli Development Scheme is by the Central Government. Maintenance of irrigation structures and systems and the infrastructure that falls within the scheme would also be by the Central Government or, if considered appropriate, maintenance of structures and systems within the territorial limits of a devolved unit could be entrusted to the devolved unit and the funds required specifically allocated to the devolved unit. Likewise, maintenance of infrastructure could be entrusted to the Devolved unit and the necessary funds allocated.

National Resources Development Commission

I. The National Resources Development Commission in so far as it seeks to curtail or circumscribe in any way the exercise by the devolved unit of powers in relation to a devolved subjects is unacceptable. Ecological balances can be maintained, and environmental consideration duly heeded by a devolved unit, without interference by such a commission.

II. The formulation of this new proposal, at this time, when devolution is under consideration militates against the very essence of devolution, and is seen as an effort to stifle the exercise of devolved powers.

III. The proposal that the National Resources Development Commission should consider and

approve of settlement schemes proposed by the devolved unit reveals the true motive for the setting up of this commission. This proposal would wreck the whole concept of devolution. The Tamils oppose this proposal.

Power reserved to the Minister

I. The Central Minister will have no powers in respect of a devolved subject, within the territorial limits of a devolved unit. There will be no reserved powers on subject of land.

Staff

I. The staff responsible for land administration within the territorial limits of the devolved units will be the Staff of the devolved unit and subject to its disciplinary control. Such staff could be staff which has been seconded for service in the devolved unit or staff which has been directly recruited to serve the devolved unit.

II. Neither the Government Agent, nor the Head of the Department whose officer/Officers have been seconded for service to a devolved unit would exercise direct disciplinary control over any member of the staff in the service of a devolved unit.

III. In the case of an officer seconded for service in the devolved unit, the Head of the Department to which such officer is permanently attached would act, except for valid reason, in keeping with the recommendation of the executive of the devolved unit in regard to the officers continuance or otherwise in the service of the devolved unit, his increments, promotional prospects etc.

IV. The matters in respect of which the Head of the Department may exercise control over the officer/officers seconded could be worked out, but, cannot be, in relation to the performance by the officer of duties and functions in respect of the subject devolved.

V. In respect of other aspects of the service of such officers, during the period of their attachment to the devolved unit co-ordination between the Head of Department to which such officer is permanently attached, the executive of the devolved unit and the Public Services Commission of the devolved unit may be necessary.

VI. Unless the devolved unit is able to exercise effective control over its staff, devolution would become a mockery. The authority of the Executive of the Devolved Unit over its staff must be unquestioned.

Foreign Funded Projects

I. The devolved unit would have the power to mobilise financial resources by receiving grants and raising loans.

II. Whether any procedures, had to be laid down, in respect of the receipt by a devolved unit of foreign funded grants and loans and if so such procedures may be determined.

III. If such foreign funded loan or grant relates to a specific project within the scope of a devolved subject, and the project falls within the territorial limits of a devolved unit, the devolved unit would be the implementing agency.

IV. If such foreign funded loan or grant is to the Centre and relates to a specific project within the scope of a devolved subject, and falls within the territorial limits of a devolved unit the fund will be transferred to the devolved unit and the devolved unit would be the implementing agency. The sanction of the funding country or agency may have to be previously or latterly obtained.

V. If such foreign funded loan or grant is to the centre and is a block allocation related to a particular field of activity in the whole country, and such activity falls within the scope of a devolved subject, then the amount apportionable to a devolved unit in consultation with the executive of the devolved unit shall be transferred to it and the devolved unit shall be the implementing agency for such activity.

III. THE SUBJECT OF INTERNAL LAW AND ORDER

Upto the early nineteen-fiftys, a fair number of Tamils served in all ranks of the Island's Police force. There used to be direct recruitment to the rank of Assistant Superintendent of Police and a fair number of Tamils were recruited to that rank.

The number of Tamil police officers of all ranks made it possible for a sufficient number of them to be posted to all Police Stations in the North and East and to some stations in the plantation areas.

These Tamil Police officers were never found wanting in maintaining law and order in the Tamil areas. Even during times of political stress and mass agitation, Tamil Police officers strictly maintained peace and order and even took action, wherever necessary, against Tamil politicians.

But there was a distinct change since the late nineteen fiftys, when the Police force became politicised and when racial and political considerations came to play an increasingly important part in recruitment. There was a sharp decline in the recruitment of Tamils to the lower as well as higher rungs of the Police force. In the nineteen eightys a bare 5% were Tamils in the Police force and a miserable 2% in the Armed Services.'

This racist composition was naturally reflected in the conduct of the police towards the Tamil People. There was a progressive deterioration in the standards of police behaviour, when they no longer observed neutrality as between the Sinhalese and Tamils. At first, passively and later actively, the Police favoured the Sinhalese, as against the Tamils.

August 1977 witnessed the sad and tragic spectacle of the Police getting involved directly in the attacks on the Tamil People. In Jaffna, they shot at and killed Tamil civilians: they set fire to the Jaffna, market and other business premises. In other parts of the island, they actively encouraged Sinhalese hoodlums to attack and kill or injure Tamils and destroy the property of Tamils.

From then on, at frequent intervals, the police and Armed Services operated jointly to kill, maim and rape Tamils in the North and East of the Island. Property worth many millions was looted or destroyed. The burning of the Jaffna Public Library with 90,000 books, the destruction of news paper offices and presses, the burning of house of Members of Parliament and party offices, the killing inside houses and along streets of 53 innocent Tamil civilians in one morning in July 1983—all these and many more were the reprehensible actions of the Police and Armed Services.

The genocidal attacks on the Tamil people between July 1983 and today are too well known to need repetition. On a modest estimate, over 5,000 Tamil civilians have been brutally murdered: whole villages have been destroyed, many thousands have been rendered homeless and destitute. This is the

grim record of the Police and Armed services of the island.

Solutions to problems will naturally differ according to differing circumstances and situations. The intense hatred between the Sinhalese and Tamils, the trail of bitterness left by the tragic events of 1983 onwards, a Police force and Armed services who have grown to be dangerously trigger-happy, a feeling among the police and armed services, which has been nurtured by the political leadership, that they can commit any crime against the Tamils with impunity, the language barrier-all these have to be considered when a solution to the law and order problem in the Tamil Areas is worked out.

In this background, the need for a Regional Police force for the Tamil areas is an inevitable conclusion. Whatever be the form of Government, be it federal, quasifederal or unitary, a police system with separate police forces that are locally administered, has been set up. England, Australia, United States, India all have such police systems, although their systems of Government differ. There is every reason for such a system in the island.

The following measures are suggested to achieve the twin purposes of maintaining law and public order and ensuring the security of the Tamil people in the Tamil areas.

1. In the list of subjects to be transferred to the devolved unit there shall be among others,

a. Public order (but not including the use of any naval, military or air force.

b. Police

c. Jurisdiction and power of all courts, except the Supreme Court and the Appeal Court, with respect to any of the matters transferred to devolved unit.

2. There shall be constituted in each Region police force which would be locally recruited and subject to the control of the devolved unit. Such a force will be called the Regional Police force.

There shall also be a Central Police force.

3. The Superintendence of the Police throughout the Regional shall vest in and be exercised by

the devolved unit and except as authorised by such council under the provisions of this law, no person, officer, or court shall be empowered to supercede or control any police function.

4. The Devolved unit may pass laws providing for preventive detention of persons in the state for reasons connected with the security of a Region the maintenance of public order or the maintenance of Supplies and services essential to the community. Such laws shall supercede any other law on this subject.

5. Composition of Regional Police force : The Regional Police force shall consist of :-

a. One Deputy Inspector General of Police (DIG)

b. Two Superintendents of Police (DSP)

c. As many Assistant Superintendents of Police and other ranks, as may be decided from time to time by the Devolved unit,

The DIG shall be posted to the Region by the Inspector General of Police (IGP) in consultation with the Chief Minister of the Region and as long as he serves in the region he shall be responsible to and under the control of the Chief Minister.

The Superintendents of Police shall be selected by the IGP in consultation with the Chief Minister from among the Assistant Superintendents of the Region.

Direct recruitment shall be done locally at three points. (a) Assistant Superintendent of Police (b) Sub Inspectors (c) Constables.

The Superintendents of Police of the Region shall be promoted as DIGs.

6. Recruitment, transfer and disciplinary control : Qualifications, mode of recruitment, standards of conduct and conditions of services shall be laid down by the devolved unit from time to time.

Two alternate bodies are suggested to perform the above function.

a. A Regional Police Committee consisting of the (Minister of the Executive Committee) in charge of the subject of police, one other elected member

of the council, the DIG, a Judicial officer and a permanent citizen to be nominated by the Chief Minister or

b. The Regional Public Service Commission which when sitting to perform the above functions shall co-opt the DIG and a judicial officer.

7. Training:- There shall be Regional training centres but for training in specialised subjects like forensic medicine, finger print identification and ballistics there shall be a central training centre.

8. Powers etc:-

Members of the Regional Police Force shall be deemed to be police officers under the Police ordinance and the criminal procedure code. They shall also be deemed to be public servants for purposes of the penal code and the bribery Act.

The Regional Police Force would be responsible for the maintenance of law and order within the region and shall more specifically engage in-

a. The effective protection of persons and property within the Region.

b. The detection, investigation and prevention of all crimes within the Region.

Investigation of offences against the State, offences in respect of currency and stamps may be undertaken by the Central Police force.

In respect of any offence which the Regional Police Force is empowered to investigate, where the Attorney-General is of opinion that such investigation involves issues of a complex and technical nature he may in consultation with the Chief Minister direct that such investigation be undertaken under the supervision of the criminal investigations department.

c. Enforcing the laws passed by the devolved unit.

9. Special powers of Chief Minister:-

If in the opinion of the Chief Minister there is a break down in law and order within the Region or any part thereof, he may request the assistance of the Central Police force to restore

and maintain order but such unit of the Central Police force shall be responsible to the devolved unit, during its presence in the region.

10. President's powers :

Where the Chief Minister requests or where the President publishes an order in terms of Part III of the Public Security Act that Public Security in any area has been endangered he may in consultation with the Chief Minister send all or any of the armed forces or the Central Police force for the maintenance of public order in that area,

*Proviso:

Provided that in the deployment of the Armed forces in any area at times of emergencies, the choice of the regiment of the Armed forces, to be so deployed, shall be such as to ensure that there is no repression of any other ethnic group in a Region by any section of the Armed Forces.

ARMED SERVICES

To ensure the security of the Tamil people it is not sufficient in the present climate, to have a Regional Police force only. Certain measures in respect of the Armed services too have to be adopted.

1. The Armed services must be withdrawn from the North and East. The position can be reviewed by the President in consultation with the Chief Minister after a period of five years.

2. The composition of the armed services shall be brought in line with the national ethnic ratio within five years.

3. The creation of a separate Tamil and Muslim regiment shall be undertaken.

JUDICIAL POWER

There is yet another aspect of internal law and order that needs consideration. Judicial power in the Region must go along with legislative power and control over the police.

1. There shall be a High Court in the region.

2. Other subordinate courts and tribunals as may be determined by the devolved unit shall be established.

3. The High Court Judges shall be appointed by the President, in consultation with the Chief Justice and the Chief Minister.

4. Other judges and judicial officers shall be appointed by the judicial Services Commission in consultation with the High Court judge and the Chief Minister. Among other qualifications a sound knowledge of the Tamil language shall be a necessary qualification.

5. Officers and employees of the High Courts, other courts and tribunals shall be appointed by the State Public Services commission in consultation with the Senior High Court Judge.

6. The Devolved unit may make laws as to the conditions of service of such employees and officers.

PLANTATION AREAS

The Superintendent of each estate in consultation with Trade Union representatives select a set

number of volunteers from among the employees to ensure the security of such employees. They shall be trained in the use of fire-arms, They shall be under the direct control of the Superintendent of the estate and the overall supervision of the DIG of the province in which the estate is situated.

We have placed before you in some detail the reasons for our position on three vital matters affecting the Tamil people. We respectfully state that these are vital for the survival and well-being of the Tamil people. You will please appreciate that we possibly cannot swerve from this position. We earnestly request you to impress on the Sri-Lankan Government the Justice and reasonableness of our position.

Your Sincerely,

M. SIVASITHAMPARAM
President
TULF

A. AMIRTHALINGAM
Secretary-General
TULF

ANNEXURE :

Mahaweli Ganga Development

The master plan envisages the development under irrigation of 900,000 acres of land. The said extent of 900,000 acres is said to be made up of 246,200 acres of existing lands and 653,800 acres of new lands. The lands to be benefited are grouped under fourteen irrigation systems designated A to M. The lands to be benefited in the Eastern Province are covered by systems B, A, and M and the land to be benefited in the Northern Province are covered by systems J, K, L and Part of I. Details of the above are as follows :

EASTERN PROVINCE

Maduru Oya (Batticaloa District):	Existing Lands	- 9,280 acres
(Part of system B)	New Lands	- 43,720 acres
	Total Lands	- 53,000 acres
Kandakadu (Trincomalee & Batticaloa Districts)	Existing Lands	- 14,000 acres
(System A)	New Lands	- 56,000 acres
	Total Lands	- 70,000 acres
Yan Oya (Trincomalee District)	Existing Lands	- 1,500 acres
(Part of system M)	New Lands	- 18,500 acres
	Total Lands	- 20,000 acres

From the above it would appear that the total new land available in the Eastern Province is 118,220 acres.

Of the above, around 9500 acres, perhaps more, under system A (Kandakadu) is to be reserved for sugar-cane. This reduces the total extent of new land available to 108,720 acres. Portions of this land on the ground have already been occupied by members of the different ethnic groups—Sinhala, Tamil and Muslim—mainly by Sinhala, and on the basis that the lands so occupied would be about 10% of the new land available, the balance extent available for alienation would be around 98,000 acres.

Of the above schemes, considerable work has been done on Maduru Oya (part of system B) and some work in Yan Oya (Part of system M.) No work has yet been commenced in Kandakadu (system A). Alienation of land under the above projects has not yet commenced, though it is likely that preliminary work for alienation is in progress and that alienation could take place without much delay, in the completed schemes.

However, in respect of the land available in the Eastern Province, though the position reflected in the Master Plan is as above, the following further points need to be considered.

1. Both Maduru Oya (system-B) and Yan Oya (system-M) are reservoirs within the Eastern Province, each with its own independent catchment area. On restoration, each one of these reservoirs, independent of Mahavelli water could irrigate substantial extents of Land-estimated to be about 40 to 50% of the total extent that would be brought under irrigation with the aid of Mahavelli water. Such extents, cannot be said to benefit from Mahavelli water.

2. Certain independent village tanks in the Eastern province, by reason of their proximity, to the Maduru Oya (system-B) have been incorporated with the Maduru Oya Scheme, as part of the Mahavelli Project, and the extent of land independently irrigable under such tanks is now included in the total extent of land that will become irrigable under such Mahavelli Project. Instances of such tanks are (1) MEYANKALLUKULAM — once an itemised work now deleted (2) OMADIAMADUKULAM — once an itemised work now deleted and (3) VADAMUNAI on which further development work has been stopped — all of which are now treated as part of the Maduru Oya Scheme (system B) in the Batticaloa District. The extents of land that would have been irrigated independently by such village tanks, cannot be said to be benefited by Mahavelli water.

3. The Land Use Survey Report of the irrigation Department has raised serious doubts. In regard to the suitability for Paddy Cultivation, of a substantial extent of Land under Kandakadu - system 'A'. Consequent to the Land Use Report, not even the Feasibility Designs have been done. There can be no assumption, that the entire land under Kandakadu (system A) will be suitable for Paddy Cultivation. The present indication is that a substantial extent will not be suitable and therefore not available for alienation. This factor will result in considerable reduction in the extent of land fit for alienation that would receive irrigation facilities, under Mahavelli in the Eastern Province.

The extent of Land that may eventually be available for alienation under the Mahavelli Scheme

in the Eastern Province, and that would benefit purely from Mahavelli water, could be much less than the estimated 100,000 acres.

NORTHERN PROVINCE

The proposed irrigation projects in the Northern Province comprise of systems J. K. L. and part of I. Development of the above projects would take place under the North Central Province Canal (N. C. P. Canal). Particulars of the schemes of the above projects are as follows :

Malwattu Oya Reservoir : Existing
Lands - 19,300 acres.
New
Lands - 16,300 acres,
Total
Lands - 35,600 acres.

Parangi Aru Reservoir : Existing
Lands - 1,000 acres.
New
Lands - 16,800 acres.
Total
Lands - 17,800 acres.

Pali Aru Reservoir : Existing
Lands - 6,100 acres.
New
Lands - 8,000 acres.
Total
Lands - 14,100 acres.

Kanagarayan Aru Reservoir : Existing
Lands - 600 acres.
New
Lands - 19,400 acres.
Total
Lands - 20,000 acres.

Kitagala Reservoir : Existing
(Though this scheme is said to be in the Northern Province in the Development Plan, this position is very much doubted - it is thought that the whole or major part of this scheme is within the North Central Province)
Lands - 19,900 acres.
New
Lands - 76,500 acres.
Total
Lands - 96,400 acres.

From the above it would appear, that the new land available in the Northern Province would be

about 137,000 acres, perhaps only 60,500 acres. However, though eight years have passed, since the commencement of work on the Mahawelli Development Programme, no work not even preliminary work, has been commenced on any one of the above projects, in the Northern Province. From information available, no arrangements whatever, have been made for finances in respect of the above projects. Though the above schemes are said to form part of the Mahawelli Development Plan, grave doubts have been expressed by both politicians and irrigation experts as to whether Mahawelli water will never reach any part of the Northern Province, both for political and technical reasons. The view has also been expressed that these projects in the Northern Province were included in the Development Plan merely to satisfy funding countries and agencies that the Northern Province too would benefit at some stage, under the Mahawelli Development Plan. As of now, development of land in the Northern Province under Mahawelli cannot be looked upon as a reality.

The projects under the Mahawelli Development Plan are listed in the following order :

Project No.	Name of Project
1	: Victoria Multipurpose Complex
2	: Moragahakanda Multipurpose Complex
3	: Maduru Oya Reservoir Complex
4	: Teldeniya Multipurpose Complex
5	: Kotmale Multipurpose Complex
6	: Kalu Ganga Reservoir Complex
7	: Rotalawala Reservoir Complex
8	: Pallwella Multipurpose Complex
9	: Malwatu Oya Reservoir Complex
10	: Yan Oya Reservoir Complex
11	: Randenigala Multipurpose Complex and part N. C. P. Canal
12	: Balance N. C. P. Canal Complex benefiting lands in the Northern Province

The report of the Development Plan states that if the projects have to be taken up as and when resources are made available, the project numbers indicate the recommended order of priority for execution. Resources have not become available for all the projects to be undertaken, and accordingly the N. C. P. Canal benefitting lands in the Northern Province remains as listed above, the last on the list of priorities.

For the reasons stated above, it is more than likely that the projects contemplated in the Northern Province will not be implemented.

In the context of the above, it cannot be disputed that the total land available for alienation in the immediate or even some distant future in both the Eastern and Northern Provinces does not exceed 100,000 acres perhaps much less, the entirety of which extent, in fact, falls within the Eastern Province.

Of the several projects listed above, work has been completed or commenced in many projects benefitting the other Provinces. Even the part of system B - Madura Oya - benefitting the North Central Province, more than the Eastern Province (62,000 acres new land in the N. C. P. as opposed to 43,720 acres in the Eastern Province) has been executed — and the land alienated, if not the entirety — at least over 98% to Sinhalese.

Deducting the 137,000 acres or more correctly, perhaps, 60500 acres new land said to be available in the Northern Province and the 118, 220 acres said to be available in the Eastern Province (in fact about 100,000 acres on the ground) of which 56,000 acres falls within Kandakadu (system A) on which no work has been commenced as yet: (the extent available in the Eastern Province could ultimately be much less) there would yet be a balance of 398,580 acres to 475,000 acres of new land available for alienation in the rest of the country. It is believed that substantial portions of the developmental programme that would benefit this extent, has been completed, or is well in progress.

Other major irrigation development programmes in other parts of the country has been completed during the tenure of office of the present Government or are in progress. It must also be noted that under major irrigation Schemes completed during the tenure of office of the present Government in the Eastern Province, land has been alienated to the Sinhalese on a preferential basis; example -

MAHADIULWEWA of PERIYAVILANKULAM in Trincomalee District :

Sinhala	—	372 allotments
Tamil	—	162 allotments
Muslim (Tamil speaking)	—	38 allotments

This alienation by Government was not in keeping with the demographic composition of the Province or the District, and was executed despite strong protests on behalf of the Tamils and Muslims.

The Government cannot point to any instance where under a major irrigation scheme the Tamils or Muslims have been treated on a just basis.

In the context of the above, the Tamils and Muslims (one-third the entire Muslim population in the country live in the Northern and Eastern Provinces) claim with justification, that the entire extent of approximately 100,000 acres (perhaps, ultimately much less) that would receive irrigation facilities in the Eastern Province in the near future should be reserved for the Tamils and the Muslims. This claim is further buttressed by the fact that past experience has conclusively proved that Tamils cannot hold land in any other part of the country. Tamils who held land in colonization schemes in other parts of the country, for instance, in the North Central Province have been murdered, massacred or driven out. It is common ground now that Tamils do not apply for land in other parts of the country.

Mr. S. Thondaman, Leader of the Ceylon Workers Congress, on behalf of the Tamils of recent Indian origin has indicated to the Government that the percentage of land due to the Tamils of recent Indian origin should be given to them in the Eastern or Northern Provinces.

The total population in the Eastern Province when the country became independent, in terms of the 1946 census was as follows :

Trincomalee District	—	75,926
Batticaloa District (this includes the present Batticaloa & Amparai Districts)	—	203,186
Total population	—	279,112

The break-up was as follows :

Tamil		
Trincomalee District	—	33,795

Batticaloa District (this includes the present Batticaloa & Amparai Districts)	—	102,264
Total Tamil Population	—	136,059

Moors

Trincomalee District	—	23,219
Batticaloa District (this includes the present Batticaloa & Amparai Districts)	—	85,805
Total Moor population	—	109,024

Sinhalese

Trincomalee District	—	15,706
Batticaloa District (this includes the present Batticaloa & Amparai Districts)	—	11,850
Total Sinhalese population	—	27,556

The position in the Eastern Province in terms of the 1981 census is as follows. When this census took place, the original Batticaloa district had been divided into the present Batticaloa and Amparai districts.

Trincomalee district	—	256,790
Batticaloa district	—	330,899
Amparai district	—	388,786
Total population	—	976,475

The break-up is as follows :

Tamils

Trincomalee district	—	93,510
Batticaloa district	—	238,216
Amparai district	—	79,725
Total Tamil population	—	411,451

Moors

Trincomalee district	—	74,403
Batticaloa district	—	79,317
Amparai district	—	161,481
Total Moor population	—	315,201

Sinhalese

Trincomalee district	—	86,341
Batticaloa district	—	10,646
Amparai district	—	146,371
Total Sinhala population	—	243,358

From the above figures, between 1946 and 1981 the Tamil population has increased from 136,059 to 411,451 a 3.02 times increase; the Moors population has increased from 109,024 to 315,201 a 2.89 times increase; the Sinhalese population has increased from 27,556 to 243,358 a 8.83 times increase. The All island increase in the Sinhala population in the said period has been 2.38 times.

This phenomenal increase in the Sinhala population has been as the result of State-aided Sinhala colonization under major irrigation schemes such as the Gal-oya scheme in the Amparai district, Kantalai scheme, the Allai scheme, the Moravewa / Muthalikulam scheme, the Padaviya scheme (part), the Mahadiulwewa / Muthalikulam scheme in the Trincomalee district.

Quite apart from grave alterations, in the demographic composition of the Province, the indigenous Tamils and Muslims of the Province strongly contend, that they have been deprived of valuable land, in a Province which they have inhabited for many many centuries. Likewise, the Tamils and Muslims of the Northern Province and other parts of the country contend that by reason of the Sinhalese being given preferential treatment in the matter of State-aided colonization, even in the Eastern Province, they have been deprived of the opportunity of receiving valuable land for cultivation.

The above facts strongly support the contention of the Tamils and Muslims that the land that would become available for alienation in the Eastern Province under the Mahavelii Development Scheme should be reserved for the Tamils and Muslims.

XI

Proposals submitted to the Government of India

1-12-1985

Shri. RAJIV GANDHI
Prime Minister
Govt. of India
NEW DELHI

Dear Prime Minister,

We are addressing this letter at a time when the Tamil people of Sri Lanka are going through the most critical period in their history. The cessation of hostilities between the Government of Sri Lanka and the Tamil Liberation Groups brought about by the assiduous efforts of the Government of India has broken down. No less than 1500 Tamils - men, women, and children have been killed and about ten thousand houses belonging to unoffending Tamils have been burnt and destroyed or damaged by the Armed forces, Police Commandos and Sinhala home guards in the Trincomalee, Batticaloa, Amparai and Vavuniya districts during the three weeks immediately prior to 18th June, when the ceasefire first came into operation and since then. The killing and destruction has escalated in the last three weeks particularly in the Eastern Province. The pursuit of search and destroy operations by the armed forces in contravention of the ceasefire accord, has led to ambushes by the militants, which in turn have been used as occasions for unleashing unbridled violence against innocent Tamil people and their properties. Recent statements by President Jayawardene and other Ministers make us fear that the violence and massacres by the armed forces will be intensified during the next few weeks, using the sophisticated arms the Sri Lanka Government has purchased in the recent past. It is

to India that the Tamils look to save them from this genocidal attack.

It was at the height of the ethnic violence against the Tamils in July-August 1983 that the late Prime Minister Smti. Indira Gandhi offered her 'good offices to enable a final solution to be reached'. It was her intervention that saved the Tamils from continued massacre at that time. Her efforts, through her special envoy Mr. G. Parthasarathy resulted in the formulation of certain proposals and the summoning of an All Party Conference in Colombo by President Jayawardene. Because of the failure of successive governments to implement agreements entered into with Tamil Leaders over the last three decades, and the futility of protracted negotiations, we had earlier decided not to enter into bilateral dialogue with the Government. We regarded India's offer of good offices and the acceptance of it by the Government of Sri Lanka as bringing a fundamental change in the whole situation and therefore we agreed to participate in the All Party Conference.

We made our position clear at the All Party Conference. We stated: "The position that the T.U.L.F. has taken is that although their mandate in the 1977 elections was for the liberation of the Tamil nation by the establishment of an independent state, if a satisfactory alternative which could meet the legitimate aspirations of the Tamil people and redress their grievances, which gave rise to the demand for a separate state was offered, we could place it before the Party which would take a decision in consonance with the wishes of the Tamil people". This stand of ours was accepted as a reasonable

one by the Government of India and a number of delegations at the All Party Conference.

In accordance with the policy, we did not place any proposals before the Conference. But other proposals based on the suggestions agreed to at New Delhi were placed before the Conference on behalf of the Tamil People. But contrary to all expectations, President Jayawardene went back on the promise, he gave the late Prime Minister Shrimati Indira Gandhi and dropped the proposals formulated in New Delhi in November, 1983 as a basis for the agenda of the Conference. He thus effectively killed the All Party Conference, but the Conference was prolonged because of India's efforts, till he suddenly wound it up on the 21st of December, 1984.

The next round of talks, which materialised in Thimphu through your Excellency's initiative and the efforts of Mr. Romesh Bhandari saw the Sri Lanka delegation putting forward proposals which were even lower than what was offered and found unacceptable by us at the All Party Conference in December, 1984. By dint of great deal of persuasion by the officials of the External Affairs Ministry some improvements were made on those proposals, but they still fall far short of what the Tamil people can be reasonably expected to accept. This draft was quite correctly characterised by your Excellency as merely a "starting paper". The total inadequacy of the proposals coupled with the conduct of the Government of Sri Lanka in escalating the violence against the Tamil people gives rise to serious misgivings with regard to the bonafides of the Government. We felt that the T.U.L.F. which was returned on an overwhelming mandate of working for an independent Tamil state as well as the liberation groups, which are engaged in an armed struggle for the same objective will

lose credibility with our people as well as our friends abroad by putting forward any other demand, with no prospect of a reasonable solution emerging.

We are aware that the view has been expressed that an autonomous state with powers similar to that of a State in India will be reasonable. We are conscious of the fact that our very survival as a people depends on the good will and the continuance of the good offices of India to work out a final solution to our problem. We have taken note of the statement of Your Excellency that the Tamil groups should take a positive attitude and put forward their proposals. Although we have grave doubts about the bonafides of the Sri Lanka Government and we entertain fears that the Government will only use any alternative proposals from us to discredit us with our people, we are putting forward the proposals contained in the attached document because of our anxiety that India's efforts at a negotiated settlement should not be frustrated. If a viable and acceptable solution does not emerge, we want it to be clearly understood that our adherence to our mandate to work for an independent state for our people, as the only means for their survival is inevitable.

The Tamil people of Sri Lanka are always grateful to the Government of India for receiving and looking after the refugees and for all its endeavours to find a final solution to their problem.

With kind regards,

Yours sincerely,

M. SIVASITHAMPARAM
President
T.U.L.F.

A. AMIRTHALINGUM
Secretary-General
T.U.L.F.

PREAMBLE

The Tamil people gave a mandate to the T.U.L.F. in the 1977 Election to establish an independent state of Tamil Ealam. At the All Party Conference in Colombo we reiterated our mandate but indicated our willingness to consider any viable and acceptable alternative put forward by the Sri Lankan Government. The Government of Sri Lanka has persistently failed to place any meaningful proposals which merit consideration. In order not

to frustrate India's efforts to work out a satisfactory solution to our problem, we now submit these proposals to the Government of India.

DRAFT

PART—I

1. Sri Lanka that is Illankai shall be a Union of States.

2. The Northern and Eastern Provinces, which are predominantly Tamil - speaking shall constitute one Tamil Linguistic State (See Annexure-I)

- 2.A. The territory of a State, once established, shall not be altered without its consent.

PARLIAMENT

3. The Legislative power of the Union shall vest in a Parliament.

- 3.A. Parliament shall have the exclusive power to make laws in respect of any of the matters enumerated in List One.

4. The membership of Parliament shall reflect the ethnic proportion of the Union.

- 4.A. Special provision shall be made to ensure the representation of Muslims and Tamils of recent Indian Origin who do not occupy contiguous areas.

5. No Bill or Resolution or part thereof affecting any nationality shall be passed, unless a majority of Members of Parliament belonging to that nationality agree to such a Bill or Resolution or part thereof,

PART—II

Special Constitutional Provisions :

1. **Citizenship :** Notwithstanding anything in the constitution or any other law regarding citizenship, all those who are not citizens of a foreign country and who were resident in Sri Lanka on 1st November, 1981 and their descendants shall ipso facto be citizens of Sri Lanka.
2. **Official Language :** Constitutional provision shall be made to make Tamil also an official language.
3. **Union Services :** Provision shall be made in the Constitution to ensure that the ethnic proportion is reflected in all Union Services, including the armed forces. Union Services shall also include public sector Services.

PART—III

STATES :

1. There shall be a Governor for each State. He shall be appointed by the President of the Union, in consultation with the Chief Minister.

2. There shall be an elected assembly for each State.

3. Each Assembly, will have its elected Presiding Officer.

4. Elections to State Assemblies shall be on the basis of territorially demarcated electorates. Provision shall be made to ensure adequate representation for Muslims in the Tamil Linguistic State.

5. The legislative power of the State shall vest in the State Assembly.

- 5.A. The Assembly shall have exclusive power to make laws for such State or any part thereof in respect of any of the matters enumerated in List Two.

9. When a Bill has been passed by the Assembly it shall be presented to the Governor. He may assent or send it back for reconsideration. If the Bill is passed again, with or without amendment, the Governor shall give his assent.

7. The Executive Power of the State shall vest in the Chief Minister and Council of Ministers.

8. The Executive power of the State shall extend to all matters with respect to which the Legislature of the State has power to make laws.

9. The Governor shall appoint the Leader of the largest party in the Assembly as Chief Minister. The Chief Minister shall choose the members of the Council of Ministers.

10. The State Assembly shall have power to levy taxes, cess or fees and mobilise resources through loans and grants.

11. All the revenues received by the Government of a State, all loans raised by that Government, and all moneys received by that Government shall form one consolidated Fund to be entitled 'Consolidated fund of the State'.

12. Some duties and taxes shall be levied and collected by the Union Government but shall be assigned to the State within which such duty or tax is leviable.

13. The President shall appoint a Finance Commission to be presided over by the Governor of the Central Bank. There shall be three other members, one of whom shall be a Sinhalese, one a Tamil, and one a Muslim.
14. There shall be a High Court for each State and such other courts and Tribunals as are necessary. The High Court will be the Court of Appeal for other courts in the State and shall have superintendent and control over all other courts and tribunals in the State. Appeal will lie to the court of Appeal from Judgements of the High Court. The Supreme Court shall deal with constitutional matters.
15. Each State will have a State Service consisting of ;
 - a) Officers and other public servants of the State; and
 - b) Such other Officers and public servants who may be seconded to the State.

Each State will have a State Public Service Commission for recruitment and for exercise of disciplinary powers relating to the members of the State Service.

PART—IV

Special provision for Tamils of recent Indian Origin :

In order to meet the needs of the Tamils of recent Indian origin, and to ensure that they enjoy a sense of security, and to provide for their participation in Government, suitable administrative arrangements and institutions shall be established, for example the establishment or creation of an administrative district. Gramasevaka division shall be modified so as to comprise estates where Tamils of Indian origin are in the majority. Such Grama Sevaka divisions could be brought together to form an A.G.A's division, in the same manner as the Vavuniya South Sinhala A.G.A's division was created. Such A.G.A's divisions could be brought together to form an Administrative and/ or Electoral District.

Tamils of recent Indian origin, resident outside such administrative Districts, envisaged above, other than in the Tamil Linguistic State, should be entitled to settle in such Administrative Districts and pursue their legitimate vocations if they so desire. Likewise such persons should be entitled to settle and pursue their legitimate vocations in the Tamil Linguistic State.

LIST ONE :

1. Defence
2. Foreign Affairs
3. Currency
4. Posts and Telecommunications
5. Immigration and Emigration
6. Foreign trade and Commerce
7. Railways
8. Air Ports and Aviation
9. Broadcasting and Television
10. Customs
11. Elections
12. Census

LIST TWO : The following among others :-

1. Police & Internal Law and Order (See Annexure II)
2. Land and all its uses (See Annexure-III)
3. Education including University and Technical Education
4. Archaeology
5. Culture
6. Industries
7. Fisheries
8. Local Government
9. Excise
10. Agriculture
11. Irrigation
12. Agrarian Services
13. Health
14. Prisons and Reformatories
15. State Transport and Roads
16. Co-operative Development.

* Annexures I, II & III correspond to Chapter X—I, III & II and annexure.

XII

Observations on the TULF Proposals by SLG

30-01-86

INTRODUCTION

The proposals of the Tamil United Liberation Front have been annexed to a letter addressed to Shri. Rajiv Gandhi Prime Minister of India dated the 1st December 1985. This letter, characteristically enough, is replete with several mis-statements of fact and pejorative comments concerning the Government of Sri Lanka. We have no doubt that they have been made with a view to prejudicing the Government of India against Sri Lanka and altering its general attitude towards the problem. It is not our intention to make a detailed reply to these accusations and numerous others contained in the annexes to the letter, which of course are typical of the sustained campaign of vilification, wild exaggeration, distortion and tendentious statements that are habitually made and form part of the T.U.L.F. strategy of disinformation for the attainment of their political objective. It is, however, necessary to set the record right on certain matters before we proceed to make our comments on the proposals that are contained in the annexed memorandum.

The allegation that no less than 1500 Tamils have been killed and about 10,000 houses have been destroyed by the agents of the Government of Sri Lanka "during the three weeks immediately prior to the 13th June and since then" is a blatant falsehood. This accusation is made in order to divert attention from the notorious fact that, despite the Agreement to desist from acts of violence made in June 1985 to enable a peaceful settlement of this question, the terrorist groups among the Tamils, who were unwilling and reluctant participants to the Agreement, have repeatedly violated it terms in the most

flagrant manner in order to prevent the successful conclusion of an agreement. These violations of the ceasefire by these terrorist groups have led to the deaths of a large number of Sinhalese, Tamils and Muslims in the Northern and Eastern Provinces and the destruction of millions of rupees worth of property. Taking advantage of the restraints imposed on the armed forces by the terms of the ceasefire, these terrorists groups have in the meanwhile brought in men and material into the Island for renewed attacks on the armed forces which have during the last few weeks climaxed in full scale attacks on army camps in the Northern and Eastern Provinces. As part of their avowed object of driving away the Sinhala and Muslim people, considered by them to be an alien presence from the Northern and Eastern Provinces, they have launched brutal attack on defenceless civilians killing a large number and rendering thousands of others homeless. This deliberate design to drive away the Sinhalese from these areas is well authenticated by the fact that there are approximately over thirteen thousand Sinhala refugees from these areas in sixty six camps and over thirty six thousand other Sinhala refugees outside welfare centres being issued dry rations. No doubt there have been retaliatory attacks on Tamils in these areas which account for the number of Tamil refugees too. Muslims in the Eastern Province have not been spared by the terrorists and there are about two thousand five hundred Muslims also in refugee camps. The terrorists have not spared their own people who either do not co-operate with them or even appear to oppose them, as witnessed by the number of "lamp-post killings" and the dastardly killings of Tamils who have supported efforts of reconciliation between the two communities, as for

instance the late Mr. Anandarajah, Principal of Jaffna College and the cold blooded shootings of Mr. Suppiah Vinagamoorthy, the courageous Post Master of Akkaraipattu in the Eastern Province who led a demonstration of citizens against the acts of the terrorists in that area. In similar fashion Tamil politicians who did not share the view point of the terrorists have been eliminated as seen by the ruthless killings of the late Mr. A M Alalasunderam, the T.U.L.F. ex M.P. for Kopay and the late Mr. V. Dharmalingam, the T.U.L.F. ex M.P. for Manipay whose son was one of the representatives of PLOTE at Thimphu. We are not therefore entirely surprised at the wholly extremist stand adopted by the T.U.L.F. in their proposals, completely jettisoning the more moderate position taken by them earlier in unofficial talks held with the Government of Sri Lanka during the period when the All Party Conference was in progress and in their talks with the Government of India in the days which preceded the preparation of the "Draft Framework of Terms of Accord" in New Delhi on 30th August 1985. It is no secret that it was the intransigent attitude of the terrorists groups that led to the abandonment by the T.U.L.F. of the proposals contained in the "Draft Framework of Terms of Accord" initialled in New Delhi. So long as the terrorists are in a position to intimidate and threaten the political leaders among the Tamils and the Tamil people in the North and East, so long will the T. U. L. F. remain powerless to put forward any proposal that will have a reasonable chance of acceptance by the Government of Sri Lanka. This is a fact which the Government of India that tolerates these terrorists within their borders must take cognisance of.

It is idle for the T.U.L.F. to blame the Government of Sri Lanka for the failure of the All party Conference. At that Conference the T.U.L.F. did not have the courage to make any proposal in public that would appear to compromise its public posture for the creation of a separate State. In private and unofficial talks they were in substantial agreement with the proposed system of government and the devolution of powers that was foreshadowed in that scheme. The escalation of terrorist violence in November and December 1984 and the implacable hostility of the terrorist groups to the Government proposals for which there was a broad consensus eventually led to a failure of nerve on the part of the T.U.L.F. and their rejection of the All Party Conference proposals - a rejection which took place not in Sri Lanka, but in Madras on or about 22-12-84 when the leaders of T.U.L.F. returned to India.

It was the profound concern of the Government of Sri Lanka and their commitment to reach a peaceful solution to the problem that led them to take, the unprecedented step on the part of any Sovereign State, of sending their accredited representatives to explore the possibility of reaching a settlement at two Conferences held in Thimphu, arranged through the good offices of the Government of India, with these terrorists who had made no secret of their criminal conspiracy to overthrow the Government of Lanka and impair its territorial integrity.

Neither the T.U.L.F. nor the terrorists groups that attended the talks showed any serious inclination to discuss any of the proposals placed before them by the Government of Sri Lanka; the T.U.L.F. made common cause with the terrorist groups in making it the occasion for slanderous attacks on the Government. Their final response to them was an outright rejection and an invitation to the Government of Sri Lanka to make new proposals that would accord with the so-called four "cardinal principles" which they enunciated, which were no more than a restatement of the demand for Eelam.

At the second conference held in Thimphu in August 1985, the Government of Sri Lanka made an appropriate response to these principles consistent with its position as a sovereign State in dealings with its own subjects and indicated the areas in which meaningful discussion and agreement was possible. Thereupon the T.U.L.F. joined the terrorists in a walk-out from the Conference under the pretext of a violation of the ceasefire by the Government of Sri Lanka and thereafter apparently sulked at their hotel, while some representatives of the Tamil groups had made arrogant and provocative remarks, leading to an order of deportation being made on one of their representatives from London.

The Sri Lanka delegation remained at Thimphu for several days, despite the breakdown of talks, at the request of the Government of India, in a bid to revive the efforts made to reach a peaceful settlement by getting the terrorist groups back to the Conference table. Thereafter the Negotiators of the Sri Lanka delegation and certain of their Advisors stayed over in New Delhi at the invitation of the Government of India for further discussions with the Foreign Secretary of India who was in communication with the T.U.L.F. in another bid to revive the effort to reach a peaceful settlement. On the basis of the discussions held in New Delhi with tacit approval, if not the concurrence, of the T.U.L.F. a "Draft

Framework of Terms of Accord and Understanding" was prepared on the basis of a consensus reached. But all this proved to be of no avail as the terrorist groups refused to accede to the request of the Government of India to come to New Delhi and the terrorist groups thus frustrated the attempts to reach a settlement. It is futile for the T.U.L.F. to deny these facts which are also well within the knowledge of the Government of India. More than three months after the terrorist groups staged a walk-out from the second conference held in Thimphu, the T.U.L.F. appears to have awakened to the need for a "a positive attitude" and have now put forward their proposals, in response to the request of the Prime Minister of India.

It is now opportune to identify the main issues on which the parties are at variance, and thereafter to discuss those issues in detail. These appear to be—

1. whether a scheme of devolution, the structure or content of which is contrary to the Constitution, is possible.
2. whether the scheme of devolution can ignore the demographic differences between the Northern and Eastern Provinces.
3. whether any part of Sri Lanka can be reserved for the exclusive use and occupation of one community to the exclusion of other communities.
4. the scope of the devolution of powers possible and acceptable, within the framework of the Constitution, in regard—
 - (a) Internal law and order,
 - (b) Land settlement,
 - (c) Other subjects referred to in the "Draft Framework of Terms of Accord".

From the foregoing recital of events it will be seen that the attempt of the T.U.L.F. to cast aspersions on the bona fides of the Government of Sri Lanka is merely a cloak to hide their own lack of good faith. We now proceed to examine these proposals.

COMMENTS ON THE T.U.L.F. PROPOSALS GENERAL

1. The draft proposals of the T.U.L.F., while they do not explicitly state the need to make

radical and far-reaching changes in the existing Constitutional structure, quite plainly do envisage such changes in regard to its basic form and structure. In a word, despite the studied avoidance of the term "federal" what is contemplated is a change from unitary to a federal system of government.

2. In the Constitution of Sri Lanka the concept of a Unitary State is much more than a mere matter of nomenclature or classification. It assumes a vital significance because of the concept of sovereignty, in which is specifically included by Articles 3 and 4 all the powers of government, legislative, executive and judicial. Under our Constitution, therefore, the powers of government inhere *in all the People of Sri Lanka* and this sovereignty is itself declared to be inalienable. A federal system which implies a divided sovereignty is therefore inconceivable in Sri Lanka.

3. In the preamble to the proposals the T.U.L.F. states that it is willing to consider "any viable and acceptable alternative" to the establishment of a separate and independent State and these proposals are evidently made on that basis. This cannot surely mean a proposal that is "viable and acceptable" from the point of view of the Sri Lanka Tamils alone, (which is the only community that the T.U.L.F. represents) but must mean one which is "viable and acceptable" as regards all the People of Sri Lanka. An objective appraisal of these proposals makes it clear that all that T.U.L.F. appears to be concerned with are the rights and privileges of the Tamils of Sri Lanka and to that and it is even prepared to distort and misrepresent the facts of history, as will be shown hereafter.

4. The most serious defect of the T.U.L.F. proposals is the apparent lack of concern and the evident absence of an awareness of the indisputable fact that the changes proposed by them have to be first brought into existence through the existing procedures prescribed by the Constitution and these procedures require, apart from securing the approval of a two-thirds majority of all the Members of Parliament, compliance with the extra-Parliamentary process of securing the approval of the people at a Referendum. The T.U.L.F. cannot be unaware of the long standing opposition of the two major political parties of the Sinhala people, who represent nearly seventy four per cent of the population, to a federal form of government in Sri Lanka. If in fact the T.U.L.F. is fully conscious of the legal, constitutional and political constraints which have to be

contended with, then their singular failure to have regard to them or to even suggest possible methods of grappling with these problems raises a question as to their seriousness in making these proposals and indeed points to their lack of a sense of responsibility and bona fides.

5. The T.U.L.F. was fully aware of these difficulties and constraints at the time when they participated in the All Party Conference and recognised this as a reality when they held talks with the President of Sri Lanka. During that time negotiations were held on the fundamental premise that the proposals for the devolution of powers to local or regional bodies would not entail a change in the unitary form of government. The present proposals are therefore a volte face and would not ordinarily merit serious consideration by the Government of Sri Lanka. Nevertheless since they have been submitted for consideration, we make the following comments.

6. Sections 1, 2, 2A, 3 and 3A of Part One of the proposals seek to introduce a federal form of government and are in conflict with Articles 2 and 3 of the Constitution which respectively state that Sri Lanka is a Unitary State and that in Sri Lanka Sovereignty (which includes the powers of government) is in the People and is Inalienable. If either Articles 2 or 3 is to be amended in any form (and implied amendments are prohibited by Article 82) then Article 83 requires such amendments to be approved at a Referendum of the people.

7. This position was also made clear at the discussions held in June 1985 between the Attorney-General of India and the team of Sri Lanka Lawyers led by Dr. H. W. Jayewardene and accepted by the Prime Minister of India as one of the essential presuppositions on which any further talks with the Tamil groups would proceed. This is not a fact unknown to the T.U.L.F. In the circumstances, it appears to us, that the present proposals as to the system of government to be established represents such a radical departure from the basic position agreed with the Government of India and that, in spite of their assertion to the contrary in the Preamble, the present proposals can only be regarded as one calculated "to frustrate Indian efforts to work out a satisfactory solution".

8. Taking the T.U.L.F. proposals as to the structure of government even at their face value, in their present form they can only be described as being of a very perfunctory character and do not

take into account the full implications of a federal structure for a country such as Sri Lanka and the complex problems of Centre-State and inter-State relation.

The Structure of Government - Part I

9. *Section I* states that Sri Lanka shall be a Union of States, *only one of which is identified* as the Tamil linguistic State comprising the Northern and Eastern Provinces. The question may be asked is the rest of Sri Lanka comprising the remaining seven provinces to constitute the other State in the proposed Union? Or is a further division of Sri Lanka contemplated? Is it envisaged that the Tamils of Indian origin (hereinafter referred to as Indian Tamils) who also constitute a single linguistic group who inhabit a substantial part of the Central and Uva Provinces should also form a constituent State of the Union? The T.U.L.F. has not faced this issue squarely, despite the fact that on certain questions it professes to speak on behalf of all Tamil speaking people in Sri Lanka. If indeed a third State in the proposed Union is contemplated, it must be candid enough to admit it, instead of maintaining an evasive silence on the matter.

10. The full implications of the proposal for a Union of States is seen when one has regard to the powers that are proposed to be conferred on the States vis-a-vis the Union. Full powers over subjects comprehensively described inter-alia as: "Land and all its Uses, Agriculture, Irrigation, Agrarian Services, State Transport and Roads" are intended to be conferred on the States. Coupled with it is a provision which requires duties and taxes levied and collected by the Union Government to "be assigned to the State within which such duty or tax is leviable". It seems to us that the proposals, apart from anything else, will bring about the economic ruin of the State of Sri Lanka.

11. The T.U.L.F. proposal ignores the fact there is no precedent anywhere in the world of a State which has had a unitary form of government for an unbroken period of nearly two centuries of its history being carved up into separate States to form a federation, supposedly in the interests of achieving greater national unity. Federalism as a system of government has been fashioned to meet a situation where existing independent States have agreed to come together, surrendering a very substantial measure of their sovereignty in the interests of a larger unity. What is now sought to be set in motion is the reverse process of a single State

breaking up into separate units and the fragmentation of an existing undivided sovereignty.

12. The T.U.L.F. has not explained why it has jettisoned the method of solving the existing problems through a devolution of powers to local or regional authorities within the existing constitutional frame-work that does not disturb the unitary form of government, which was the basis on which talks were heretofore conducted. No reason is adduced why the T.U.L.F. has revived the federal system for which they once agitated, which will bring in its train a whole host of new problems, assuming that the Sinhala majority will ever agree to concede such a demand.

THE PROPOSED AMALGAMATION OF THE NORTHERN AND EASTERN PROVINCES

13. Section 2 of Part I states :

"The Northern and Eastern Provinces, which are predominantly *Tamil-speaking* shall constitute one Tamil Linguistic State (see Annexure I)".

The reference to Annexure I is presumably for the reason that it contains a detailed rationale for this proposal. The annexure itself is entitled "The Integrity of the Tamil Homeland". The two expressions "Tamil-speaking" and the "Tamil Homeland" are underlined above for emphasis as they have distinct meanings and different connotations which are sought to be glossed over. They will therefore be dealt with separately. The two major political parties among the Sinhala People have declared their opposition to such an amalgamation and since it contains the nub of the problem, it is necessary to deal with it at some length, (vide paragraphs 14 to 45, infra).

14. The use of the two different expressions is not unintentional and, as will be seen hereafter, reveals a fundamental discrepancy in objectives which is sought to be artfully concealed by the T.U.L.F. The expressions "*Tamil-speaking*" people refers not to one ethnic group but in fact to *three different ethnic groups*, namely the Sri Lanka Tamils, the Muslims and the Indian Tamils. The expression "*Tamil Homeland*," on the other hand, is meant to signify a geographical area which it is claimed corresponds to the Northern and Eastern Provinces of Sri Lanka. Although the earlier expression "*traditional homeland of the Tamils*" has been significantly dropped no doubt for the reason, belatedly realised, that the concept was a

myth which had no foundation in historical fact, yet the motivations behind the use of that expression linger on as evident from the citation of the opinion of Cleghorn in support of it. Behind the deliberate ambiguity of the current expression, the T.U.L.F. is in fact seeking to identify an area which Tamil politicians have claimed in the post Independence era as the *homeland of the Sri Lanka Tamils only*. Neither the Muslims of Sri Lanka nor the Indian Tamils have claimed any particular area of Sri Lanka as being exclusively their "homeland" and in fact ninety per cent of the Indian Tamils live outside these two Provinces. So under the facade of a common language being predominantly spoken in the North and East of Sri Lanka, the T.U.L.F. is in fact seeking to carve out an area of Sri Lankan territory which *the Lanka Tamils alone* will dominate and control by reason of being the majority in that area to the exclusion of all other ethnic groups in the Island - the Sinhalese, Muslims the Indian Tamils, the Malays and Burghers. The expression "*traditional homelands of the Tamils*" which had been used for over three decades (from the time Federal Party was formed) has now been quietly dropped because it would be highly inconvenient to draw attention to the exclusiveness of the Sri Lanka Tamils to this area and thus raise a storm of opposition from the Muslims, from whom the T.U.L.F. expects support.

15. At present the Sri Lanka Tamils are in a minority in the Eastern Province while the Sinhalese and the Muslims together constitute nearly sixty per cent of the population. Since the Sri Lanka Tamils constitute more than ninety per cent of the population in the Northern Province, the object of the Amalgamation of the North and the East is clear - *the Sri Lanka Tamils will after amalgamation become the majority group in the combined unit of administration*. Once the amalgamation is achieved the concept of "*the traditional homeland of the Tamils*" which has been a corner-stone of agitation in the post-independence period will be revived as this is the only ground on which the T.U.L.F. denies the legitimate rights of the Sinhala people to become settlers in the Northern and Eastern Provinces. Nor does the traditional homelands theory recognise any rights for the Muslims either except as an attenuated minority in the amalgamated territory. So on the one hand while professing to urge the case for all Tamil speaking people, in fact the T.U.L.F. is covertly seeking to secure the extensive areas of the Eastern Province which are already planned for development, especially under

the accelerated Mahaweli Programme, for exploitation by the Sri Lanka Tamils alone. This in short is the duplicitous motivation behind the demand for amalgamation.

16. Upon a close examination it will be found that the covert basis for the creation of a single linguistic State, namely, the "*Tamil speaking people*" is merely a convenient political slogan of the T.U.L.F. that does not correspond to an existent political reality in Sri Lanka. Except the fact of a common language, the three ethnic groups which are sought to be encompassed within it are in no sense a homogeneous group.

17. Taking first the case of the Muslims, there has been a recent attempt to describe the Muslims of Sri Lanka as "Tamil Muslims". A similar attempt had been made almost a hundred years ago by an outstanding Tamil politician—Ponnambalam Ramalanathan in a paper entitled "The Ethnology of the Moors of Ceylon" (read before the Ceylon Branch of the Royal Asiatic Society on 26th April 1898) which drew strong rejoinders in opposition from the Muslims, notable Siddi Lebbe and I.L.M. Abdul Azeez in which they contended for a separate identity. They maintained the position that the Ceylon Moors were descendents of Arabs who settled in Ceylon many centuries ago (vide-A Criticism of Mr. Ramanathan's Ethnology of the Moors of Ceylon by I.L.M. Abdul Azeez—published in 1907)

Among the writers cited to contradict Ramanathan's thesis were Chief Justice Alexander Johnstone, Emerson Tennant (a recognised historian of early British times) and Ponnambalam Arunachalam (who was Ramanathan's own brother and a distinguished lawyer).

18. As for the implied sense of community with the Tamils of Indian origin, it is practically non-existent as far as the Sri Lanka Tamils are concerned. Caste considerations alone make ties of kinship impossible. More than half the immigrants to Sri Lanka from South India and their descendents, according to Jayaraman (an Indian social scientist) belong to the Adi-Dravida groups such as the Pallans and the Parayans who have a low rating as far as caste ranking is concerned. (vide Caste Continuities in Ceylon (1975) pgs. 5-6).

A British scholar points out that when universal franchise was granted in 1931 in Sri Lanka that

"the claim of the Indian Tamils were not considered important to the Ceylon Tamils" (Vide—Jane Russel—Communal Politics

under the Donoughmore Constitution (1982) pg. 34.)

Jayaraman observes :

"The Tamilians living in estates, particularly persons belonging to Velallan, Kallan and other non-Brahmin castes revealed a strong antipathy to the Jaffna Tamil" (cit. pg. 201).

Professor K. Sivatamby (Associate Professor of Tamil at the Jaffna University) observes :

"The estate Tamils have always regarded the Jaffna Tamil as a selfish person and the Jaffna Tamil in his turn had looked down on the estate Tamils as a people of low caste."

(some aspects of the Social Composition of the Tamils of Sri Lanka pg. 127—published under the title "Ethnicity and Social Change in Sri Lanka").

19. Nor is there any great sense of community or common identity between the Sri Lanka Tamils of the North and those of the Eastern Province. Professor Sivatamby observes :

".....Even though on common ethnic terms they are taken as Tamils, there is a substantial difference between the Tamils of these two areas. The relative geographical separation of these two areas along with the discernible differences in traditional social organisation, economic pursuits and more important, varied historical background and the pattern of population distribution have clearly marked them out as to distinct spheres of interests resulting quite often in the sounding of a double note in the political orchestration of the Sri Lankan Tamils" (ibid pg. 130).

and again he states :

"The educational backwardness of the district had prevented the inhabitants of Batticaloa from enjoying their due share in the public service and professional occupations. The Jaffna man has been dominating officialdom and the administrative machinery. There has been a sharp reaction to this among the Tamils of Batticaloa and quite often anti-Jaffna politicians of Batticaloa have raised the "Yalpani domination cry". (ibid pg. 132).

20. It will be seen therefore that the whole concept of "*the Tamil speaking people* as a political entity embodying a sense of solidarity arising from common social customs, cultural traditions or ties of blood or kinship or even a common religion is either non-existent or rests on very fragile foundations. It is merely a slogan fabricated by Sri Lanka Tamil politicians for the adhoc purpose of carrying on a relentless political agitation against the Sinhala people and does not constitute any common bond as would justify the amalgamation of the two provinces.

The Tamil Homeland

21. Turning now to the second ground on which the case for amalgamation is sought to be argued as set out in *Annexure I*, namely, the need to preserve "*the integrity of the Tamil homeland*", it would appear that the argument does not enjoy the same importance it once did, considering that it has been relegated to an appendix to the main ground based on linguistic reasons. The clear object of the proposed amalgamation is to preserve the alleged Tamil character of the area by preventing Sinhala settlements which is seen as an alien element and a danger to its "*integrity*".

22. On what ground are the Sinhala people sought to be excluded from the North and East as being alien? The historical antecedents relied on for the claim were at one time stated to commence from "*the dawn of history*" (T.U.L.F. Resolution of 1976), later it was claimed that an area (which extended even outside the boundaries of the Northern and Eastern Provinces) became established as "*the exclusive homeland of the Tamils at the beginning of the 13th century*" (T.U.L.F. Election Manifesto 1977). In *Annexure I* the claim appears to be an even more modest one - "*from the days of British rule*" or "*the British conquest of the Maritime Provinces of Ceylon*".

23. The authority relied on by the T.U.L.F. in their memorandum to the Indian Prime Minister is that of a British colonial - *Hugh Cleghorn* who wrote the words quoted in the memorandum in *June 1799*. Cleghorn first visited the island in January 1796 and left it six weeks later. He returned to Ceylon on the 28th September 1798 in the company of the first British Governor-Frederick North and wrote his famous Minute dated 1st June 1799 on the Administration of Justice and of the Revenues under the Dutch Government" (which would be just about a period of eight months stay after his second visit.)

It may be noted that he had to leave Ceylon a few months later in February 1800 having been interdicted from the exercise of his official duties on charges of corruption in connection with the Pearl Fishery of 1799, which does not speak a great deal for his own integrity.

24. It is also relevant to note that the accuracy and reliability of his knowledge of history of this part of the world may be gauged from another comment he makes in the same Minute concerning the origins of the Sinhala People and of Buddhism which immediately follows the text quoted by the T.U.L.F.

"These two nations differ entirely in their religion, language and manners. The former (i.e. the Sinhalese) (brackets supplied) who are allowed to be the earlier settlers, derive their origin from Siam, professing the ancient religion of that country."

No further comment is necessary.

25. From the quotation from Cleghorn it is clear that "*the Tamil homeland* is the same as that hoary myth of "*the traditional homeland of the Tamils*" presented in the new garb of a linguistic entity in order to make it less offensive to the Muslims whose support the T. U. L. F. vainly hopes to secure. The concept of the traditional Tamil homeland was fashioned by the Illankai Tamil Arasu Kachchi (misleadingly translated into English as the Federal Party) in order to exclude the Sinhala people from the North and East and for the Sri Lanka Tamils alone to claim exclusive rights over these territories as against all other groups and as the nucleus of a new State to be created.

26. In its original formulation it was as *extravagant to claim* as that made by the Ceylon Tamil Congress (the main political party of the Sri Lanka Tamils at that time) for balanced representation or the fifty : fifty formula for representation of minorities in the Ceylon Legislature in 1944 preceding the grant of Independence. It implied the future reservation of approximately twenty nine per cent (29%) of the land area of Sri Lanka, its use and development and sixty per cent (60%) of the Island's coast line and the appurtenant marine resources for the Sri Lanka Tamils for whom the homeland was claimed who represented just twelve point six per cent (12.6%) of the total population. The manifest unfairness of the

attempt to appropriate a disproportionate share of the country's resources for a small minority was sought to be justified by the appeal to history and the implied claim to an exclusive proprietorship. It is therefore necessary to examine quite briefly the validity of this claim. At the same time it has to be stated quite clearly that the very notion of such exclusive rights being accorded to a single ethnic group is wholly repellant to the Sinhala people who constitute seventy four per cent (74%) of the Island's population and who consider the whole Island to be their homeland from time immemorial, along with other communities who have also come to inhabit it. Nor will any other arrangement which savours of the Tamil homeland theory in whatever manner disguised, be ever found to be acceptable to the Sinhala people.

27. In its practical operation the Tamil homelands theory would exclude the Sinhala people from most of the major land development schemes in the future, most of which are located in the Eastern Province and to a lesser extent in the Northern Province for all of which millions of rupees have already been expended for the provision of irrigation facilities. Quite simply, the T.U.L.F.'s claim to the *exclusive user* of a very substantial part of the land resources of the country that is now available for development for the expanding population - and that is the whole end purpose of the amalgamation proposal - would in its essence be no different from the policy followed by the racist regime in South Africa which is the reservation of a very substantial part of that country's land resources for the white minority to the exclusion of the indigenous black majority.

28. The concept of the traditional homelands of the Tamils has been the subject of a critical study by Professor G. H. Pieris of the University of Peradeniya, in a paper entitled "An Appraisal of the Concept of a traditional Tamil Homeland in Sri Lanka". From a detailed analysis of the statistical data revealed by the Island's Census Reports and Provincial Administration Reports and the relevant areas located on large scale maps showing the distribution of the various racial groups, Professor Pieris has shown that in the Eastern Province in the year 1921 almost all Tamil settlements were *confined to a coastal strip* barely extending even ten miles to the interior. The Sinhala settlements on the other hand were scattered over extensive areas of the interior over a considerable area of the Eastern

Province. From their relative locations on the map, Professor Pieris concludes that the process of Tamilization had not penetrated significantly into the interior even at its most extensive territorial spread.

29. Adverting to the attempts made by Tamil politicians to define Tamil homelands with reference to the modern administrative limits of the two provinces, Professor Pieris observes :

"Given the spatial patterns of Ethnicity born out by our maps, the demand by one ethnic group for exclusive proprietary rights over Provinces and Districts which encompass *extensive tracts of territory which it has never occupied* (and much of it, in every sense, the traditional homeland of people belonging to other ethnic groups) appears in its true light as one which lacks a rational basis".

30. Furthermore he points out :

"that the sparsely settled interior of the Eastern Province of Sri Lanka was not a hinterland of the settlement clusters of the littoral and that there is no empirical basis for a theoretical assertion that because there was a numerical preponderance of the Tamils in the coastal areas, the inland areas, regardless of the traditional rights of other ethnic groups, should form a "traditional hinterland" of the Tamil areas".

and further that the littoral of the Eastern Province is as much the traditional homeland of the Muslims as that of the Sri Lankan Tamils.

31. The criticism made by Tamil politicians of the increase in recent decades of Sinhala settlers in certain areas of the Northern and Eastern Province would have had some rational basis or moral justification had these areas been at all times "alien territory" as far as the Sinhalese were concerned. On the contrary, there is ample historical evidence to show that these areas were an integral part of the Sinhala Kingdom and abounded in Sinhala settlements from very ancient times, though later invasions and the vicissitudes of history led to their gradual disappearance from these areas, in the ensuing periods. These are facts of history which are not disputed even by Tamil historians and scholars.

32. The detailed tabulation of the historical evidence would make this memorandum quite unwieldy. It may be convenient first to cite the views and opinions of some Tamil writers who cannot be accused of any bias in favour of the Sinhalese. *Dr. H. W. Thambiah* (formerly a judge of the Supreme Court of Ceylon who has written widely on the Laws and Customs of the Tamils of Sri Lanka) says :

"From the time of the defeat of Elara to the middle of the 15th century A.D. the Tamils of the Eastern Province were the vassals of the Sinhalese Kings".

(Laws and Customs of the Tamils of Ceylon (1954) pg. 67)

S. O. Canagaratnam (Chief Mudaliyar, Eastern Province, Batticaloa) referring to Batticaloa says :

"The whole District formed part of the Kandyan Provinces when the Sinhalese Kings held sway and Batticaloa was then known as Pulianduwa."

(Monograph of the Batticaloa District (1921) pg. 2)

Canagaratnam also observes :

"One of the saddest features in the history of the District is the decay of the Sinhalese population in the West and South. At one time there were flourishing and populous Sinhalese villages here, as is evidenced by the ruins and remains dotted about this part of the country".

33. Ponnambalam *Arunachalam*, a Tamil leader who was in the forefront of the agitation for constitutional reform in the early part of this century, says of the Batticaloa District :

"It was part of the Rohana Rata (of which the name still lingers in Ranna, or Rohana in the Tangalla District) which embraced the mountainous zone and the region which rose up to it ladderwise (Rohana) from the Western, Southern, and was bounded on the north by the Mahaweli Ganga. The Kandyan provinces correspond with part of the Central and Eastern Provinces and the Sabaragamuwa and Uva Provinces and the Southern Province".

(Kandyan Provinces)

34. That the Eastern area of Ceylon remained part of the Kandyan Kingdom even in the middle of the 18th century is confirmed by the fact that in 1766 King Kirti Sri Rajasinghe was obliged by the *Treaty with the Dutch* to relinquish his sovereignty, inter alia over Tirikunamala (Trincomalee) and Pulianduwa (Batticaloa) and the places appertaining thereto and a belt along the sea coast upto a distance of one Sinhalese Gawwa.

(R.A.S. Journal (1899) Vol. XVI
pgs. 70-71)

35. A Dutch writer in Ceylon *Baldaeus*, who was a priest officiating with the Dutch forces which captured the Portuguese coastal settlements in his work entitled "A True and exact discription of the Great Island of Ceylon" in 1672 refers to the fact that King Senerat in 1613, to ensure the right of succession to his eldest son summoned his councillors from various parts of the Kingdom including those of Cotiarum, Batecaloa, Panua and Palugam which together encompass the present Eastern Province.

36. Going further back to Portuguese times, *De Queyros*, the 17th century Portuguese historian, says in his "Conquest of Ceylon" that among the fifteen kinglets who were *subject to* the (Sinhalese) (brackets inserted) *King of Kotte* were Triquilimale, the Bay of Trincomalee and its hinterland and Batecalaov (Batticaloa).

"The Temporal and Spiritual Conquest of Ceylon"

"Translation by Fr. S. G. Perera—1930
pg. 32)

37. The well known *Robert Knox* who landed in 1660 near Trincomalee was captured by officers of the King of Kandy, according to him, which would not have been the case had that area been under the control of the Tamils.

38. In the light of this overwhelming evidence and the opinions of historians, cited above, the bare assertion of *Cleghorn* that the North and East of Sri Lanka were territories in the hands of the Tamils "from ancient times" has to be rejected as being without foundation and along with it has to be rejected the suggestion of a divided sovereignty over the Island shared between the Sinhalese and the Tamils which allegedly terminated with the establishment of British rule.

39. Although it is beyond dispute that the Jaffna peninsula itself had been for centuries the homeland of the Sri Lanka Tamils, yet Tamil writers themselves acknowledge that the Sinhala occupation of the Jaffna Peninsula *preceded the Tamil settlements*. Thus the Rev. S. Gnana Prakasar O. M. I. supports the view of Horsburgh that the Sinhala occupation of Jaffna Peninsula was "antecedent to the Tamil period" as exemplified by a long list of Sinhala place names in the Jaffna Peninsula.

(The Ceylon Antiquary (1917) Vol. II
Part III pg. 167 et seq)

Professor K. Indrapala (one time Professor of History at the Jaffna University) states :

"The *earlier* Sinhalese occupation of the Jaffna peninsula, the long survival of the Sinhalese there and the Tamil occupation of the North-Central Province before the Sinhalese *resettled* there are unmistakably indicated by place-names".

Early Tamil Settlements in Ceylon—
J.C.B.R.A.S. Vol. XIII pg. 45

These views find confirmation in the researches carried out by C. W. Nicholas (one of the Editors of the University of Ceylon—History of Ceylon) and published in his famous Historical Topography of Ancient and Medieval Ceylon.

(Journal of the Ceylon Branch of the Royal Asiatic Society (N.S.) (1963) Vol. VI)

40. The objections of Tamil politicians to the settlement of Sinhala people in the North and East will thus be seen to be an unfair and unreasonable demand and one which savours of narrow selfishness especially when one has regard to the undisputable fact that (as shown by the 1981 Census) that nearly thirty three per cent (33%) of Sri Lanka Tamils live outside the Northern and Eastern Provinces amongst the Sinhalese people and over ninety per cent of the Indian Tamils live in the hill country in the heartland of the Sinhala people. Their demand to maintain the so-called "integrity of the Tamil homeland" will therefore be seen to be nothing but a negation of the *historic right of all the people of Sri Lanka*, from time immemorial irrespective of their ethnic origins to settle in all parts of the Island, which the Sri Lanka Tamils themselves have exercised in full measure.

41. Furthermore, it would be a violation of any meaningful exercise of the *constitutionally guaranteed freedom of movement* within Sri Lanka granted to all

citizens of Sri Lanka which includes the *freedom to choose one's place of residence* and the ancillary right of earning one's livelihood in any place in Sri Lanka.

(Vide Article 14(1)(h) of the Constitution)

42. Nor can the claim to exclusive rights of possession and user of State Lands in these areas on the basis of a linguistic division be justified. What is the rational basis for allocating the natural resources of a State to one group of its citizens on the basis of language? That any classification on the basis of language with a view to the total exclusion of a seventy four per cent majority in the enjoyment of the economic resources of the country in a third of its total land area when the object is the common welfare of all, would be both irrational as well as unreasonable, is beyond argument. How does one justify such a reservation for a minority, in the face of a constitutional guarantee of equality before the law and equal protection of the laws?

43. What is precisely meant by the statement that "throughout British rule and even after Independence, the Northern and Eastern Provinces have been *treated separately for administration*" is not clear. The administrative requirements in the matter of recruitment of personnel for each province had for obvious reasons to be considered separately. This was not a unique phenomenon in the North and East and was the case on all provincial administration and remains so. Both under the British and up to the passing of the Official Language Act in 1956, English was the language of administration and there were both transferable and non-transferable officers in the public service. Greater attention was paid to the local language needs in the post-independence period. When in 1956 English as the language of administration was replaced by Sinhala as the official language throughout the country, it became necessary to take cognisance of the language requirements of the areas which were predominantly Tamil speaking and the Constitutional Status given in 1971 to the Tamil language in the administration of these areas and later in 1978 as a national language was a recognition and a fulfilment of that need. How can the fair acknowledgement by the State of a just claim of a minority to the use of its language in these two provinces be used as an argument to deny to the majority the exercise of their own legitimate rights in the North and East? The implication and assumption behind the argument appears to be that had the Government of Sri Lanka unfairly denied and refused to acknowledge the

language rights of the Tamils altogether, the case against a joinder of the Provinces might have been stronger. On the contrary one would have thought that such an unreasonable attitude on the part of the majority would have strengthened the case of a minority for a separate administration. Accordingly to this thinking the grant of concessions would only enhance their claims and *entitlement for more!* it is this kind of deviousness among the Tamil politicians which makes the average Sinhalese extremely suspicious and wary of the grant of even a reasonable measure of devolution of powers. Quite candidly, the Sinhala people do not regard the demand for the amalgamation of the Northern and Eastern Provinces as a bona fide claim but as one motivated by an ulterior purpose, namely, as a first step towards the creation of a separate State, comprising these two Provinces. The recent outrages by Tamil terrorists against the Sinhala civilian population settled in the North and East, killing vast numbers of them, ravaging their homesteads and making thousands of them refugees in their own land has only made their apprehensions seem more real than ever before.

44. The argument of the T.U.L.F. that the Northern and Eastern Provinces must be reserved for the Tamils in *the interests of the security of their lives* and property will on close examination be seen to be one in reality motivated by considerations of political expediency and not any longer by genuine fears. Outbreaks of violence between the two communities have occurred when prevailing tensions have exceeded levels of tolerance consequent on acts of grave provocation which triggered off such waves of violence as, for example, the assassination of the late Srimati Indira Gandhi by some Sikhs extremists. After the riots of 1958 there was no major outbreak of violence till 1977 and the subsequent recurrence of violence at more frequent intervals is directly attributable to the sustained campaign of violence against the armed forces and State property by the various terrorist groups whose avowed purpose has been armed rebellion against the State. The resultant sense of insecurity caused to the Tamil community arising from such outbreaks of violence is therefore largely attributable to the strategy of armed insurrection adopted by the terrorist groups with the encouragement at the early stages at any rate, of the T.U.L.F. The threats to human life and property that has continued to prevail since the 1983 outbreak are not threats to the security of the Tamils alone *but also to thousands of the Sinhala civilian population living in*

the North and East and even in the North-Western and North Central Provinces from terrorists. Indeed it is true to say that the terrorists present a danger and threat not only to the armed forces and the Sinhala people but to all Tamils as well who do not support the terrorist cause. The recent murder of two former Members of Parliament of the T.U.L.F. is the clearest evidence of this. It is true to say that today Tamils who do not support terrorism find greater security in Sinhala areas (and perhaps in South India) than in the North and East and that has been so for the last two years and a half despite the genocidal attacks on Sinhalese people in the Northern and Eastern Provinces. Insofar as the Tamil civilians in the North and East have in certain instances suffered in consequence of excesses on the part of the armed forces, such retaliatory acts are the direct consequence of attacks on the armed forces by terrorist group and the terrorists must therefore take full responsibility for such untoward events. The argument that the Northern and Eastern Provinces must be reserved for the Tamils *in the interests of their security* is therefore without substance.

45. The statement of the T.U.L.F. that "a substantial number of these refugees (in Tamil Nadu) are youths between the ages of 18 and 30" is probably correct. In our view their presence in Tamil Nadu under cover of being "refugees" is for the continuation of their training in terrorism in camps set up for the purpose and in furtherance of the strategy of armed attacks against Sri Lanka. We do not therefore accept the argument that the reservation of the North and East for the Tamils is necessary for the rehabilitation of the genuine refugees now living in South India. What prevents their return to Sri Lanka are the unstable conditions created by the terrorists themselves. In any case the amalgamation of the North and East will not help the return of the Tamil refugees. If they fear reprisals from the armed forces stationed in these areas following terrorist attacks, that fear cannot be removed as considerations of national defence will necessitate the presence of the armed forces in these areas. The presence of the armed forces will in any case be necessary for the protection from terrorists of the thousands of Sinhala refugees who will have to be resettled and rehabilitated in these areas.

Other provisions in the proposed Structure Part I

46. Without prejudice to the general objection to any federal or quasi-federal system of government

the following observations are made in respect of the following sections :

Section 2A states that the territory of a State once established shall not be altered without its consent.

This provision clearly contradicts Article 5 of the Constitution which defines territorial limits of the Republic read with *Article 2* which declares it to be a unitary State and infringes on the sovereignty of the People exercisable through the Parliament of the Republic.

(*Article 3*). The requirement that the alteration of the boundaries necessitates the consent of the constituent State is clearly an infringement on the supremacy of Parliament.

47. *Sections 3 and 3A* which state that the legislative powers of the Union shall vest in a Parliament and is confined to the matters enumerated in list one, conflict with Articles 2, 3 and 4(a) in that they seek to curtail the existing legislative power of Parliament which is unlimited in scope and subject matter, if exercised in conformity with the Constitution.

48. *Section 4* states that the membership of Parliament shall reflect "the ethnic proportion of the Union". It is not clear what precisely is meant by this. Since the States are to be constituted on the basis of a linguistic division and language is an aspect of ethnicity, does it mean that there will have to be parity of representation in Parliament as between the two States?

Section 4A seems to contemplate both territorial representation as well as some form of a communal representation as well.

49. *Section 5* states that no legislative measure will be enacted by Parliament "affecting any nationality" unless a majority of Members of Parliament "belonging to that nationality" agree to it. Firstly nowhere in the draft is there a definition of what is meant by "nationality" for this purpose. Are ethnic divisions coterminous with nationality? If so what about the status of persons of mixed parentage? Are all Tamil speaking persons whether Muslim or Hindu or Christian considered to have single nationality?

50. Secondly, what is meant by "affecting any nationality"? Every legislative measure insofar as it affects persons will also affect them as persons

belonging to a nationality. Who is to finally determine whether a measure "affects a nationality"—the Speaker or the Supreme Court? Or is it the Members of Parliament representing the affected nationality themselves who will decide? It does not appear that persons of Sinhala "nationality" are to be provided such a safeguard against measures by the Legislature of the North and East, assuming that it is contemplated that they will have any representation at all in the State Legislature of the North and East. Logically, if there is even one Sinhala representative in the State Legislature, it is presumed that he too will have the right to decide whether Bills affecting his nationality should become law and thereby prevent its enactment.

Comments on Special Constitutional Provisions

Part II

51. i) *Citizenship* : No problems concerning the citizenship of Sri Lanka Tamils has hitherto arisen. The T.U.L.F. has no right or claim to speak on behalf of the Indian Tamils.
- ii) *Official language* : The existing constitutional provisions in regard to language in Sri Lanka are in our view adequate to safeguard the rights of Tamil speaking people without the necessity of making Tamil also an official language. Even in India the several regional languages are not given the Status of the Official Language, despite Tamil being spoken by nearly 50 million people.
- iii) *Union Services* : We accept the principle of fair representation of all ethnic groups in the public service. It is noteworthy that the T.U.L.F. does not envisage the observance of a similar principle in regard to the services within the Northern and Eastern Provinces.

Powers of the States

Part III

52. *Sections 1—3*. No special observations are necessary in view of the general objection to the federal form of government.

Section—4 seeks to ensure adequate representation for Muslims in the Tamil Linguistic State

Assembly. It is noted that the T.U.L.F. does not concede similar rights to the Sinhala people in these provinces and is itself an indication of their future fate under the proposed system of government, assuming that they have not been exterminated in the meanwhile by the repeated terrorist attacks made on them. According to the most recent figures available to the Government 885 civilians were killed by the terrorists in the year 1985.

53. *Sections 5 and 5A* which vests the legislative power of the State Assembly is inconsistent with the unitary form of government and cannot be accepted except it be approved at a Referendum of the People.

Sections 6—9. No particular comments are made in view of the general objection to the federal system of government.

Finance

54. *Sections 10, 11, 12 and 13.* The functions of the Finance Commission are not stated. It is assumed that what is envisaged in Sections 10 and 11 will apply in all the constituent states of the Union. If taxes levied and collected by the Union Government within a State are to be assigned to the State within which such duty or tax is leviable, then what are the revenues which the Finance Commission can allocate to a State which does not already belong to it?

Judicature

55. *Section 14.* The structure of the Judiciary that is proposed by the T.U.L.F. is appropriate to a federal system of government and therefore cannot be accepted. Nor has there been any demand for such a structural change and no criticism has been made in regard to the administration of justice in the Northern and Eastern Provinces which is related to the communal problem. Both Judges and court officials in these areas have been from the Tamil community after the introduction of the use of the Tamil language in the courts.

56. *Section 15.* No special comments are necessary in view of the general comment as to the proposed federal structure of government.

Special Provisions for Tamils of Recent Indian Origin

Part IV

57. The T.U.L.F. has no right or mandate to speak on behalf of the Tamils of recent Indian origin

who have their accredited representative in Parliament and in the Government. The proposals made in Part IV envisage that there should eventually be separate administrative districts "comprising estates where Tamils of Indian origin are in the majority" which will probably be the nucleus for a later demand that such districts too should form a constituent state of the Union or even perhaps be amalgamated with the proposed Tamil Linguistic State.

58. According to the T.U.L.F. proposals "Tamils of recent Indian origin" but not Sinhalese who are resident outside these specially created administrative districts "should be entitled to settle in such Administrative Districts and pursue their legitimate vocations if they so desire".

59. From the foregoing analysis of the T.U.L.F. proposals it is clear that they are not intended to unite the different communities in the Island, which is one of the much vaunted objectives of federalism, but to isolate the Sinhala people and intensify and exacerbate existing differences and create ghettos within Sri Lanka. What is presented in the form of a "viable and acceptable alternative" to Eelam is nothing else but a first step towards its eventual consummation. Truly it may be said that the T.U.L.F. proposals as to the system of government have been formulated in a manner and form calculated to ensure their rejection by the Government of Sri Lanka and embarrass the Government of India as well.

T.U.L.F. PROPOSALS REGARDING DEVOLUTION OF POWER IN RESPECT OF LAND

TULF Proposals

1. The proposals of the T.U.L.F. in regard to devolution of power in respect of land may be broadly enumerated as follows :

- (i) That the State (as distinct from the Centre) be vested with the power over land within its area of authority which includes—
 - (a) command over the natural resources,
 - (b) all powers pertaining to land in all its aspects including land settlement under all Irrigation Schemes and other forms of land settlement,
 - (c) land use including land development and land acquisition within its area of authority.

- (ii) That the Centre should have no right to exercise such power referred to above nor to monitor, review or revise the exercise of such power by the State.
- (iii) The Centre could only play a role of guiding and suggesting to the State in the management or utilization of the natural resources within that states,
- (iv) That the entire extent of land coming under the Accelerated Mahaweli Programme in the Eastern Province to be reserved for the Tamils and Muslims.

1.1 These proposals clearly amounts to a demand that all power in respect of land, land utilization, land development and land settlement should be vested with the regional or provincial body which the proposals refer to as the State with the Centre having in fact no right to the exercise of any power or authority in respect of the above subject.

Observations on the above Proposals

Unitary State

2.1. The Government of Sri Lanka has clearly stated that one of the preconditions to any negotiations for the settlement of the present ethnic dispute is that the unitary character of Sri Lanka as embodied in the Constitution must be preserved. The Government of Sri Lanka cannot agree to any proposal which has the effect of negating the unitary character of the country. The effect of the T.U.L.F. proposals in respect of land is to devolve on each State the absolute authority in respect of land in all its aspects within the area of that particular State. This tantamounts to a division of the country and whether it be in the form of the establishment of a separate State or in effect the establishment of a Federal system of Government, it would amount to the negation of the concept of a unitary State.

2.2. On this ground alone the proposals of the T.U.L.F. in respect of land are totally unacceptable to the Government of Sri Lanka.

Natural Resources

3.1. The natural resources of this country are a common heritage of all its peoples irrespective of caste, class, race or creed and all communities of this country have a right to share and an obligation to manage all natural resources of the country on

rational and equitable principles. The natural resources of the country can be put to its optimum use only on an overall plan of development and management of all natural resources covering the entire Island.

3.2. For each an integrated and unified strategy the conservation, improvement and better utilisation of the basic natural resources such as land, water soil conservation and forestry has to be undertaken. These resources transcend all provincial and district boundaries which have been demarcated purely for administrative purposes. It is therefore essential that the utilization of the natural resources of this country on an objective and scientific criteria be effected under an overall National Plan for that purpose.

3.3. It is having this idea in view that the Government proposals recommended the establishment of a Natural Resources Development Commission which would determine the utilization and allocation of land based on scientific land use planning principles and ensure that all district and provincial plans be consonant with the overall National Plan.

3.4. It is the view of the Sri Lanka Government that it is only in this way that all the people of this country could have the optimum benefit for the development of the natural resources of the country. This proposal is in keeping with the concept of the unitary character of this country.

Land Distribution

4.1. For the people of this country to be able to make use of its natural resources, the available land for agriculture must be distributed among them on a rational and equitable basis. Limiting land use or alienation to a particular community will not achieve this result.

4.2. The bulk of the population of Sri Lanka are engaged in agriculture. Even with the expansion of employment opportunities in other sectors in recent years, the number of persons in the agricultural sector has not decreased appreciably. In the wet zone a greater part of the land comes under plantation crops. This area, viz : the wet zone—is less than one third of the country's land extent but has about 65 percent of the country's total population living within this zone. Due to this high population density landlessness is acute in this area and this problem could only be solved by the

distribution of land in areas where land is available for agriculture.

4.3. The available area with agricultural potential is in the Anuradhapura and Polonnaruwa districts and System 'C' of the Mahaweli Project. In the South there is the Moneragela district and the Hambantota District which have now been developed with the Uda-Walawe and Lunugamvehera Schemes. These areas have already been developed and the other available area with adequate water resources is the Eastern and Northern Provinces.

4.4. It is therefore not surprising that a greater part of the land to be benefitted by the Mahaweli Project is in the Eastern and Northern Provinces. Over 60 percent of the new land that comes within the total Mahaweli Project is situated in the Eastern and Northern Provinces. The question therefore is on what equitable basis this available land in the Eastern and Northern provinces could be distributed amongst the people of this country so as to ease the problem of landlessness that exists today. The Sri Lanka Government does not agree that any particular area should be reserved for any particular community. The most rational and equitable basis on which such land could be distributed is on the basis of the National ethnic ratio which would ensure that all communities would receive extents of land in proportion to their ethnic population in the country. If any particular community does not take its entitlement from any particular settlement scheme it would be entitled to receive that entitlement from another major settlement scheme.

Population and Land Holdings

4.5. The Sri Lanka Tamils constitute 12.6 percent of the population of the country. Together with the Indian Tamils and Muslims, the population of the Tamil speaking people of this country would be 25.6 percent while the Sinhala population would be 74.4 percent. If the Northern and Eastern provinces which contain over 60 percent of the new land to be benefitted by the Mahaweli Project are to be reserved to the Tamils and Muslims of this country, the Sinhala people who constitute 74 percent of the population would have to be satisfied with about 32 percent of new Mahaweli land. This would amount to a discrimination against the majority community among whom the problem of landlessness is acute and does not accord a rational basis for reserving to the Tamils

and the Muslims the available land in the Northern and Eastern provinces.

4.6. Further, on a consideration of the density of population in the different regions, one finds that in the Northern and Eastern provinces, the density of population is 123.4 persons per sq. kilometre whereas the All-Island average is 229.7 persons per sq. kilometre. In the wet zone which comprises less than 1/3rd of the country, the density of population is 468.8 persons per sq. kilometre.

4.7. This distribution of population and the fact that the country is mainly agricultural are reflected in the man/land ratios which clearly indicate that the adoption of the T.U.L.F. proposals would not be a fair basis for land distribution. The average size of an operational agricultural holding in the Northern and Eastern provinces (other than Amparai District) is 2.25 acres and in the rest of the Island it is 1.91 acres which includes the plantation sector as well. If the plantation sector is excluded, then the average size of the agricultural holdings would be much less than 1.91 acres.

4.8. This Government therefore cannot agree to the proposal that the Mahaweli land in the Eastern province be allotted solely to the Tamils and Muslims. This Government, however, does not accept that the Muslims have made such a demand.

4.9. It is significant that the T.U.L.F. proposals do not set out a policy for land settlement. It ignores the land needs of the majority community and seeks to retain in the hands of the State (in contra-distinction to the Centre) the absolute power to decide how and to whom land should be distributed within its area of authority.

5.1. One of the main reasons for the contention on the part of the T.U.L.F. that land in the Eastern province be allotted to the Tamils and Muslims is that Governments of Sri Lanka have discriminated against Tamils and Muslims in the allocation of land in settlement schemes in the Eastern and Northern provinces. Such settlement schemes, it is contended has adversely altered the demographic composition of the Northern and Eastern provinces.

5.2. A consideration of the distribution of land in major settlement schemes in the Northern and Eastern provinces, however, would clearly establish that the allegation that Tamil and Muslim peoples have been discriminated against in the allotment of

land in such schemes is baseless. All major settlement schemes in the Jaffna (including Killinochchi) District, Mannar District, Vavuniya District, Mullativu District and Batticaloa District have, except for 26 allotments, been allotted to Tamils and Muslims. This covers 13,734 allotments approximately. In the Trincomalee District, the Tamil speaking communities have been allotted approximately the following percentage of allotments in the respective schemes- viz:

Allai Scheme	46%
Kantali Scheme	40%
Morawewa Scheme	45%
Wan-Ela Scheme	20%
Mahadivulwewa	35%

In the Galmetiyana and Mahakalanpattu schemes both of which consisted of 438 allotments only and which related to the regularisation of occupants already occupying land within that scheme no allotments had been made to the Tamils or Muslims. In the Gal-Oya scheme falling within the Amparai District 10 percent of the allotments have been given to the Tamil speaking communities. It would thus be seen that other than the case of the Gal Oya scheme in the Amparai District which was predominantly Sinhala populated, land in the major settlement schemes in the Northern and Eastern provinces have been distributed to the Tamil speaking communities in a proportion well above their National ethnic ratio.

Demography

5.3. The settlement of people in land settlement schemes must necessarily alter the demography of the particular area. The Government of Sri Lanka is unable to subscribe to the view that in settling of persons in major settlement schemes one must ensure that the demography of the District for instance is not altered. If this principle is followed the problem of landlessness would never be solved and would result in a discrimination between communities and to solidifying of the claim of the Sri Lanka Tamils that the Northern and Eastern provinces belong to them as their traditional homelands which view the Sri Lanka Government does not accept. From both a political and economic standpoint, the view that the demography of the province or district should not be altered in settling of persons in major settlement schemes in the Northern and Eastern provinces cannot be accepted by the Sri Lanka Government as a basis for land settlement.

Conclusion

6.1. The Sri Lanka Government has submitted its proposals in regard to land which have been formulated within the parameters of the broad principles set out above which ensure both the continuation of the unitary character of the Republic of Sri Lanka and also the rational and equitable basis regarding the utilization of the natural resources of this country and a equitable basis for land settlement. The proposals of the T.U.L.F. run contrary to the above well-known basic concepts on which the Sri Lanka Government has formulated its proposals on land settlement and one cannot help but arrive at the view that the T.U.L.F. proposals were made with the fore knowledge that they would have to be rejected by the Government of Sri Lanka.

6.2. The Government of Sri Lanka, however, is always prepared to enter into negotiations for settlement of this acute question of land on the basis of the parameters set out above.

ACCELERATED MAHAWELI PROGRAMME

According to the Master Plan of the FAO/UNDP Study (1969) the Mahaweli Programme was to be implemented in three phases spread over a period of 30 years. The areas covered by the Mahaweli Development Plan covered the systems A to M. This development programme envisaged a net area of about 900,000 acres to be brought under this irrigation scheme. Out of this extent 246,200 acres consisted of old land and 653,800 acres consisted of new land. Of these Systems, System A, part of System B and System M fell within the Eastern province and Systems I, J, K & L within the Northern province.

2. In 1979 a feasibility study was conducted by MEDECO and according to this report the extent of land to be brought under the Mahaweli Programme was revised. The present position with regard to the acreage of new land that would come under the Mahaweli Development Programme is 541,510 acres of which Systems falling within the Northern province viz: Systems I, J, K & L would comprise of 232,760 acres and Systems in the Eastern province viz : System A, about half of System B and System M would comprise of 106,950 acres. The totality of the lands benefitted by the Mahaweli Programme in the Northern provinces would therefore total 329,710 acres which is about 63 percent of the total acreage of land to be benefitted by this programme.

3. In 1978 the Government of Sri Lanka embarked on what is now known as the Accelerated Mahaweli Programme. Under this Project the Systems in the Eastern Province viz : Systems A, B and a small portion of System D comes within the purview of the accelerated programme.

4. As at present settlement in Systems H has been completed. It is expected that the settlement in System G be completed this year and the settlement in System C be completed by the end of 1988. Settlement has already begun in System B (Polonnaruwa District) and it is expected that Systems A and B would be completed within the next 5 to 6 years.

5. The Paper submitted by the T.U.L.F. on the Mahaweli Development Project makes a point that even the preliminary work has not been commenced as yet in any of the Systems in the Northern Province and entertains grave doubts as to whether for political and technical reasons the Northern Systems would ever be developed. It is also stated that the Systems in the Northern province were included in the development plan for the purpose of satisfying funding countries and agencies that the Northern province too would benefit from this development programme. The Reports also states that the work so far completed or commenced has benefitted provinces other than the Eastern and Northern provinces.

6. In the Master Plan of 1969 the development of the Northern Systems was included to be in the last phase of the entire programme. The reason for this is simply geographical. The water resources available in the central hill country has first to be harnessed and thereafter by transbasin diversions water has, in stages, to be conveyed to the distant areas. Consequently, the river basins and land close to the hill country have naturally to be developed first in order of sequence. The NEDECO study has clearly found that there would be surplus water available for diversion after developing all the projects falling under the accelerated programme. Further, this study has recommended as technically feasible the construction of the North Central Canal to divert water into the Systems in the Northern province.

7. Consequently, the Headworks Projects of the accelerated programme such as Victoria, Kotmale and Randenigala and the Maduru-Oya Reservoir had necessarily to be given priority and as a result Systems H, C & G were the first of the Systems to benefit by the accelerated programme as they lie

closer to the river and the major reservoirs than the other Systems. System B is now in the process of being settled. The reason therefore for the development of these Systems is not ethnic or for the purpose of giving priority to the Sinhala community. Further the Government in its proposals has given the undertaking that the deficit entitlements of the Tamil and Muslim peoples and peoples of other communities in projects of the Mahaweli Programme would they are willing to obtain their entitlement of land.

8. However, it must also be noted that the Sinhala community would be entitled to similar reciprocity in respect of projects of this development programme where they are unwilling to obtain their entitlements. In this way, all communities would receive their fair share of land according to the National ethnic ratio and no community will be able to contend that another community has been given preferential treatment in the distribution of land.

9. In the settlement of new lands, priority will be given to re-settlers and to those displaced by the scheme. Further 10 percent of the extent of land would be deducted in consideration of the necessity to provide for such physical constraints as problematic soil and non-irrigability, such reservations are usual in planning land settlements. On this basis a number of new allotments available in the Systems falling within the Accelerated Mahaweli Development Programme could be given approximately as follows :

<i>Systems</i>	<i>No. of new allotments</i>
System H	4,065
System B	33,980
System C	18,280
System A	11,700
System D	11,600
Total	79,625
	79,625 × .9
	= 71,662
The ratio of Tamil speaking population = 25.6	
Therefore, the entitlement of the Sri Lanka Tamils, Muslims and the Indian Tamils to new settlements would be	
Sri Lanka Tamils	= 9,029
Muslims	= 5,303
Indian Tamils	= 4,013
	18,345

This entitlement to new settlements of 18,345 allotments could be accommodated from Systems A & B leaving the land in the Northern Systems and Systems M to be distributed similarly according to the National ethnic ratio.

POLICE AND INTERNAL LAW AND ORDER

Part 1

1. The T.U.L.F.'s Case for A Separate Police Force

1.1. The T.U.L.F. prefaces its proposals in respect of "Police and Internal Law and Order" with a statement of its case for the creation of a separate Police Force.

1.2. It states that though there was, in the mid-1950s, a fair number of Tamil Officers in the Police Force and Tamil Police Officers were not found wanting in maintaining Law and order, even in times of political stress and mass political agitation, the number of Tamils in the Police Force dwindled to about 5% in the 1980s, as a result of discrimination on racial and political grounds. It further states that there was a progressive deterioration in the standards of Police behaviour in relation to the Tamils. It implies that the reason for the incidents of August 1977 was the large number of Sinhalese in the Police Force.

1.3. It also alleges :-

1.3.1. that in August 1977 the Police shot and killed Tamil civilians and set fire to the market and other business premises in Jaffna; that from then on the Police and the Armed Forces operated jointly to kill, maim and rape Tamils in the North and the East; that property worth millions was destroyed and that on one morning in July 1983 they killed 53 innocent Tamil civilians along the streets and inside houses.

1.3.2. that genocidal attacks on Tamils by the Armed Forces since 1983 have resulted in the brutal murder of over 5000 civilians, the destruction of villages and thousands being rendered homeless.

1.3.3. that there is intense hatred between Sinhalese and Tamils; that the Police and Armed Forces have become dangerously trigger happy and that a feeling has been nurtured among the Police and the Armed Forces by the political leadership that they can commit any crime against the Tamils with impunity.

2. Comments on the T.U.L.F.'s "Case"

2.1.1. The reason for the straining of Police public relations was the communal political policies of the Federal Party, the predecessor of the T.U.L.F., and the treasonous conduct of the T.U.L.F. (which was called the T.U.F. till 1976) and its youth groups which formed the nucleus of the present terrorist groups. From early 1972 onwards these youth groups, with the blessings of the T.U.L.F., engaged in a terrorist campaign to establish a Separate State. They destroyed public property worth millions of rupees, looted and robbed Banks, School laboratories, Co-operative Societies, etc. and engaged in systematic attempts to murder any Tamils who were loyal to the lawfully constituted Government of the country. At times they succeeded in their attempts. At the same time, a relentless campaign was conducted against the Police by the T.U.L.F. and its terrorist allies. Between 1972 and 1979, 13 Police Officers and several Police informants were murdered in cold blood by these terrorists and many others were attacked. No witnesses came forward to give evidence about these heinous crimes. The T.U.L.F., which claimed to be apostles of non-violence, never condemned these atrocities, never expressed its sympathy to the widows and orphans of those murdered or called upon the people of the Northern Province (the majority of whom were their political followers) to do their public duty by coming forward to give evidence about these crimes. On the contrary, the T.U.L.F. added fuel to the flames by attacking, abusing and vilifying the Police from public platforms. They called the Police, inter alia, "dogs" and "an Army of occupation of the Sinhala Government". Tamil Police Officers were called traitors. The extent to which the T.U.L.F. went to attack, vilify and abuse the Police and denigrate their lawful authority can be gauged from the fact that at a very largely attended public meeting at Moolai on the 15th May 1976, Mr. Amirthalingam said, Mr. Seneviratne, S.P. Jaffna (Mr. A. S. Seneviratne, S. P. Jaffna, was present at that meeting), "I am telling you that what happened to Duraipappah will happen to people like you", (Mr. Duraipappah was a former Member of Parliament and Mayor of Jaffna, and a strong supporter of the then S.L.F.P. Government, who was murdered by the Tamil Terrorists in 1976). Acting with great restraint and responsibility, the Police Force stoically endured the abuse, vilification and cowardly attacks to which they were subjected for many years.

2.1.2. By and large, the Police Force, comprising of members of all nationalities, was not found wanting in maintaining law and order even in times of 'political stress and mass agitation' and did not actively or passively favour the Sinhalese or any other community. There were, of course, a few black sheep of all nationalities in the Police Force. However, the venom of the T.U.L.F. and of the Tamil terrorists was directed in particular against the Tamil Police Officers who "were not found wanting in maintaining law and order". These and all other Tamil Police Officers were those who were characterised by the T.U.L.F. as being traitors. Of the first 13 Police Officers murdered by Tamil Terrorists between 1972 and 1979, (since the outbreak of terrorism in the North), 11 were Tamils.

2.1.3. Against this background of hostility to the Police, engineered, sustained and encouraged by the T.U.L.F., its predecessors and allies applications for recruitment to the Police Force Tamil citizens were very few indeed. For example, between 1970 and 1983, 189,876 Sinhalese applied for enlistment as Police Constables, while the number of Tamils who applied was only 1268. (It is significant to note that of these 1268 Tamils, 655 [51.65%] were appointed Police Constables.) In the aforesaid circumstances, it is not surprising that the percentage of Tamils in the Police Force has dropped considerably.

2.2.1. The T.U.L.F. has been as free as it has been irresponsible and mendacious in making allegation against the Police and the Armed Forces. It has used the word 'Genocide' to describe the killing of any Tamil by any Sinhalese or member of the Security Forces, under any circumstances whatsoever. However, they have not seen fit to categorise the mass murder of unarmed Sinhala civilians including women and children, notably at Anuradhapura, the Dollar and Kent Farms and Namalwatta, or the mass murder of service personnel and police officers, (the great majority of whom were Sinhalese) by mining roads and railways as such.

2.2.2. Certain personnel of the Police and Armed Forces have, most regrettably, been guilty of excesses at times when they found their colleagues and fellow citizens being foully murdered by terrorists. The "wall of silence" the Police have repeatedly come up against when they sought to investigate these heinous crimes and the provocative and inflammatory statements made by T.U.L.F. and

its allies referred to in the previous paragraphs, were doubtless contributory causes for these excesses. However, it is totally and utterly false to allege that the Police and the Armed Forces have been guilty of "genocidal attacks" on Tamil civilians, that they have killed over 5000 innocent Tamil civilians since July 1983, etc.

2.2.3. If indeed the Police and the Armed Forces were going about killing, maiming and raping innocent Tamil civilians in a genocidal campaign, if the Police and the Armed Forces felt that they could commit any crime against the Tamils with impunity and if there was intense hatred between the Tamils and Sinhalese, it is self-evident that no Tamil could possibly live in safety in any Sinhala majority area. Yet about 46% of the Tamils of Sri Lanka, including Tamils of recent Indian origin, live and go about their normal avocations in Sinhala majority areas, in peace and safety. However, no Sinhalese can, with safety, travel to the North. The fact that 94,000 Tamils of recent Indian origin, the vast majority of whom live in Sinhala majority areas, who could have obtained Indian citizenship and gone back to India, have voluntarily opted to obtain Sri Lankan citizenship and remain in Sri Lanka, provides conclusive proof of the utter falsity of the above allegations made by the T.U.L.F.

2.2.3.1. Of the manifold allegations made by the T.U.L.F. against the Police and the Armed Forces, the allegations in respect of the incidents in Jaffna in August 1977 were subjected to a detailed investigation by a Presidential Commission presided over by Mr. M. C. Sansoni (a retired Chief Justice and a member of the Burgher community who is held in the highest regard by members of all communities.). This Commission was appointed to inquire into the incidents that took place between 13-8-77 and 15-9-77 in Sri Lanka, and the causes that led up to them. Mr. Sansoni heard the evidence of 959 witnesses, the vast majority of whom were Tamils. Mr. Amirthalingam gave evidence before the Commission.

2.2.3.2. The findings of this Commission did not support the very wide and grave allegations made by the T.U.L.F. in respect of the conduct of the Police in Jaffna in August 1977. Indeed the findings were to the contrary. The principal findings of Mr. Sansoni were that a mob had gone on the rampage in Jaffna, committing arson, mischief and looting, that roads were blocked with concrete

blocks, burning tyres and burning barrels of diesel to prevent the Police from moving about to restore law and order, that though the Police had inadvertently caused fires in one or two shops by throwing inflammable material from the roads in order to clear them, they did not start fires deliberately. It was to control and disperse this mob that the Police opened fire killings 4 people. It was also established that two Police Officers had been shot and injured, that a number of State Institutions had been looted, that a number of vehicles belonging to Government Institutions and the Police had been burnt and that a large number of houses and business premises of Sinhalese had been burnt and looted by Tamils. This was the beginning of the communal riots of 1977.

2.2.3. The demonstrably false allegations made by the T.U.L.F. against the Police in respect of their conduct in Jaffna in August 1977, clearly indicates what degree of credence could be placed on the numerous grave allegations made by the T.U.L.F. and nauseam against the police and the armed forces.

PART 2

THE T.U.L.F. PROPOSALS

1. In brief the principal T.U.L.F. proposals are :-

1.1.1. that there should be created in the North and East, a single, armed Police Force, responsible solely to and under the sole direction and control of the "State Government" and that "Except as authorised by the State, no person, Officer, or Court shall be entitled to supercede or control any police function".

1.1.2. that all recruitment to this Police Force should be by the State, save that the D.I.G. shall be "posted to the State by the I.G.P. in consultation with the Chief Minister, and that S.P.S. should be appointed by the I.G.P. from among the A.S.P.s appointed by the State. (The I.G.P.'s powers are to begin and end with making these appointments.)

1.2. that the State Police Force should be responsible for the maintenance of law and order, the prevention, detection and investigation of ALL CRIMES within the State (including sedition and waging war against the Republic, illicit immigration and emigration etc.) save that Offences against the State and offences in respect of currency and stamps may be undertaken by the "Central Police Force" and the Attorney General may in consulta-

tion with the Chief Minister, direct that any investigation "be undertaken under the supervision of the C.I.D."

1.3.1. that the "Central Police Force" and/or the Armed Forces could be sent to the North and or East to restore law and order in the whole or any part thereof, if and only if the Chief Minister makes such a request and that even in such a case the Officers of the Central Police Force deployed for such purpose should be responsible to the State.

1.3.2. that even if the President declares a State of Emergency he could deploy personnel of the Central Police Force or the Armed Forces in the North and/or East only with the CONCURRENCE of the Chief Minister. i.e. the President would be DEBARRED from deploying any units of the Central Police Force or the Armed Forces in any part of the North and/or East except with the sanction and agreement of the Chief Minister.

1.4. that the Armed Forces should be withdrawn from the North and East for at least five years.

1.5.1. that the composition of the Armed Forces should be brought in line with the ethnic ratio within 5 years.

1.5.2. that a separate Tamil and Muslims regiment should be created.

1.6. that the State should be entitled to pass laws for the PREVENTIVE DETENTION of persons within the State for reasons connected with the maintenance of public order, the SECURITY OF THE STATE, and the maintenance of supplies essential to the Community.

1.7. that in plantation areas, Superintendents of Estates should select volunteers from among workers, in consultation with Trade Union Representatives, to ensure the security of their employees and that these employees should be trained in the use of firearms and be under the direct control and supervision of the D.I.G.

2. Comparison with Earlier Proposals

2.1. It is self evident that the T.U.L.F. proposals go immeasurably beyond and do not bear even an infinitesimal semblance of a comparison to the proposals regarding Internal Law and Order in the "Draft framework of Terms of Accord and Understanding" signed at New Delhi on 30-8-85 with the Indian Government. Clearly the Indian

Government would not have signed that draft accord had not in considered the proposals contained therein to be reasonable.

2.2. The present proposals of the T.U.L.F. also go far beyond the proposals made by it at informal discussions at the time of the All Party Conference in 1984 (even those proposals were unacceptable to the Government). It would be observed that those proposals, inter alia :-

- (a) contemplated the creation of Provincial Police Forces,
- (b) did not contain provision for the exclusive jurisdiction for the maintenance of law and order and the prevention, detection and investigation of crimes being vested in a Provincial Police Force;
- (c) made specific provision for "Offences Relating to the Army, Navy and Air Force" and "Offences relating to Elections", in addition to "Offences against the State" and "Offences relating to Coin and Government Stamps" being investigated by the "Central Police Force".
- (d) made provision for the Attorney-General to direct that any investigation be conducted under the supervision of the C.I.D. at his sole discretion. (Provision for consultation with the Chief Minister is however contained in the draft accord.)
- (e) made provision for the President deploying the Armed Forces and the Central Police Force for the maintenance of law and order etc. in any part of the country after making an order in terms of Part III of the Public Security Act, at his sole discretion,
- (f) made no provision for the withdrawal of the Armed Forces from the North and East for even one day,
- (g) made no provision for the training of estate employees in the use of arms.
- (h) made no provision for the creation of a Tamil/Muslim regiment or for the ethnic ratio being reflected in the Armed Forces within five years.
- (i) made no provision for States passing laws for the "Preventive Detention" of citizens.

3. Comparison with Indian Police System

3.1. The police powers claimed by the T.U.L.F. in its present proposals go even beyond the police powers vested in the Federal States of India (which enjoy much larger powers than Union Territories), (e.g.)—

- (a) Gazetted Officers of a State Police Force in India are members of the Indian Police Service. They are appointed and trained by the Centre and allotted to States. Once allotted they become members of the State Police Force, but they are transferable back to the Centre and the ultimate authority regarding disciplinary action etc. in respect of such Officers is the Centre.
- (b) A State does not have exclusive jurisdiction over the maintenance of law and order within its territory. The Centre can at any time and at its sole discretion, deploy a Central Para Military Police Force in any State or Union Territory for the maintenance of law and order and can vest such Para Military Police Force with any powers ordinarily enjoyed by members of the State Police Force.
- (c) With the declaration of an emergency, the Central Government is empowered to give directions to any State, about the manner in which its executive powers are to be exercised (including Police Powers) and the Union Parliament is then empowered to enact laws conferring powers and duties on the Centre, its Officers and authorities, even in respect of matters not included in the Union List.
- (d) When any State is brought under Presidential Rule, all Police powers vest in the Centre.

4. Evaluation of T.U.L.F. Proposals

4.1.1. The powers concerning law and order claimed by the T.U.L.F. are greatly in excess of the powers in that regard ordinarily vested in even a Federal State. It would be observed that if these proposals are implemented, the Republic would have no effective power whatsoever in respect of the maintenance of law and order within about 30% of its territory including about 60% of its sea coast.

4.1.2. The "power given to the I.G.P. to post a D.I.G. and to appoint Superintendents from among

Assistant Superintendents appointed by the State (that too in consultation with the Chief Minister) are merely "ceremonial powers". The D.I.G. himself would be under the control, disciplinary and otherwise, of the State-so also would all his "subordinates". Since all Officers except the D.I.G. would have been initially appointed by the State, and since they would be under the ultimate control of the State, their loyalties would be with the State and not with the Centre in the event of a conflict between the State and the Centre. In such event the D.I.G., even if loyal to the Centre, though technically in command, would be powerless to take effective action against his subordinates who are loyal to the State, particularly in view of the fact that both the D.I.G. and all his subordinates would come under the ultimate control of the State.

4.1.3. The powers of the President in terms of the Public Security Act are rendered nugatory and meaningless since he could deploy the Armed Forces or the Central Police Force in the North and East only with the consent of the Chief Minister. Thus, even if a Civil War broke out with the State Government initiating, instigating or supporting a move to secede from the Republic and form a separate State of Eelam, the President would be powerless to take action since he could deploy units of the Central Police Force or of the Armed Forces only with concurrence of the Chief Minister.

4.1.4. It is self evident that the power of the Attorney-General to direct that any investigation be conducted under the supervision of the C.I.D. and the powers of the Central Police Force to investigate offences against the State (the Republic) and offences in respect of Currency and Stamps, would be meaningless if the State Police refused to co-operate. There is nothing the Centre could do in such an event.

4.1.5. It is significant to note that while it is proposed that powers in respect of the prevention, detection and investigation of ALL CRIMES are to vest in the State Police Force, the Central Police Force is only to be vested with the powers to INVESTIGATE offences against the State and offences in respect of currency and stamps. i.e. the Central Police Force would have NO POWERS to PREVENT OR DETECT these offences but only have the power to INVESTIGATE them after they have been committed. This is manifestly ridiculous.

4.1.6. Since it is the uniformed police that is most in touch with the public, all or practically

all police informants in the North and East would become the exclusive "property" of the State Police and the Centre would be almost totally dependant on the State Police for the gathering of intelligence, even in regard to plots of treason.

4.1.7. With the Armed Forces being withdrawn from the North and East for at least 5 years, the Naval Bases of Karainagar and Trincomalee would necessarily have to be disbanded. So also would all Army, Navy and Air Force camps in the North and East. All coastal surveillance, and anti-illicit immigration and emigration and anti smuggling operations along 60% of the country's coastline would have to be conducted solely from Naval Bases in Kalpitiya and Tangalle and from Air Force Bases in Katunayake etc. Since this would be clearly ineffective, the total control of 60% of the coast would effectively pass to the State Government. It is most significant and sinister that while "Airports and Aviation" are included in the "List One"—(the list of subjects for the "Union Parliament") Seaports and Shipping is not.

4.1.8. The powers of making laws for preventive detention to be devolved on the "State Government" are akin to the powers of the Centre in terms of the Public Security Act and could be used against any Officer of the Central Government or citizen who displays a loyalty to the Centre in the event of a conflict between the Centre and the State. It is also implicit in the T.U.L.F. proposals that it seeks to draw a distinction between the "Security of the State" and the 'Security of the Republic'. This distinction would be of some meaning if and only if the proposals have been drafted in anticipation of a conflict between the two.

4.1.9. In all the aforesaid circumstances it is manifest that the powers in respect of the maintenance of internal law and order sought by the T.U.L.F. are not merely the powers in that regard ordinarily enjoyed by a Federal State but those ordinarily enjoyed by a Sovereign State. The very nature of and magnitude of the T.U.L.F. demand make abundantly clear its mala fides and sinister intentions.

4.2. The implementation of the T.U.L.F. proposals would also necessarily result in the achievement by the Tamil Racists of a long cherished demand, namely the expulsion of all Sinhala settlers from the North and East. Thousands of

Sinhalese settlers have already been driven out of the North and East by Tamil Terrorists even though those areas are policed by the National Police Force and notwithstanding the presence of the Armed Forces in those areas. Even the most naive of people could not expect a single Sinhalese to go back to the North and/or East if the maintenance of law and order within those areas becomes the exclusive preserve of the political leaders and patrons of the very terrorists who chased them out. Could one, for instance, expect the survivors of Namalwatta to go back to their village if the leader of the Tamil Terrorist gang that murdered their families is the A.S.P. of the area? Not only would those poor refugees not go back but even those Sinhalese, including those in Ambara and Trincomalee, who are still living in the North and East, would necessarily leave their lands and flee to the South, if these proposals are implemented. The plight of these people and the problems that would befall the Government to rehabilitate over two hundred thousand destitute men, women and children, who once tilled their own soil, can better be imagined than described.

4.3. The proposal that estate workers should be given a training in the use of arms is most sinister. The T.U.L.F. does not represent and has no right whatsoever to speak for and on behalf of the Estate labourers. It would appear that the T.U.L.F. seeks to woo the Tamils of recent Indian origin to join their "cause" in order to include the hill country too in the proposed "State of Eelam". The T.U.L.F. would, doubtless, have realised that the Northern and Eastern Provinces could not form a viable Sovereign State since they contain no water sources, hardly any hydropower sources, and

few foreign exchange generating resources, all of which are found in abundance in the hill country. It is ironical that the T.U.L.F., which has vehemently opposed the formation of Home Guard units among Sinhalese villagers in the North and East even after they have been the victims of well planned savage attacks by trained terrorists armed with sophisticated weapons, now sees fit to propose that estate labourers should be trained in the use of weapons.

4.4. The proposal for the creation of a separate Tamil and Muslim Regiment is a monstrous proposal for racial segregation in the Armed Forces. The consequences that would flow therefrom in a small country such as ours need hardly be spelled out.

5. Conclusion

5.1. These proposals are totally unacceptable. If they are implemented, the T.U.L.F. would have all but attained Eelam. It need hardly be said that even if the demand for a Tamil Linguistic State is granted, further problems and conflicts are bound to arise between that "Tamil Linguistic State" of the North and East and the Centre. Water, hydropower, the apportionment of funds, are some of the areas in which conflicts could arise. A cause or pretext for a conflict on which to base an unilateral declaration of independence could easily be found. There can be little doubt that what the T.U.L.F. seeks to achieve by its demands is the necessary infra structure for a State of Eelam, after which a final push could be made for the creation of a State of Eelam, comprising not only of the North and East, but of at least the hill country and the N.C.P. as well.

XIII

Annihilation of Tamils in Trincomalee District — Sri Lanka

17th December '85

Shri RAJIV GANDHI,
Prime Minister of India,
Prime Minister's Office,
New Delhi

Dear Prime Minister,

I represented the Trincomalee Electorate in the Sri Lanka Parliament till 1983, and have been a member of the T.U.L.F. delegation, at meetings with you.

State sponsored anti-tamil actions in Trincomalee, have always had a particular motive, and since the pattern of current violence against the Tamils in Trincomalee, clearly suggests a deliberate plan, not unrelated in my submission, to the strategic importance of Trincomalee, I have felt urged to address you specially on behalf of the Tamil people in Trincomalee.

Current Violence, and forcible eviction of Tamils :

The Tamils in Trincomalee number about 105,000. Around 40,000 of them have been driven out of Trincomalee they have been compelled to go to other Tamil Districts or have left the country, substantial members have come to India as refugees: around 25,000 are refugees in Trincomalee itself, in School and public buildings, in the houses of other Tamils / Muslims, and temporarily in thickets and jungles, while about another 40,000 continue to live in their homes, largely in the Trincomalee City, though in a state of dreadful fear.

Since May this year, not less than 450 Tamils men, women and children have been killed in

different parts of the Trincomalee District; people have been killed in their homes, in paddy fields, on the public highway, in refugee camps, in detention camps, and in a recent instance, bombs were thrown into a Hindu Cemetery, wherein people had assembled for the cremation of an elderly lady, several Tamils were injured, one of whom succumbed to his injuries. The killing continues.

Scores of Tamil females have been raped in the rural areas, frequently gang raped.

Forty traditional Tamil villages and some urban settlements in parts of the Trincomalee City, wherein Tamils have lived for generation and centuries have been totally or substantially burnt and destroyed, such attacks sometimes continuing for several successive days. Gun Boats have shelled coastal villages from the sea, explosives have been dropped into villages from planes, thickly populated rural areas have been fired into from helicopters, while armoured cars have moved into villages firing indiscriminately. In many instances, attacks from the Air, Sea, and land have been simultaneous and co-ordinated. There are credible reports that foreign mercenaries have partaken in some of these attacks.

Over 6000 Tamil owned buildings, houses, shops, and commercial establishments have been burnt, and destroyed. The buildings of a recognised Home for destitute children the 'Sivananda Thapovanam' which provided for the needs of around 200 orphans were amongst these destroyed. Houses and shops abandoned by Tamils have been regularly looted even stripped of Doors, windows, Roofing material, furniture and fittings before being destroyed.

Agricultural implements, and fishing gear of Tamils have been marked targets of destruction,

Several thousands of acres of paddy crop cultivated by Tamils have been destroyed by reason of abandonment, in some instances, fields with mature crops have been burnt.

The value of property looted and destroyed is several crores.

At least 10 Hindu Temples have been desecrated and destroyed. The fact that dead human bodies have been thrown into Hindu Temples and set on fire, suggests the measure of deliberate sacrilege.

Hundreds of innocent youth for the only reason that they are Tamils are indiscriminately arrested followed by long periods of detention, torture, and in numerous instances murder. Selective judicial inquests are a total farce.

Government's Responsibility :

These crimes against an innocent Tamil Civilian population, are being committed by the racist Sri-Lankan Security Forces and Sinhala Civilians mostly from other parts of the country selected, trained, armed by the Government, and designated Home Guards. The Home Guards are armed with shot guns and automatic firearms and carry bags full of grenades. Tamil Civilians are defenceless are have even been deprived of their licensed firearms.

The Tamils in Trincomalee today face the cumulative impact of animosity built up over a period of time. The pattern and severity of the attacks clearly reveal a diabolical plan. That, the Sri-Lankan Government is responsible for the events is beyond question. The Tamils in Trincomalee I submit face extinction.

Perhaps, nothing worse than what is happening in Trincomalee, since the past few months, is happening in any other part of the world today.

New Sinhala Settlements and obstruction to Tamils resettling :

New Sinhala settlements are being created, frequently successfully, in areas from which Tamils have been driven out. Tamils evicted from their Homes through violence, are being physically prevented from resettling in their traditional villages. Some Tamils who attempted to return to their villages have been killed. Armed Sinhala Home Guards parade the streets preventing the Tamils from returning - the Government is clearly privy to these actions.

Government's position untenable :

The Government attempts to take cover for its misdeeds behind Tamil 'Terrorism'; this version is untenable. Tamil Militancy was never heard of in Trincomalee, when whole Tamil settlements were burnt and Tamils killed in June, July and August 1983, the security forces playing a prominent part in the violence, nor when the Sri-Lankan Naval Forces subjected the Trincomalee Town to a severe attack on 26th July '83. On 24th July '83 over 500 Tamil Refugees were forcibly transported from refugee camps, out of the Trincomalee District by the Security Forces to prevent their resettling in the villages from which they were driven out. This was the beginning of the forcible eviction of Tamils from the Trincomalee District by the State.

The few recent instances of attacks by Tamil militants, against sinhala civilians, which have been largely retaliatory or sometimes to prevent new Sinhala incursions, though blown up by the Sri-Lankan Government pale into insignificance compared to the atrocities being continuously perpetrated on the Tamils by the Armed might of the State.

Violence against tamil civilians by the security forces in Trincomalee, had become a frequent occurrence long before attacks by tamil militants against the security forces commenced. More often, than not, attacks by the Security Forces and the Sinhala Home Guards on the tamil civilian population in Trincomalee are deliberate and quite independent of any incident involving tamil militants.

Though the entry of all foreigners into Trincomalee has been banned by the Government, and though many a foreign journalist was forced to leave the district by the Government, even before the ban was introduced, there have been well documented reports of the havoc that has been committed on the Tamils there. Victims and eye-witnesses who fled the country have given graphic accounts of the massacres. The world at large has been shocked by the recent events in Trincomalee against the Tamils.

Past Sinhala settlement and destabilisation of Tamils :

State aided land settlement of Sinhalese in substantial numbers in Trincomalee (in violation of the law governing land alienation, and in breach of all pacts and agreements with Tamil Leadership), stirring Sinhala Chauvinism so as to sustain in Trincomalee, a population hostile to the Tamils, to

counter-balance and check-mate the Tamils in every way, and devious methods of destabilising the long resident Tamils have been in vogue for a long period; it has now been transformed into naked aggression by the State. It is the Government's hope that in the present state of ethnic division, a Government which accomplishes the task of driving the Tamils out of Trincomalee, will receive the support of the Sinhala Population in whatever it does.

Preponderantly Tamil District :

The Tamil people have very deep roots in the Trincomalee District.

In 1827 the Sinhalese were just 1.30% of the total population in the Trincomalee District, in 1881 - 4.21%, in 1921 (the last census, before the transfer of any political power) a mere-4.38%, in 1953 (first census after independence) 18.22%, and in 1981 (last census) after substantial state aided Sinhala settlement, 33.62%. The Tamils by themselves were an absolute majority, in the district till 1921, and are the single largest ethnic group according to the last census.

Trincomalee is historically and culturally, a Tamil district. Its renowned Hindu Temple Koneshwaram has been referred to as "Thakshinakailas" in the Puranas, and Tamil Saints have sung hymns in praise of the Temple atleast from the 7th Century onwards. Dr. Paul Pieris the famous Sri-Lankan Sinhala historian has said that this Ishwaram of Lord Shiva, 'Koneshwaram' facing the great bay of Koddigar in Trincomalee, existed long before the advent of Vijaya to Sri-Lanka. Without being chauvinistic in any way-one may state that the history of the Tamils in the district is as ancient and is inter-twined with the history of the temple.

Electoral Verdicts in Trincomalee :

Successive Governments, the present Government in particular, have been unhappy with the trend of electoral verdicts in Trincomalee. In the face of injustice by Sinhala dominated Governments, Tamils in Trincomalee have emphasized the need for the transfer of power to the Tamils. The Trincomalee Electorate has at every election from 1947 up to date, returned as their representative to Parliament only the candidate of the T.U.L.F. or its precursor. In the Trincomalee district, out of 23 members elected to Parliament from 1947 up to date, 14 were from the T.U.L.F. or its precursor, 3 were Independants with the support of the Main Tamil party, 3 were from the ruling United National Party, and 3

from the Sri-Lanka Freedom Party. No Tamil has ever been returned from the Trincomalee district other than on the ticket of the main tamil political party.

President Jayewardene frequently stresses that his party won 2 seats in the Trincomalee district in 1977. He does not disclose that the only time his party won an election in any electorate in the Trincomalee district, prior to 1977, was in 1947, and that between 1952 and 1977 his party faced defeat in every electorate at each election. The causes for the results of the 1977 elections need to be explained. A Delimitation Commission freshly demarcated electorates before the 1977 elections. An existing multi-member electorate was abolished, and an enormous electorate was newly carved out so as to encompass pockets of Sinhala Population, to ensure the return of only a Sinhalese, and a Sinhalese member was elected for the first time the Trincomalee district to Parliament in 1977.

This new demarcation so divided the Tamil speaking people in the district, that their capacity to exercise their collective strength was substantially minimised.

At the District Development Council Elections of 1981 conducted on the basis of the whole district being a single electorate, the T.U.L.F. defeated the ruling U.N.P. in a straight contest, as the electoral strength of the Tamil speaking people was not divided to their disadvantage.

President Jayewardene conspicuously does not speak of the District Development Council Elections which took place after the Parliamentary Elections of 1977.

At the Referendum in 1982, the Trincomalee district decisively rejected the call of the Government for the extension of the term of Parliament; President Jayewardene is not entitled to claim any longer, even the benefits of the 1977 elections in the Trincomalee district.

At the Trincomalee City elections both in 1979 and 1983, the T.U.L.F. captured 75% of the total number of seats:

Government's disappointment and Reaction :

One of the reasons for the collapse of the District Development Councils Scheme (weak, though it was) was the Government's dissatisfaction over the T.U.L.F. emerging victorious in Trincomalee. The Government's hostility towards Tamils in Trincomalee has gathered momentum since 1981.

The Government was clearly disappointed over its inability to assure favoured foreign investors, more so in areas of strategic concern, that it was in political control of Trincomalee. It is largely the Trincomalee City and the Trincomalee Electorate that is linked to the Harbour and the Government has found the definite political stance of the Trincomalee City and the Trincomalee Electorate irksome.

In 1981, the Government had arranged to lease out the large Oil Storage Tank Farm at China-Bay in Trincomalee, with a substantial extent of Land, that fell within the Trincomalee Electorate, to the 'Coastal Corporation of *Burmuda*' a foreign Company susceptible to super power influence. This Oil Tank Farm served British and allied interests during the second world war and this step of the Government was looked upon with disfavour by other countries both in the region and elsewhere. It was the strenuous protest of the T.U.L.F. in Parliament, and the uproar of the public in Trincomalee, that compelled the Government to abandon that proposal. The Government was clearly displeased that it was compelled to take decision.

More recently, after the T.U.L.F. lost its representation in Parliament, the lease was awarded by the Government to a firm by the name of 'Oroleum Ltd.', Singapore. Though claimed by the Sri-Lankan Government as being economically and technologically the soundest of all tenderes, consequent to the revelation of its meagre share capital - a mere 100,000 dollars, with all shares being owned mysteriously by 'Oroleum Limited' - *Bermuda*, the lease has not been acted upon. The Tamils are held responsible for the exposure. The Government was annoyed by what had happened.

New Territorial Demarcation :

Quite apart from tamil presence in Trincomalee being minimised through violence, the Sri Lankan Government also has other plans to achieve this, through the new territorial demarcation of the Trincomalee district. The Presidential Secretariat has recently initiated a proposal to the Home Ministry, in terms of which the present Trincomalee district is to be divided into parts, and each separate part annexed to territory from adjoining Sinhala districts in the North Central Province, so as to create new districts all of which would be majority Sinhala districts. Under this new territorial demarcation, the hinterland of the Trincomalee Harbour would fall within a majority Sinhala

district. Despite the Government's oft-repeated concern for provincial boundaries, for the purposes of this scheme provincial boundaries were not to be regarded as sacrosanct. A foreign based Sinhala study group with questionable links is to be assiduously advocating this scheme and has put out plans and reports in support thereof. This group has also suggested certain territorial changes in the adjoining Tamil districts which would effectively terminate the existing contiguity between the Northern and Eastern Provinces.

In this situation, the Tamils who have been driven out of Trincomalee would never be able to return, perhaps, even those who are in Trincomalee would be compelled to leave.

The Compelling Reason :

There has to be some compelling reason for the adoption of all these strategies against the Tamils in the Trincomalee district.

Despite pretensions to the contrary, the Sri-Lankan Government sees a common identity between the Tamils, and Indian interests as perceived by Sri-Lanka. Sri-Lanka visualises an effective Tamil presence in Trincomalee, as a factor favourable to India, and disapproves of such a presence. It would appear that the Tamils in Trincomalee have to be eradicated as a first step in the pursuit of the plans that Sri-Lanka has in respect of Trincomalee.

Foreign Involvement its purpose and implication :

The situation assumes alarming proportions with the continued Israeli presence, the increased South African assistance, and the direct involvement of Pakistan. Many actions of the Government in Trincomalee, strongly resemble Israeli actions in occupied Palestine. The attitudes of these countries to India is well known. The involvement of these countries, in the present crisis, must inevitably lead to the Sri-Lankan Government with its known proclivity, becoming even more responsive to the larger interests which these countries obviously serve. These countries are not backing Sri-Lanka, to such a degree as to even hinder India's efforts to find a just political solution, for altruistic reasons — there must necessarily be some quid-pro-quo. Given the strategic importance of Trincomalee, these developments do not portend well for the peaceful future of Trincomalee, or the region.

Democratic Tests :

President Jayewardene talking recently of the merger between the Northern and Eastern Provinces

has talked of democratic tests. This is precisely what the Bandaranayake — Chelvanayakam Pact provided for in 1957 in regard to the regional councils in the Northern and Eastern Provinces — “provision is to be made in the Bill to enable two or more regions to amalgamate even beyond provincial limits”. A democratic verdict in 1957 in the Trincomalee District would have been clearly for amalgamation. The trend of electoral verdicts, was beyond question. It was President Jayewardene’s march to Kandy, and the Campaign which he carried on against the pact, that resulted in it being scuttled. The talk of democratic tests now, after the Sinhala percentage has been substantially increased, and large numbers of Tamils forcibly evicted — both achieved through the instrumentality of the State — President Jayewardene’s Government being in no small measure responsible for the situation — is an attempt at distortion of the process of democracy.

A significant factor in the genuine democratic process, is the just compilation of Electoral Registers. It was the eternal vigilance of Tamil Representatives that ensured the preparation of fair registers in the past. After the tamils lost their representation in Parliament and other elected bodies, and in the present troubled situation, electoral registers have been manipulated to the absolute detriment of the Tamils. As early as 1st October ’84 I wrote to President Jayewardene outlining several malpractices in the preparation of the 1984 register for the Trincomalee district. The letter was acknowledged, but no remedial action was taken. I wrote to President Jayewardene again on 13th May 1985 and described the 1984 Electoral Register as a ‘downright fraud’, and that “no one can be fooled by such deceitful exercises”. There is reliable information, that worse things are happening in respect of the 1985 register now in the course of preparation. Thousands of tamil names are being omitted in the Trincomalee district while large numbers of new sinhala name — are being included. The 1985 register is bound to be much worse than the 1984 register.

It is the Tamil contention, that the last democratic test with the whole district being the electorate ; based on the issue of devolution, was at the District Development Council Elections in 1981, and that President Jayawardene who himself campaigned for his party should accept the verdict of the people at the said election. Moreover, this verdict was

consistent with the vast majority of verdicts in the Trincomalee District since independence.

The future :

We have the gravest fears that the Tamils in Trincomalee are yet to face the worst, the events of the past few months, I submit are a clear indication.

Most unfortunately, the Sri-Lankan Government appears to have come to the conclusion that it can get away with anything.

May I seek your indulgence to refer to what Prime Minister Indira Gandhi said in a letter to President Nixon on 15th December 1971 in regard to a similar situation — “The fact of the matter is that the rulers of West Pakistan got away with the impression that they could do what they liked, because no one, not even the United States, would choose to take a public position that while Pakistan’s integrity was certainly sacrosanct human rights, liberty were no less so, and that there was a necessary inter-connection between the inviolability of states and the contentment of their people”.

We are deeply conscious of the efforts made by your revered mother the late Shrimathi Indira Gandhi and also by you, from almost immediately after assumption of office, to amicably resolve this matter. We appreciate that these steps have all been taken with the best intentions, but most regrettably there has been a total lack of genuine reciprocity on the part of the Sri-Lankan Government.

President Jayewardene’s recent pronouncements that the country is not facing an ethnic problem—but a ‘terrorist’ problem, and a ‘marxist’ plot clearly indicate that despite the misery and suffering to which Tamils have already been subjected, the search for an acceptable political solution is not his priority. The ban imposed by the Government on the publication of the reports of the Cease-Fire Monitoring Committee, though comprising largely of Presidential Nominees, in contravention of the earlier understanding arrived at through India’s efforts, is yet another pointer to its determination to suppress the truth, and avoid the genuine search for a just political solution.

Meanwhile, the most flagrant violation of human rights, and genocidal attacks on the tamil

people, is a continuing process in Tamil areas particularly in the Trincomalee District. There is a grave fear that the Sri-Lankan Armed Forces will launch a massive attack on the Tamils shortly. No Tamil District for that matter is safe.

Appeal to India :

In the face of annihilation, the Tamils in Sri-Lanka, I submit, have an even more valid basis, for looking up to India, than other oppressed people the world over. Our close geographical, historical and cultural ties, and India's well known concern for oppressed people, convince us, that this is neither an unjust nor unfair expectation.

Tardiness on Sri Lanka's part to evolve an acceptable political solution can only mean doom for the Tamils. This I submit India should not permit.

I earnestly appeal to you, for your urgent consideration of the dangers to which the strategic Trincomalee district is being exposed, and for timely action to save the Tamils in particular the Tamils living in Trincomalee, from further massacre.

Thanking you and with my good wishes,

Yours sincerely,
R. SAMPANTHAN

XIV

Integrity of Tamil Homeland

17th January '86

Shri RAJIV GANDHI
Prime Minister
Prime Minister's Office
NEW DELHI

Dear Prime Minister,

The Tamil United Liberation Front expresses its thanks to you for your deep concern at the killings of Tamil Civilians and your abiding interest in finding a permanent and lasting solution to the Tamil problem.

We trust you will appreciate our anxiety to address you again on the integrity of our traditional homeland comprising the Northern and Eastern Provinces which alone can achieve the safety, the security, the salvation and the destiny of the Tamil People. We appreciate the need for a degree of flexibility in the process of negotiations but there is a line beyond which flexibility cannot extend. Shrimathi Indira Gandhi has put it aptly "We cannot manoeuvre or fluctuate where basic convictions, ideals, aims and objectives are concerned".

The concept of linguistic states is nothing new to India, particularly to the Indian National Congress. Long before independence, in the early nineteen twenties one of the planks of the Congress programme was linguistic states because the then existing provinces were mere accidents of British Policy and administrative convenience and were not suitable for a free people in a democratic country. The concept remained valid and necessary even in the nineteen sixties when Shrimathi Gandhi declared "I reached the conclusion that only a linguistic reorganisation could solve the Punjabi problem".

The tortuous history of the island's ethnic relations, shows clearly that what is true in the Indian Sub-continent is truer in Sri Lanka.

Historically the Northern and Eastern provinces have been predominantly populated by the Tamil people. In 1921, according to the Government census, Tamils constituted an absolute majority of every district in the Northern and Eastern Provinces, viz—Jaffna, Mannar, Vavuniya, Trincomalee and Batticaloa. (The present Amparai district was part of the Batticaloa district) In the entirety of the Eastern Province the Singhala Population was less than 5 per cent.

If the citizenship laws were intended to strike down the democratic rights of Tamils of recent Indian origin, state-aided colonisation often in breach of the law of the land and illicit colonisation aided and abetted by state agencies, were the instruments by which the demographic composition of the Eastern province was altered to the detriment of the indigenous Tamils. These illegal and illicit inroads were carried out in the teeth of sustained opposition by the Tamils and Muslims. The struggle and sacrifices of the Tamil people in well-nigh the past four decades would indeed have been in vain if the oneness and togetherness of the Tamil people cannot be preserved in any new structural arrangement.

Despite all these deliberate and planned attempts to make the Tamils a minority in their own traditional homeland, Tamils are still 68.70% in their traditional Tamil homeland comprising the Northern and Eastern Provinces. The Tamil speaking people in this region comprising of the tamils and muslims constitute 86%.

While the tamils can with justification ask that there should be decolonisation of recent Sinhala settlers in the Eastern Province, we wish to emphatically state that the presence of the settlers who have gained access to the Eastern Province in the last three to four decades by the most questionable means does not give them any right moral or legal to thwart the aspirations of the Tamil people who have lived and carried on their livelihood in these areas for many centuries.

The T.U.L.F. refuses with justification to agree to throw 450,000 Tamils of the Eastern Province to the tender mercies of the Sinhalese and their Government.

The Muslims who are 18% of the 86% Tamil speaking people of the Eastern and Northern provinces will, given the chance, throw in their lot with the Tamils, with whom they have lived together in the Eastern province for centuries. The Muslim leadership of the Sinhala areas does not reflect the thinking of the Muslims of the Northern and Eastern Provinces. The T.U.L.F. is always prepared to make suitable arrangements in respect of representation, land distribution, education etc. to re-assure the Muslims in a Tamil linguistic state.

The Sinhalese have nothing to fear because the Government at the Centre will always be a Sinhala dominated Government.

The Northern and Eastern Provinces have been traditionally recognised as Tamil speaking areas from the days of British rule. Foreign travellers, British governors and administrators have stated this in their travelogues and despatches. This recognition led them to treat these two provinces together and separately from other provinces for various administrative purposes. Even after independence the same practice continued. Recruitment of Divisional Revenue Officers, Assistant Commissioners of Local Government, officers of the Local Government, Clerical Service has been for these two provinces together, and separately from other provinces. Under the Constitutions of 1972 and 1978, the Northern and Eastern provinces have been recognised as a single linguistic entity wherein the Tamil language shall also be used as the language of administration, as the language for the conducting of business by local authorities, and as the language for litigation in the courts of original jurisdiction.

Even the Bandaranayake—Chelvanayagam pact of 1957, in recognition of this fact provided for the amalgamation of Regional Councils in the Northern and Eastern Provinces beyond provincial boundaries. It was the chauvinistic politics and organised campaigns of President Jayewardene that resulted in the abrogation of that pact. Even today, it is the chauvinistic posture of President Jayewardene that is the primary obstacle to accord being reached on this all important question. President Jayewardene's consistent opposition to an integrated Tamil region inclusive of the strategic Trincomalee district in our submission is also motivated by geo-political considerations.

Whenever the democratic will of the Tamil people has been gauged at an election, they have always signified their resolve to work together in a common homeland. The T.U.L.F. and before it, the Federal Party and the Tamil Congress stood for these ideals in the face of injustices by successive Sinhala Governments. These parties won by overwhelming majorities at almost all elections since independence. The pattern of voting in the Trincomalee district is particularly significant. Elections were held to elect 23 members of Parliament since 1947. 14 of these members were from the above Tamil parties, 3 from the U.N P., 3 from the S.L.F.P. and 3 were independants with the support of the Federal party. The support of the majority of Muslims to the T.U.L.F. at the District Development Council Elections of 1981 is also of great significance.

Repeated pogroms since 1956, deliberate and gross discrimination against the Tamils in the field of education, employment and economic development, had compelled Tamils in their tens of thousands to flee to many countries as refugees. Everyone of them is resolved to get back to live, work and die in their homes in the Northern and Eastern Provinces. But, they can do so with safety, dignity and honour, only if they have an economically strong unit with the Tamil people living together and having complete control over the governance of such a unit.

A negotiated political solution may emerge but it will be very long before reconciliation - before a solution to the problems of fundamental mistrust, suspicion, fear and hatred can be found. Too much blood had been let, too many shots fired, too many young men tortured and killed, Tamil assets worth billions have gone up in flames. The North and East can be the only sanctuary for the Tamils. If

the ultimate objective of all political exercises, is the happiness of the large majority of the people, then a strong, viable homeland is the only answer.

If a negotiated settlement is intended to primarily achieve a peaceful resolution of the Tamil Conflict, it is our firm conviction that peace would prove elusive unless the integrity of Tamil territory is preserved. It would also be the only way to ensure that any new arrangement is wholesome in content, and benefits the broadest spectrum of the Tamil people. This is a matter on which there is complete consensus amongst all Tamil organisations and the Tamil people as a whole. The separation of the Eastern Province would be tantamount to the creation of a Northern Ireland situation - the Eastern Province would become yet another Ulster and Trincomalee its Belfast. The Tamils cannot accept this position.

Judged by any standard - common history, common heritage, common language, geographical contiguity and a will to live together, the Northern and Eastern Provinces is one entity and must continue to be so.

On the 2nd of December, 1985 on behalf of the T.U.L.F. we handed over a set of proposals to the Foreign Secretary Mr. Romesh Bhandari. We are reliably informed that these proposals were in turn handed over to President Jayawardene on the 12th of December 1985. Over a month has elapsed and there has been no response from the Lankan Government except for some public statements implying a negative response by President Jayawardene and the Minister for National Security on the question of the Tamil homeland. 'History, it is said, sometimes seems to move with the infinite slowness of a glacier and sometimes to rush forward in a torrent'. The current pace in the process of peaceful resolution, we fear could lead to the extinction of the Tamil people.

It is our sad and bitter experience that President Jayewardene joins these negotiating processes to buy time for the Sri Lankan Government to marshal all its forces, and to gather further strength in this period of seeming co-operation. Time is on his side and the consequences to the Tamils will be tragic, if this stratagem of President Jayewardene succeeds every time.

Even as he maintains the pretence of a commitment to a negotiated settlement, the frequency and ferocity of military operations against the Tamil people has been stepped up. One shudders to think what might have been the magnitude of the carnage if you had not often expressed your concern

and anguish at the killings of innocent Tamil Civilians. But, the magnitude of killings is yet high, considering that we are a small nationality of only 35 lakhs of people. While over 10,000 Tamils have been killed since July '83, on a modest estimate, over 2000 Tamils have been killed since June '85, over 10,000 houses have been burnt or destroyed, over 150,000 people have been rendered refugees in Sri Lanka. When Major Calley destroyed the entire village of Mai Lai in Vietnam the world was shocked. In Sri Lanka over a hundred Tamil villages have been destroyed in Tamil districts. In Trincomalee alone 42 villages have been destroyed.

Apart from the stepped up Military operation, the Government is actively engaged in the pursuit of several other devices to effectively crush the Tamils. The economy of the Tamils has been totally devastated—the Tamils are today an impoverished people, in many rural Tamil areas, starvation is already a stark reality. In a part of the Amparai district in the Eastern Province, 93,000 new Sinhalese have been settled since 1981, Sinhalese have been induced and instigated to occupy land from which Tamils have been forcibly evicted in the Trincomalee district, further adversely altering the demographic composition primarily in the Eastern Province. Electoral registers are being rigged and manipulated in the Trincomalee District. The decimation of the Tamils would become a fait-accompli in several Tamil districts. Such actions on the part of the Government clearly establish that the Government is not genuinely seeking an honourable settlement with the Tamils.

Recent statements and interviews of President Jayewardene and the interminable delay in the negotiating process indicate that President Jayewardene has foreclosed the option of a negotiated settlement. Continuation of the process of negotiation, when the stark fate of annihilation faces our people, would not be in their interests. As we indicated to you in our letter of 1st December 1985, in the absence of a positive response to our proposals we will be left with no option but to work in pursuit of our cherished ideal in keeping with the clear mandate given us by the Tamil People.

We pray that you and the Indian people who have always stood by us, will understand and appreciate our position.

Thanking you and with our warm regards.

M. SIVASITHAMPARAM
President
TULF

We remain,
Yours sincerely,
A. AMIRTHALINGUM
Secretary General.
TULF

XV

March 8'86

Shri RAJIV GANDHI,
Prime Minister,
New Delhi.

Dear Prime Minister,

As we stated in the course of the meeting we had with your Excellency on January 31, 1986, over two thousand innocent Tamil civilians were killed by the Sri Lankan armed forces in the Northern and Eastern Provinces during the period May 1, 1985 to January 31, 1986. We have brought the incidents up to date, to the period ending February 28, 1986. During these ten months over ten thousand residential houses and business places belonging to Tamils have been burnt, totally damaged or destroyed. We have listed the incidents in chronological sequence giving available details and facts relating to the number of deaths and property destroyed. We wish to state, however, that while this document covers a wide range of the acts of violence it is not an exhaustive record of all events.

It was at the height of the genocidal attack on Tamils all over Sri Lanka in July, 1983 that India offered her good offices to work out a lasting

solution to the ethnic problem. There was comparative calm during the period September 1983 to March 20, 1984 when President Jayawardene suddenly postponed the All Party Conference for six weeks. The long postponement of the All Party Conference and the receding prospects of any solution led to a renewal of tensions. Under cover of eradicating terrorism, the Sri Lanka Government started unleashing violence of the armed forces against innocent Tamil people in the North and East of Sri Lanka.

A statement concerning the killing of Tamil civilians in the North and East by the armed forces and the destruction of property during the period April 1984 to May 1, 1985 is being prepared and we shall forward these as early as possible. These two documents will give particulars relating to the massacre of innocent Tamil people and destruction of their property committed by the Sri Lanka armed forces and expose the real intention of the Government to commit genocide against the Tamil people in that country.

Yours sincerely,
A. AMIRTHALINGUM
Secretary General
T.U.L.F.

XVI

Final Proposals Forwarded by Government of Sri Lanka for finding a Political Solution to the Ethnic Problems—May 4, 1986

PREAMBLE

The Sri Lanka Government has made certain proposals and states that the said proposals may be examined within the framework of the under-mentioned principles to which the Sri Lanka Government subscribes :

- i) maintenance of the unity, integrity and sovereignty of Sri Lanka ;
- ii) the maintenance of the unitary character of the Sri Lanka Constitution ;
- iii) the principle of devolution of powers upon the provincial councils within the framework of the constitution of Sri Lanka as proposed to be amended.

2. With reference to the Northern and Eastern provinces, in order to allay the apprehensions of any community, the Sri Lanka Government is prepared to consider the following alternative suggestions :

- i) Suitable institutional arrangements to provide for the provincial councils in the Island, especially in the Northern Province and the Eastern province to consult with each other and act in co - ordination on matters of mutual interest and concern.
- ii) Suitable legal and institutional arrangements to ensure that the ethnic groups in each province participate in the Government of the Province.
- iii) Establishment of units to the ethnic groups a large measure of local self - government

under the control of the provincial Government such as :

- a) community oriented AGA Division.
- b) Pradeshiya sabhas in the AGA Divisions.
- c) Any other unit of local self - Government.

3. A detailed note containing observations on the proposals of the Sri Lanka Government on the framework is appended as Annexure-I. The Sri Lanka Government believes that further negotiations are possible to arrive at final agreement.

4. A separate note is annexed (Annexure-II) on law and order and the scope of the powers devolved there under.

5. A separate note is annexed (Annexure-III) on land settlement and the scope of the powers devolved there under.

ANNEXURE-I

NOTE ON PROVINCIAL COUNCILS

1. A Provincial Council shall be established in each Province. Law-making and Executive (including Financial) powers shall be devolved upon the Provincial Councils by suitable Constitutional amendments, without resort to a referendum. After further discussion, subjects broadly corresponding to the proposals contained in Annex-I to the Draft Framework of Accord and Understanding of 30.8.85 and the entries in List II and List III of the Seventh Schedule of the Indian Constitution shall be devolved upon the provincial Councils. This will, however, be subject to the accompanying notes relating to (i) law and order ; and (ii) land settlement.

2. In the Northern Province and in the Eastern Province, the Provincial Councils shall be deemed to be constituted immediately after the Constitutional amendments come into force. Elections to the said Provincial Councils shall be held immediately there after on the basis of proportional representation.

3. In regard to the other Provinces, the existing District Councils in a Province may, at any time, opt to constitute a Provincial Council. Where a Provincial Council is constituted in any other Province, the said Provincial Council may exercise legislative powers in respect of any or all subjects devolved upon the Provincial Councils. The Provincial Council may also resolve to request Parliament to exercise legislative powers on its behalf in respect of any devolved subject.

4. There shall be a High Court in each Province. The Supreme Court of Sri Lanka will exercise Appellate and Constitutional jurisdiction.

5. The leader of the Party which commands a majority in the Provincial Council shall be appointed as the Chief Minister. The other Ministers of the Council of Ministers shall be appointed on the advice of the Chief Minister.

6. The Sri Lankan side has no objection to the proposal to appoint a Governor in each Province. However, this question may be further examined.

7. Any future amendment to the Constitutional provisions or any other laws providing for devolution of legislative and executive (including financial) powers shall require a 2/3rd majority as provided in the present Constitution. Any further safeguards, for example a further requirement of a referendum, may also be discussed.

8. On the establishment of a provincial Council, it may, by a resolution, decide to grant right of audience in the Provincial Council, but without a right to vote, to the Members of Parliament elected from the Province. Such resolution shall be in for the duration of the term of the Provincial Council.

9. A Bill passed by the Provincial Council shall become law on certification by the Chairman of the Council. If the President is of opinion that the constitutional validity of the Bill has to be decided by the Supreme Court, he may, before the Bill comes into operation, refer the same to the Supreme Court for a decision thereon. Such

reference shall be made within a specified period. This may be further discussed.

10. The circumstances under which the President may dissolve a Provincial Council or remove the Provincial Government, and the conditions and limitations under which such powers may be exercised, shall be further discussed and suitable provisions made.

11. Elections to the Provincial Council shall be on the basis of proportional representation. The number of members to be elected shall be determined having regard to the population and the area of each District in the Provincial Council. The scheme of proportional representation may be discussed on the basis of the clarifications appended to the August 1985 document.

12. Disputes relating to elections to the Provincial Council shall be decided by Courts on election petitions filed before them, in the same manner as is provided now in the case of elections to Parliament.

13. The Sri Lanka side desires that the concept, powers and functions of Pradesheya Sabhas as units of local Government under a Provincial Council may be further examined and discussed.

14. The Sri Lanka side also desires that the powers and functions of other units of local government, either in existence now or which may be created in the future, may also be further examined and discussed.

15. The above represents the cardinal features of the proposed structure of Government in each province. They will be supplemented by suitable consequential and incidental provisions

AIDE MEMOIRE

1. Further to the Law and order papers of 4th and 10th May, 1986, additional Confidential Clarifications (dated 13th June, 1986) in response to the nine points raised by the Indian Delegation are appended.

2. It is proposed to discuss the question of the status and use of Tamil and English at the political parties' Conference. One of the proposals of the Government will be that Tamil and English should have the status these two languages have in the Constitution of India.

3. The Sri Lanka Government will be prepared to consider providing an institutional framework providing for Inter-province co-ordination and consultation on matters of common interest and concern similar to that provided for in the Indian Constitution in relation to "Inter-State Councils" under Article 263. The Sri Lanka Government will also endeavour to persuade the major political parties, through the political parties' Conference to accept these two proposals, in paragraphs (2) and (3).
4. All these as well as other proposals should not be viewed in isolation, but as integral elements of an overall settlement provided that all other elements are accepted.

Colombo,
13th June 1986.

ANNEXURE-II

LAW & ORDER

1. The subject devolved shall be described as follows :—

Public order within the Province but not including—

- (a) national defence,
- (b) national security, and
- (c) the use of any armed forces or any other forces under the control of the Government of Sri Lanka in aid of the civil power.

2. The Sri Lanka Police Force which shall function under the overall direction and control of the I.G.P. shall consist of—

- (i) the National Division (including Special Units),
- (ii) a Provincial Division for each Province.

2.1. The National Division shall consist of the I.G.P., D.I.Gs, S.S.Ps, A.S.Ps and other ranks recruited at the National level.

2.2. A Provincial Division shall consist of the D.I.G., S.S.Ps, SPs. and A.S.Ps, all seconded from the National Division and Provincial Asst. Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors, Sergeants and Constables recruited in the Province. Members of the Provincial Division shall be eligible for promotion to the National Division.

3. Recruitment to the National Division and promotions of Police Officers in the Provincial Divisions to the National Division shall be made by a National Police Commission composed of three members, namely—

- (a) the I.G.P.,
- (b) a nominee of the President, and
- (c) A nominee of the Chief Justice.

3.1. The Commission shall also be responsible for promotions, transfers and disciplinary control of members of the National Division other than the I.G.P. subject to paragraph 4.1. below.

3.2. It shall hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Commissions.

3.3. It shall set standards for recruitment and promotion of Police Officers of all Divisions and such standards shall be uniform for all Provincial Divisions.

4. Recruitment to each Provincial Division shall be made by a Provincial Police Commission composed of three members, viz.

- (a) the D.I.G., of the Province,
- (b) a nominee of the President, and
- (c) a nominee of the Chief Minister of the Province.

4.1. A Provincial Police Commission shall be responsible for transfers, promotions and disciplinary control over officers in the Provincial Division; for promotion of Officers of the National Division seconded to the Provincial Division up to the rank of S.S.P. ; and for transfer and disciplinary control over officers seconded to the Provincial Division except the D.I.G.

Provided that any such officer against whom disciplinary action has been taken by a Provincial Police Commission shall have the right of appeal to the National Police Commission whose decision on such appeal shall be final.

5. The National Police Commission or a Provincial Police Commission shall be entitled to delegate such of its powers as may be prescribed to such other person or authority as may be prescribed.

6. The I.G.P. shall appoint a D.I.G. for each Province with the concurrence of the Chief Minister

of the Province. However, where there is no agreement between the Inspector-General of Police and the Chief Minister the matter will be referred to the President who after due consultations with the Chief Minister shall make the appointment.

7.1. The cadres of Police Officers of all ranks of the National Division shall be fixed by the Government of Sri Lanka. The cadre of Officers and other ranks of each Provincial Division shall be fixed by the Provincial Administration with the approval of the President having regard to :—

- (i) area of the Province,
- (ii) population of the Province, and
- (iii) such other criteria, as may be agreed to or prescribed.

These principles shall be uniformly applied to all Provincial Divisions.

7.2. The cadres of the Provincial Divisions shall be fixed on ascertained principles such as population, area, number of Police Stations involved and other relevant considerations. These principles shall be applied to all Provincial Divisions without distinction.

7.3. The salary scales and perquisites of office enjoyed by the various ranks in the National and Provincial Divisions shall be determined by the Government of Sri Lanka after consultation with the Chief Ministers of the Provinces. The salary scales and perquisites of office as enjoyed by Members of the Provincial Divisions shall apply uniformly to all Provincial Divisions.

8. The nature, type and quantity of fire-arms and ammunition and other equipment for the National Division shall be determined by the National Police Commission. The nature, type and quantity of fire-arms and ammunition and other equipment for all Provincial Divisions shall be determined by the National Police Commission after consultation with the Provincial Police Commission and uniform standards and principles shall be applied for all Provincial Divisions.

9. Recruitment to the National Division shall be made at the ranks of P.C., S.I. and A.S.P. Recruitment to the Provincial Division shall be made at the ranks of P.C., S.I. (and P.A.S.P. rank referred to in para 2.2. above).

9.1. Recruitment to the National Division shall be made by the National Police Commission and

recruitment to the Provincial Division shall be made by the Provincial Police Commission having regard to the standards of recruitment and other criteria prescribed in this behalf. Provided also that recruit shall, on appointment set out his preferences as to the Division in which he wishes to serve and that he shall, if possible be posted to the Division of his choice with the consent of the Division concerned.

9.2. The Government of Sri Lanka shall be responsible for the training of all recruits to and of members of all Divisions of the Sri Lanka Police Force.

The Provincial Administration may with the consent of the President provide for additional training for the members of the Provincial Division.

10. Members of the National Division and the Provincial Divisions shall wear the same uniform and insignia of rank, provided that uniforms of the members of each Division shall bear a distinctive shoulder flash indicating the Division to which he belongs.

10.1. There shall be one uniformed police force in each Province comprising of the members of the Provincial Division and the officers seconded thereto. Members of the National Division shall ordinarily be in plain clothes provided that they may wear uniform when performing any duties in respect of the maintenance or restoration of public order as set out in paragraphs 12.1, 12.2, 12.3 and 12.4. Provided also that the I.G.P. and such other Officers as may be specified shall ordinarily be attired in uniforms.

11. All Police Officers serving in units of the National Division and Provincial Division in any Province shall function under the direction and control of the D.I.G. of such Province.

11.1. The D.I.G. of the Province shall be responsible to, and under the control of, the Chief Minister thereof in respect of the maintenance of public order in the Province.

11.2. The provisions of para 11.1. above are subject to the qualifications that—

- (i) Upon the declaration of any emergency the President may assume such powers and responsibilities of the Chief Executive and the Provincial Administration in respect of Public Order within the Province as he may by regulation provide.

- (ii) Where the President is of the opinion that the security of or public order in a Province is threatened by grave internal disturbance, he may without the declaration of an emergency but in consultation with Chief Minister of such Province, by order deploy in aid of the civil power any unit of the National Division or the armed forces in the Province for the purpose of restoring public order. Provided that every such order shall cease to be in force as soon as the President is satisfied that public order has been restored or on the expiry of 60 days from the date of the order whichever is earlier.

12.1. The Provincial Division shall be responsible for the preservation of public order within the Province and the prevention, detection and investigation of all offences (except the offences specified in the Schedule) and subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, the institution of prosecutions in the relevant Courts in respect of such offences.

The National Division of the Sri Lanka Police Force shall be responsible for the prevention, detection and investigation of all offences specified in the Schedule and, subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, for the institution of prosecutions in the relevant Courts in respect of such offences.

12.2. Where the Provincial Administration seeks the assistance of the National Division to preserve public order within a Province, the I.G.P. shall deploy such personnel of the National Division as are necessary for the purpose, and place them under the control of the D.I.G. of the Province.

12.3. Where a State of Emergency is declared the I.G.P. may deploy such units of the National Division as he deems necessary in any Province for the restoration and maintenance of public order within such Province.

12.4. Any offence which may ordinarily be investigated by a Provincial Division may be investigated by the C.I.D. or any other unit of the National Division—

- (a) Where the Chief Minister requests that such investigation be undertaken by the C.I.D. or any other unit of the National Division;

- (b) Where the Attorney-General/I.G.P. is of opinion that an investigation of such offence by the C.I.D. or any other unit of the National Division is necessary in the public interest and directs, after consultation with the Chief Minister, that such offence be investigated by the C.I.D. or any other unit of the National Division.

12.5. In a case falling under (a) or (b) of para 12.4. the prosecution of the offence shall be under the supervision and control of a Director of Prosecutions to be appointed in this behalf.

13. The National Division shall perform all the functions vested in the Provincial Division in any Province until a Provincial Division is established in such Province.

14. All gazetted officers of the National Division and Provincial Divisions shall be required to attain the prescribed standard in Sinhala and Tamil. All Officers of the rank of A.S.P. and above shall also be required to attain the prescribed standard of English.

Every recruit to the Sri Lanka Police Force shall have proficiency in his mother tongue. For the first promotion he shall acquire proficiency in a language other than his mother tongue. For the next promotion he shall acquire a knowledge of the third language. The three languages recognised for this purpose are Sinhala, Tamil and English.

13th June, 1986.

ANNEXURE-III

NOTE ON LAND SETTLEMENTS

The subject matter of Devolution

Land, that is to say, rights in or over land, land tenures, transfer and alienation of land and land improvement shall be a devolved subject, except as provided hereinafter.

1.1. Lands which are vested in the State (State lands), will be alienated, used and disposed of in the following manner.

1.2. Lands which are required for the purpose of the Government of Sri Lanka, in respect of subjects not devolved on the Provincial Council, may be utilised without any restriction by the Government of Sri Lanka,

1.3. Insofar as any such lands are required for the purpose of the Provincial Council, in respect of subject devolved on the Provincial Council, the Provincial Council shall formulate schemes for the use of such land in accordance with any applicable national policy. If for the purpose of such scheme it becomes necessary for such land to be alienated or otherwise disposed of to any citizen or any other body, such alienation or disposition shall be made by the President on the advice of the Provincial Council.

1.4. The National Land Commission shall also have power to formulate policy regarding the use of State Land.

2.1. Inter-Provincial irrigation and land development projects, such as the Mahaweli Development Project, shall be the responsibility of the Government of Sri Lanka.

2.2. Principles and criteria in regard to the size of holding of agricultural and homestead land arising out of inter-Provincial irrigation schemes shall be determined by the Government of Sri Lanka in consultation with the Provincial Governments.

2.3. Principles and criteria in regard to selection of allottees for settlement of land arising out of inter-Provincial schemes shall be determined by the Government of Sri Lanka, but the actual application of these principles, the selection of allottees and all other incidental matters shall be within the powers of the Provincial Government.

2.4. The Government of Sri Lanka shall establish a National Land Commission for formulating a national policy regarding land use in areas covered by inter-Provincial irrigation schemes. Such national policy will be based on technical aspects (and not on political or communal aspects). It will lay down general norms in regard to the use of land having regard to soil, climate, rain-fall, soil erosion, forest cover, environmental factors, economic viability etc. The Provincial Council shall, in exercise of its power derived as on page 1 above, give due regard to the national policy in regard to land use as formulated by the National Land Commission.

Enclosure to ANNEXURE-III

MAHAWELI PROJECT

The total number of new allotments estimated to be available in Systems A to H under the

Accelerated Mahaweli Programme is as follows :

System A	14,300
System B	37,483
System C	22,000
System D	14,800
System E	Nil
System F	Nil
System G	2,900
System H	10,000 (national)
	<hr/> 101,483 <hr/>

Therefore, the entitlements on the basis of national ethnic ratios of Sri Lankan Tamils, Muslims and Indian Tamils to the new allotments would be :

Sri Lankan Tamils	12,787
Muslims	7,509
Indian Tamils	5,683
	<hr/>
Total	25,979 <hr/>

This number of allotments will be made available accordingly in the Trincomalee and Batticaloa districts to the Tamil-speaking people. However, it is noted that up to date the following allotments have been alienated to Tamil-speaking families and these numbers have to be reduced from the above entitlements.

System	Tamil	Muslim	Total
A	47	822	869
B	14	91	105
C	821	568	1,389
	<hr/>	<hr/>	<hr/>
Total	882	1,481	2,363 <hr/>

1. The national entitlement of allotments of the "Tamil speaking people" in the Accelerated Mahaweli Programme has been

estimated at.....25979 allotments
consisting of—

Sri Lankan Tamils	12787	allotments
Muslims	7509	allotments
Indian Tamils	5683	allotments

2. The entitlement of allotments of the "Tamil speaking people" in Trincomalee and Batticaloa

Districts, distributed according to the ethnic population of the Districts would be approximately as follows : (subject to availability and further discussions in the event of changes in available land)

	<i>Trincomalee</i>	<i>Batticaloa</i>	<i>Total</i>
Allotments	12700 (approx)	18690 (approx)	31390
Sri Lanka Tamils	6960 + 19	10440 + 30	17400 + 49
Muslims	3220 + 10	4830 + 15	8050 + 25
Indian Tamils	180 + 2	270 + 3	450 + 5
	<u>10391</u>	<u>15588</u>	<u>25979</u>

3. Such a distribution would result in Sri Lanka Tamil receiving about 4700 allotments more than they are entitled to, and Muslims receiving

about 500 additional allotments. Indian Tamils would receive about 5000 allotments less. The distribution then has to be adjusted to give the Indian Tamil community its due share, and this would result in their ethnic proportion in these two Districts being very significantly increased.

4. The balance allotments comprising of approximately 2308 allotments in Trincomalee district and approximately 3103 allotments in the Batticaloa district will be allotted to the Sinhalese.

5. It is therefore necessary to specify that—

"In making settlements in Systems A, B and D in the Trincomalee and Batticaloa districts, the government will do so in a way which will not affect the ethnic proportions of those districts". Subject to paragraph 3 above.

XVII

Amendment to the Constitution sent by Sri Lankan Government

ON SEPT. 4, 1986

DRAFT VII

1. PREAMBLE

The TULF suggested the incorporation of the following preamble at the beginning of the Chapter :—

“Nothing in this Chapter or in any law made in pursuance of the provisions thereunder shall affect or derogate from, or be read or construed as affecting or derogating from, Article 1 or 2 or 3 or 6 or 7 or 8 or 9 or 10 or 11 or 30(2) or 62(2) or 83, but save as aforesaid, nothing contained in any other provisions of the Constitution or any other law shall be interpreted to derogate from the provisions contained in this Chapter, and of any law made in pursuance of it.”

THIS MATTER TO BE DISCUSSED FURTHER

SLG suggests the following preamble :—

“The provisions of this Chapter shall be subject to Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 62(2) and 83 and shall not affect or derogate from, or be read or construed as affecting or derogating from, any such Article, but save as aforesaid, nothing contained in this Chapter or any law in force on the date on which this Chapter comes into force shall be interpreted to derogate from the provisions of this Chapter.

ARTICLE 154A

154A—Subject to the provisions of the Constitution, a Provincial Council, shall by operation of this Article, be deemed to have been constituted for every province specified in the Eighth Schedule,

with effect from the date on which this Chapter comes into force.

IT WAS AGREED THAT THIS ARTICLE BE AMENDED AS FOLLOWS :—

154A (1) Subject to the provisions of the Constitution, a Provincial Council is hereby established for every Province specified in the Eighth Schedule, with effect from the date on which this Chapter comes into force.

(2) Every Provincial Council established under paragraph (1) shall be constituted upon the election of the members of such Council in accordance with the law relating to Provincial Council elections.

ARTICLE 154B (Draft V)

154B. (1) There shall be a Governor for each province for which a Provincial Council has been constituted in accordance with Article 154A. The Governor shall be the representative of the President in the Province. The Governor shall be responsible to the President for the due exercise, performance and discharge, of his powers, duties and functions, under the Constitution and any written law.

(2) The Governor shall be appointed by the President by warrant under his hand and shall hold office during the pleasure of the President.

(3) The Governor may, by writing addressed to the President, resign his office.

4. Subject to the provisions of paragraph (2) and (3), the Governor shall hold office for a period of five years from the date he assumes office.

5. Every person appointed as Governor shall assume office upon taking and subscribing the oath, or making and subscribing the affirmation, set out in the Fourth Schedule, before the President.

6. Upon such assumption of office, the Governor shall cease to hold any other office created or recognised by the Constitution and if he is a Member of Parliament, shall vacate his seat in Parliament. The Governor shall not hold any other office or place of profit.

7. (a) The Governor may, from time to time, summon the Provincial Council to meet at such time and place as he thinks fit, but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.

(b) The Governor may, from time to time, prorogue the Provincial Council.

8. (a) The Governor may address the Provincial Council and may for that purpose require the attendance of members.

(b) The Governor may also send messages to the Council whether with respect to Statute pending in the Council or otherwise, and when a message is so sent the Council shall with all convenient despatch consider any matter required by the message to be taken into consideration.

9. Parliament shall by law, make provision for the salary, allowances, age of the retirement and pension entitlements of the holders of the office of Governor.

The TULF suggested the following amendments:

(a) the omission of the last four lines in paragraph (1)

(b) a provision enabling the Provincial Council to petition the removal of the Governor ;

(c) a provision enabling the Governor to pardon persons convicted of offences against statutes made by the Provincial Council ; and

(d) power of dissolution and prorogation to be on the advice of the Chief Minister.

SLG suggested the inclusion of a provision similar to Article 167 of the Indian constitution.

AMENDED ARTICLE 154B

154B (1) There shall be a Governor for each Province for which a Provincial Council has been established in accordance with Article 154A.

(2) The Governor shall be appointed by the President by warrant under his hand and shall hold office, in accordance with the terms set out in his warrant of appointment and Article 4(b), during the pleasure of the President.

(3) The Governor may, by writing addressed to the President, resign his Office.

(4) (a) The Provincial Council may, subject to sub-paragraph (b) present an address to the President advising the removal of the Governor on the ground that the Governor—

(i) has intentionally violated the provisions of the constitution ;

(ii) is guilty of misconduct or corruption involving the abuse of the powers of his office; or

(iii) is guilty of bribery or an offence involving moral turpitude ;

if a resolution for the presentation of such address is passed by not less than two-thirds of the whole number of members of the Council (including those not present).

(b) No resolution for the presentation of an address to the President advising the removal of the Governor on the grounds referred to in sub-paragraph (a) shall be entertained by the Chairman of the Provincial Council or discussed at the Council, unless notice of such resolution is signed by not less than two-thirds of the whole number of members of the Council.

(5) Subject to the preceding provisions of this Article, the Governor shall hold office for a period of five years from the date he assumes office.

(6) Every person appointed as Governor shall assume office upon taking or subscribing the oath or making and subscribing the affirmation as set out in the Fourth Schedule, before the President.

(7) Upon such assumption of office a Governor shall cease to hold any other office created or

recognized by the Constitution and if he is a Member of Parliament shall vacate his position in Parliament. The Governor shall not hold any other office or place of profit.

(8) (a) The Governor may, from time to time summon the Provincial Council to meet at such time and place as he thinks fit but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.

(b) The Governor may, from time to time, prorogue the Provincial Council.

(c) The Governor shall ordinarily exercise his powers under this paragraph in accordance with the advice of the Chief Minister, unless he is satisfied, after consultation with opinion in the Provincial Council, that to act in accordance with such advice would not be in the interests of the province.

(9) Without prejudice to the powers of the President under Article 34, the Governor of a province shall have the power to grant a pardon to any person convicted of an offence against a statute made by the provincial Council established for that province and to grant a respite or remission of punishment imposed by Court on any such person.

(10) (a) The Governor may address the Provincial Council and may for that purpose require the attendance of members.

(b) The Governor may also send messages to the Council either with respect to a statute then pending with the Council, or otherwise, and when a message is so sent the Council shall with all convenient despatch consider any matter required by the message to be taken into consideration.

(11) It shall be the duty of the Chief Minister of every province—

(a) to communicate to the Governor of the Province all decisions of the Board of Ministers relating to the administration of the affairs of the province and the proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Province and proposals for legislation as the Governor may call for; and

(c) If the Governor so requires, to submit for consideration to the Board of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Board.

(1) Parliament shall by law make provision for the salary, allowances, age of retirement and pension entitlements of holders of the office of Governor.

ARTICLE 154C.

154C. Executive power extending to the matters with respect to which Provincial Council has power to make statutes shall be assigned to the Governor of the Province for which the Provincial Council is constituted, and shall be exercised by him either directly or through officers subordinate to him.

THE TULF SUGGESTED THE ADDITION OF THE WORDS "IN ACCORDANCE WITH ARTICLE 154F" AT THE END OF THIS SECTION AND FOR THE INCLUSION OF PROVISION FOR THE ALLOCATION OF EXECUTIVE FUNCTIONS TO MINISTERS.

AMENDED ARTICLE 154C.

154C. Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established either directly or through Ministers of the Board of Ministers or through officers subordinate to him, in accordance with Article 154F.

ARTICLE 154D.

154D. 1. Every Provincial Council shall consist of such number of members as may be determined by law, having regard to the area and population of the province for which that Provincial Council is constituted.

2. (a) A Provincial Council may, at the commencement of the term of office of its members, decide, by resolution, to grant the right of audience to Members of Parliament elected for electoral districts, the limits of which fall within the province for which that Provincial Council is constituted.

(b) So long as a resolution passed under subparagraph (a) is in force, a Member of

Parliament elected for an electoral district, the limits of which fall within the province for which that Provincial Council is constituted, shall have the right during the term of office of that Council to speak in, and otherwise to take part in, proceedings, of such Provincial Council and to speak in, and otherwise to take part in, any Committee of such Provincial Council of which he may, be named, a member, but shall not, by virtue of this sub-paragraph, be entitled to vote.

THE TULF AGREED TO THE INCLUSION OF A TRANSITIONAL MEASURE ENABLING THE MEMBERS OF THE FIRST PARLIAMENT TO SIT AND VOTE AS MEMBERS OF THE PROVINCIAL COUNCIL.

AMENDED ARTICLE 154D.

154D (1) A Provincial Council shall consist of such number of members as may be determined by law, having regard to the area and population of the province for which that Provincial Council is established.

- (2) (a) A Provincial Council may at the commencement of the term of office of its members, decide, by resolution, to grant Members, of Parliament elected for electoral districts, the limits of which fall within the province for which that Provincial Council is established, the right to participate in proceedings of that Council.
- (b) So long as a resolution passed under subparagraph (a) is in force, a Member of Parliament elected for an electoral district, the limits of which fall within the province for which that Provincial Council is established, shall have the right, during the term of office of that Council, to speak in, vote and otherwise take part in, the proceedings of that Provincial Council and to speak in vote and otherwise take part in, any committee of that Provincial Council of which he may be named a member.
- (c) The provisions of this paragraph shall cease to operation on the date of dissolution of the first Parliament.

ARTICLE 154E.

154E. A Provincial Council shall, unless sooner dissolved, continue for a period of five years from

the date appointed for its first meeting and the expiration of the said period of five years shall operate as a dissolution of the Council.

THE TULF AGREED TO THIS FORMULATION.

154F. (1) There shall be a Board of Ministers with the Chief Minister at the head to aid and advise, the Governor of a Province in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what advice was tendered by the Ministers to the Governor shall not be inquired into in any Court.

(4) The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for that Province, who, in his opinion is best able to command the support of a majority of the members of that Council :

provided that where more than one half of the members elected to a Provincial Council are members of one Political party the Governor shall appoint the leader of that political party in the Council, as Chief Minister.

(5) The Governor shall, on the advice of the Chief Minister, appoint from among the members of the Provincial Council constituted for that province, the other Ministers.

(6) The Board of Ministers shall be collectively responsible and answerable to the Provincial Council.

(7) A person appointed to the office of Chief Minister or member of the Board of Members shall not enter upon the duties of his office until he takes and subscribes the oath, or makes and subscribes the affirmation, set out in the Fourth Schedule.

**THE TULF AGREED TO THIS FORMULATION
SUBJECT TO —**

- (a) the omission of the words "or under" in line 3 of paragraph (2) SLG suggests the formulation in Article 163 of the Indian Constitution.
- (b) a limitation being placed on the number of Ministers of the Board of Ministers. SLG suggests not less than six and not more than one-third the number of members of the Council.

154G. (1) Every Provincial Council may, subject to the provisions of the Constitution, make Statutes applicable to the Province for which it is constituted in respect of—

- (a) any matter set out in List-I of the Ninth Schedule (hereinafter referred to as 'the Provincial Council List').
- (b) any matter set out in List-III of the Ninth Schedule (hereinafter referred to as 'the concurrent list').

(2) No Bill for the amendment or repeal of the Ninth Schedule shall become law unless it is passed by the special majority required by Article 82.

(3) Parliament shall not make laws in respect of a matter set out in the Provincial Council List except with the special majority required by Article 82.

(4) Notwithstanding anything in paragraph (1), Parliament may make laws in respect of any matter set out in the concurrent list.

(5) If any provisions of any Statute made by a Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of this Article, the provisions of such law shall prevail and the provisions of such statute shall, to the extent of the inconsistency, be void.

(6) Nothing in sub-paragraphs (a) and (b) of paragraph (1) shall be deemed to empower a Provincial Council to make statutes in respect of any matter set out in List-II of the Ninth Schedule (hereinafter referred to as "the Reserved List").

(7) Where a Provincial Council constituted for a Province makes a statute in respect of a matter set out in the Provincial Council List, being a matter

with respect to which there is a law made by Parliament in force, on the date on which this chapter comes into force, the provisions of that law shall, with effect from the date on which that statute receives assent and so long as that statute is in force, be inoperative within that Province.

(8) Nothing in this Article shall be read or construed as derogating from the powers conferred on Parliament by the Constitution to make laws, in accordance with the provisions of the Constitution, with respect to any matter, for the whole of Sri Lanka or any part thereof.

(9) The provisions of this Article shall be subject to Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 6-(2) and 83.

THE TULF SUGGESTED

- (a) that the provisions of sub-paragraph (b) of paragraph (1) be included in paragraph (4).
- (b) in regard to paragraphs (2) and (3), that further safeguards be included, in addition the special majority required by Article 82.
- (c) the inclusion of provision enabling Provincial Councils to adopt an existing law on a Provincial Council subject.
- (d) the inclusion of a provision enabling a Provincial Council to make statutes overriding existing law on a concurrent subject.
- (e) the inclusion of the words "inclusive of this Chapter" after the words "provisions of the Constitution" in paragraph 8.
- (f) the omission of paragraph (9) as it is included in the Preamble.

**THE TULF AGREED TO THE INCLUSION
OF A PROVISION SIMILAR TO ARTICLE
253 OF THE INDIAN CONSTITUTION.**

THIS MATTER TO BE DISCUSSED FURTHER.

PROPOSED AMENDMENT TO ARTICLE 154G.

154G (1) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the province for which it is established with respect to any matter set out in List-1 of the Ninth Schedule. (hereinafter referred to as "the Provincial Councils List").

(2) No Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and

(a) where every such Council agrees to the amendment or repeal, such Bill is passed by a majority of the Members of Parliament present and voting or

(b) where one or more Councils do not agree to the amendment or repeal, such Bill is passed by the special majority required by Article 82 and approved by the people at a Referendum.

(3) No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and

(a) where every such Council agree to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or

(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 12 and approved by the people at a Referendum.

Provided that where on such reference, some but not all the Provincial Councils, agree to the passing of the Bill, such Bill shall become law applicable only to the province for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting.

(4) Where one or more Provincial Councils request Parliament, by resolution, to make law on any matter set out in the Provincial Council List, Parliament may make law on that matter applicable only to the provinces for which those Provincial Councils are established, by a majority of Members of Parliament sitting and voting.

(5) (a) Parliament may make laws with any matter set out in List-III of the Ninth Schedule (hereinafter referred to as "the Concurrent List") after such consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.

(b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.

(6) If any provision of any Statute made by a Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of this Article, the provisions of such law shall prevail and the provisions of such Statute shall, to the extent of such inconsistency, be void.

(7) A Provincial Council shall have no power to make statutes on any matter set out in List-II of the Ninth Schedule (hereinafter referred to as "the Reserved List").

(8) Where there is a law with respect to any matter on the Provincial Council list in force on the date on which this Chapter comes into force, and a Provincial Council established for a province subsequently makes, or is deemed to have made, a statute on the same matter and which is described in its long title as being inconsistent with the law, then, the provisions of the law shall, with effect from the date on which that statute receives assent and so long only as that statute is in force, remain suspended and be inoperative within that province.

(9) Where there is a law with respect to a matter on the concurrent list on the date on which this Chapter comes into force and a Provincial Council established for a province subsequently makes a statute on the same matter inconsistent with that law, then, the provisions of that law shall, unless Parliament, by resolution decides to the contrary, remain suspended and be inoperative within that province with effect from the date on which that statute receives assent and so long only as that statute is in force.

(10) Nothing in this Article shall be read or construed as derogating from the powers conferred

on Parliament by this Constitution to make laws, in accordance with the provisions of the Constitution (inclusive of this Chapter), with respect to any matter, for the whole of Sri Lanka or any part thereof.

(11) Notwithstanding anything in paragraph (3) of this Article, Parliament may make laws, otherwise than in accordance with the procedure set out in that paragraph, in respect of any matter set out in the Provincial Council List for implementing any treaty, agreement or convention with any other country or countries or any decisions made at an international conference, association, or other body.

154H (1) Every statute made by a Provincial Council shall come into force upon such statute receiving assent as hereinafter provided,

(2) Every statute made by a Provincial Council shall be presented to the Governor for his assent, forthwith on the making thereof, and the Governor shall declare either that he assents to such statute or that he withholds assent therefrom or that he reserves the statute for the consideration of the President :

Provided that the Governor may, as soon as possible after presentation to him of the statute for assent, return the statute together with a message requesting that the Provincial Council will reconsider the statute or any specified provisions thereof, and in particular, will consider the desirability of introducing any such amendments as may be recommended in his message and, when a statute is so returned, the Provincial Council shall reconsider the statute accordingly, and if the statute is made again by the Provincial Council with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom :

(3) When a statute has been reserved by the Governor for the consideration of the President the President shall declare either that he assents to such statute or that he withholds assent therefrom :

Provided, that the President may direct the Governor to return the statute to the Provincial Council together with a message requesting the Provincial Council to reconsider the statute or any specified provisions thereof, and to make such amendments thereto, as may be recommended in such message. Upon a statute being so returned, the Provincial Council shall reconsider the statute

and may again make such statute, with or without the amendments recommended by the President and shall present the statute for consideration by the President.

Provided further that the President may refer any statute reserved or presented for his consideration to the Supreme Court for a determination as to whether such statute is inconsistent with the Constitution, and shall not assent to such statute unless and until the Supreme Court-determines that such statute is not inconsistent with the Constitution.

THE TULF SUGGESTED THE FOLLOWING RE-FORMULATION

ARTICLE 154H

When a Bill is passed by a Provincial Council and sent to the Governor, the Governor shall either give assent forth with, or within two weeks return the the Provincial Council with a recommendation in respect of any proposed amendment. Once a Bill is re-passed by the Provincial Council and sent back to the Governor, the Governor shall give assent unless within two weeks the President invokes the jurisdiction of the Supreme Court on the grounds of constitutional invalidity, and the Supreme Court shall make its determination on the matter within one month thereof.

THIS MATTER TO BE DISCUSSED FURTHER

PROPOSED ARTICLE 154H.

154H. (1) Every statute made by Provincial Council shall come into force upon such statute receiving assent as hereinafter provided.

(2) Every statute made by a Provincial Council shall be presented to the Governor for his assent, forthwith upon the making thereof, and the Governor shall either assent to the statute or he may as soon as possible after the statute is presented to him for assent return it to the Provincial Council together with a message requesting the Council to reconsider the statute or any specified provision thereof and in particular, requesting it to consider the desirability of introducing such amendments as may be recommended in the message.

(3) Where statute is returned to a Provincial Council by the Governor under paragraph (2), the Provincial Council shall reconsider the statute having regard to the Governor's message and may pass such statute with or without amendment and present it to the Governor for his assent.

(4) Upon presentation of a Bill to the Governor under paragraph (3), the Governor may assent to the Bill or reserve it for reference by the President to the Supreme Court, within one month of the passing of the Bill for the second time, for a determination that it is not inconsistent with the provisions of the constitution. Where upon such reference, the Supreme Court determines that the Bill is consistent with the provisions of the Constitution, the Governor shall, on receipt by him of the Courts determination, assent to the Bill. Where upon such reference the Supreme Court determines that the Bill is inconsistent with the provisions of the Constitution, the Governor shall withhold assent to the Bill.

Effect of Proclamation of Emergency

154-I. Upon the making of a Proclamation under the Public Security Ordinance or the law for the time being in force relating to public security, bringing the provisions of such Ordinance or law into operation, the President may give direction to any Governor as to the manner in which the executive power assigned to him is to be exercised.

Provided that where such Proclamation is in operation only in any part of Sri Lanka, the power of the President to give directions under this Article shall also extend to any province other than the province in which the Proclamation is in operation if, and in so far as it is expedient so to do in the interests of Public Security or the preservation of public order or for the maintenance of supplies and services essential to the life of the community.

THE TULF SUGGESTED THAT THE PROCLAMATION UNDER THE PUBLIC SECURITY ORDINANCE BE CONFINED TO THE GROUNDS REFERRED TO IN ARTICLE 352 OF THE INDIAN CONSTITUTION AND THAT THE DIRECTIONS GIVEN UNDER THIS ARTICLE BE ONLY IN RELATION TO THOSE GROUNDS.

THIS MATTER TO BE DISCUSSED FURTHER.
PROPOSED AMENDED ARTICLE 154-I.

154-I (1) Upon the making of a Proclamation under the Public Security Ordinance or the law for the time being in force relating to public security, bringing the provisions of such Ordinance or law into operation on the ground that the maintenance of essential supplies and services is threatened or that the security of Sri Lanka is threatened by war or external aggression or armed rebellion, the President may give directions to any Governor as to the manner in which the executive power exercisable by

the Governor is to be exercised. The directions so given shall be in relation to the grounds specified in such Proclamation for the making thereof :

Explanation

(A Proclamation under the Public Security Ordinance declaring that the maintenance of essential supplies or services is threatened or that the security of Sri Lanka or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual breakdown of supplies and services of the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof).

Provided that where such Proclamation is in operation only in any part of Sri Lanka, the power of the President to give directions under this Article shall also extend to any Province other than the province in which the Proclamation is in operation if, and in so far as is expedient so to do for ensuring the maintenance of essential supplies and services or the security of Sri Lanka.

(2) A Proclamation under the Public Security Ordinance or the law for the time being relating to public security shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or tribunal shall inquire into, or pronounce on or in any manner call in question, such Proclamation, the grounds for the making thereof, or the existence of these grounds or any direction given under this Article.

ARTICLE 154J

154J. Where the Governor for any Provincial Council has failed to comply with, or give effect to, any directions given to such Governor or such Council under this Chapter of the Constitution, it shall be lawful for the President to hold that a situation has arisen in which the administration of the province cannot be carried on in accordance with the provisions of this Constitution.

THE TULF AGREED TO THIS ARTICLE

154K. (1) If the President, on receipt of a report from the Governor of a Province or otherwise, is satisfied that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation.

(a) assume to himself all or any of the functions of the administration of the province

and all or any of the powers vested in or exercisable by the Governor or any body or authority in the Province other than the Provincial Council.

- (b) declare that the powers of the Provincial Council shall be exercisable by or under the authority of Parliament,
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation :

Provided that nothing in this paragraph shall authorise the President to assume to himself any of the powers vested in or exercisable by any Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before Parliament and shall except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of fourteen days unless before the expiration of that period it has been approved by a resolution of Parliament.

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when Parliament is dissolved or the dissolution of Parliament takes place during the period of fourteen days referred to in this paragraph but no resolution with respect to such Proclamation has been passed by Parliament before the expiration of the period, the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution unless before the expiration of the said period of fourteen days a resolution approving the Proclamation has been passed by Parliament.

(4) A Proclamation so approved shall, unless earlier revoked, cease to operate on the expiration of a period of two months from the date of issue of the Proclamation.

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by Parliament, the Proclamation shall, unless revoked, continue in force for a further period of two months from the date on which under this paragraph it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than one year :

Provided further that if the dissolution of Parliament takes place during any such period of two months but no resolution with respect to the continuance in force of such Proclamation has been passed by Parliament during the said period the Proclamation shall cease to operate at the expiration of fourteen days from the date on which Parliament first sits after its reconstitution unless before the expiration of the said period of fourteen days a Proclamation approving the continuance in force of the Proclamation has been passed by Parliament.

(5) Notwithstanding anything in this Article the President may within fourteen days of his making a Proclamation under paragraph (1) and for the purpose of satisfying himself with regard to any of the matters referred to in that paragraph appoint a retired Judge of the Supreme Court to inquire into and report upon such matters within a period of sixty days. A Judge so appointed shall in relation to such inquiry have the powers of a Commissioner of Inquiry appointed under the Commissions of Inquiry Act. Upon receipt of the Report of such Judge, the President may revoke the Proclamation made under paragraph (1).

THE TULF AGREED TO THE PROVISIONS OF THIS ARTICLE.

SLG suggests adding the following paragraph :-

(6) A proclamation under this Article shall be conclusive for all purposes and shall not be questioned in any Court, and no Court or tribunal shall inquire into, or pronounce on or in any manner call in question, such Proclamation or the grounds for making thereof.

Exercise of legislative powers under proclamation issued under Article 154K.

154M. (1) Where by a proclamation issued under paragraph (1) of Article 154K it has been declared that the powers of the Provincial Council shall be exercisable by or under the authority of Parliament, it shall be competent—

- (a) for Parliament to confer on the President, the power of the Provincial Council to make statutes and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;
- (b) for the President to authorise when Parliament is not in session, expenditure from

the Provincial Fund of the Province pending sanction of such expenditure by Parliament.

THE TULF SUGGESTED THE INCLUSION OF A PROVISION SIMILAR TO PARAGRAPH (2) OF ARTICLE 357 OF THE INDIAN CONSTITUTION AT THE END OF THIS ARTICLE,

PROPOSED AMENDED ARTICLE 154M

154M (1) Where by a proclamation issued under paragraph (1) of Article 154K it has been declared that the powers of the Provincial Council shall be exercisable by or under the authority of Parliament, it shall be competent-

(a) for Parliament to confer on the President the power of the Provincial Council to make statutes and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred, on any other authority specified by him in that behalf ;

(b) for the President to authorise, when Parliament is not in session, expenditure from the Provincial Fund of the province pending sanction of such expenditure by Parliament,

(2) A statute made by Parliament or the president or other authority referred to in sub-paragraph (a) of Paragraph (1), during the continuance in force of a proclamation issued under Paragraph (1) of Article 154K, shall continue in force until amended or repealed by the Provincial Council.

Provisions as to financial emergency.

154N. (1) If the President is satisfied that a situation has arisen where by the financial stability or credit of Sri Lanka or of any part of the territory there of is threatened, he may by a proclamation make a declaration to that effect.

(2) A Proclamation issued under paragraph (1)-

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before Parliament ;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by a resolution of Parliament :

Provided that if any such Proclamation is issued at a time when Parliament has been dissolved or

dissolution of Parliament takes place during the period of two months referred to in sub-paragraph (c), but no resolution with respect to such Proclamation has been passed by the Parliament before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by Parliament.

(3) During the period any such Proclamation as is mentioned in Paragraph (1) is in operation, the President may give directions to any Governor of a Province to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions, as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution.

(a) any such direction may include :-

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a Province ;

(ii) a provision requiring all statutes providing for payments into, or out of, a provincial Fund to be reserved for the consideration of the President after they are passed by the Provincial Council;

(b) it shall be competent for the President during the period any Proclamation issued under this Article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the State including the Judges of the Supreme Court and the High Courts.

IT WAS AGREED THAT sub-paragraph (b) of paragraph (4) OF THIS ARTICLE BE OMITTED. SUBJECT TO THIS AMENDMENT THE TULF AGREED TO THIS ARTICLE.

NEW PROVISION RELATING TO HIGH COURTS

154-O (1) There shall be a High Court for each province with effect from the date on which this Chapter comes into force. Each such High Court shall be designed as the High Court of the relevant province.

(2) The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka, such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.

(3) Every such High Court shall :

(a) exercise, according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the province;

(b) notwithstanding anything in Article 138 and subject to any law, exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by, Magistrates' Courts and Primary Courts within that province;

(c) exercise such other jurisdiction and powers, as Parliament may, by law provide.

(4) Every such High Court shall have jurisdiction to issue, according to law -

(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the province and

(b) orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the province, and powers under :—

(i) any law or

(ii) any statute made by the Provincial Council established for that province, in respect of any matter set out in List I of the Ninth Schedule.

(5) The Judicial Service Commission may delegate to any such High Court, the power to inspect and report on, the administration of any Court of first instance within the province.

(6) Subject to the provision of the Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (c) or (4). may appeal therefrom to the Court of Appeal in accordance with Article 138. Article 138 to be amended in paragraph (1) as follows :-

(a) by the substitution, for the words "committed by any Court of First Instance", of the words committed by the High Court, in the

exercise of its appellate or original jurisdiction or by any Court of First Instance"; and

(b) for the words "of which such Court of First instance", of the words "of which such High Court of First instance".

Functions, powers, Election etc. of Provincial Councils.

154P. Parliament shall by law provide for—

(a) the election of members of Provincial Councils and the qualifications for membership of such Councils;

(b) the procedure for transaction of business by every such Council; and

(c) the salaries and allowances of Members of Provincial Councils.

THE TULF SUGGESTED THE ADDITION OF THE FOLLOWING PARAGRAPH :—

"(b) any other matters requiring provision for giving effect to the provisions of this Chapter".

AMENDED ARTICLE 154P

Functions Powers, Election etc of Provincial Councils.

154P. Parliament shall by law provide for—

(a) the election of members of Provincial Councils and the qualifications for membership of such Councils ;

(b) the procedure for transaction of business by every such Council ;

(c) the salaries and allowances of Members of Provincial Councils ; and

(d) any other matter necessary for the purpose of giving effect to the principles or provisions of this Chapter.

Financial Commission

155 Q. There shall be Financial Commission consisting of three members appointed by the president. The Commission shall decide on the apportionment of such funds as are granted annually by the Government for the use of Provincial Councils.

IT WAS AGREED THAT THE FINANCE COMMISSION SHOULD CONSIST OF

a) Governor of the Central Bank ;

b) Secretary to the Treasury ;

- c) Three other members to represent the three major communities.

THIS MATTER TO BE DISCUSSED FURTHER.

PROPOSED ANENDED ARTICLE 154 Q

154 Q. (1) There shall be a Finance Commission consisting of—

- (a) the Governor of the Central Bank ;
- (b) the Secretary to the Treasury ; and
- (c) three other members to represent the three major communities and each of whom shall be a person who has distinguished himself, or held high office, in the financial, legal, administrative, business or academic fields.

(2) Every member of the Commission shall, unless he earlier dies, resigns or is removed from Office, hold office, for a period of five years.

(3) It shall be the duty of the Commission to make representations to the President as to—

- (a) the principles on which such funds as are granted annually by the Government for the use of Provincial Funds should be apportioned between the various Provinces; and
- (b) any other matter referred to the Commission by the President relating to provincial finance.

(4) The Commission shall determine its own procedure and shall have such powers in the performance of its duties as Parliament may, by law confer on it.

(5) The President shall cause every recommendation made by the Finance Commission under this Article, to be laid before Parliament.

ARTICLE 154 R

This has now been included in the Preamble.

Provision regarding Provincial Public Service to be included.

SLG suggests a provision enabling Provincial Councils to hand back power to the Centre.

Proposed Provision

(1) A Provincial Council may, by resolution, decide not to exercise its powers under Article 154C with respect to any matter or part thereof set out in List I or. List III of the Ninth Schedule.

(2) Where a resolution has been passed by a Provincial Council under paragraph (1) and the

terms of such resolution have been accepted by Parliament, by resolution, the powers of such Provincial Council under Article 154C shall be deemed not to extend to the matter specified in such resolution and Parliament may make law, with respect to that matter, applicable to the province for which that Provincial Council is established, otherwise than in accordance with the provisions of Article 154G.

SLG proposed the following amendment to Article 155 of the Sri Lanka Constitution (corresponding to Article 250 of the Indian Constitution.)

- 155 (3) (a) Nothing in this Constitution shall be deemed to prohibit the making of emergency regulations, under the Public Security Ordinance or the law for the time being in force relating to public security, with respect to any matter set out in the Ninth Schedule or having the effect of overriding, amending or suspending the operation of a statute made by a Provincial Council.

DRAFT IV

PROVINCIAL COUNCIL ACT : SENT BY SLG

On Sept. 4, 1986

The TULF suggested that Sections 3, 4 (1), 8, 11, 12, 17, 21, 28 and 29 of Draft III be omitted, as provisions for these matters have been made in the constitutional amendment.

It was also agreed that Section 32 of Draft III be omitted.

1. This Act may be cited as the Provincial Councils Act, No. of 1986.

PART I

Name and membership of Provincial Council

2. Where a Provincial Council is established for a province by virtue of Article 154 A of the Constitution, the President shall, by order published in the Gazette, assign a name to such Council and specify the number of members such Provincial Council shall consist of. In specifying such number, the President shall have regard to the area and population of the province for which that Provincial Council is constituted.

Qualification for membership of Provincial Council.

3. No person shall be qualified to be elected as a member of a Provincial Council or to sit and vote as a member of such Council—

- (a) if such person is subject to any of the disqualifications specified in paragraphs (a), (c), (d), (e), (f), and (g) of Article 91(1) of the Constitution ;
- (b) if such person is under any law, disqualified from voting at an election of members to a local authority;
- (c) if he is a Member of Parliament;
- (d) if he is a member of any other Provincial Council or stands nominated as a candidate for election for more than one Provincial Council;
- (e) if he stands nominated as a candidate for election to a Provincial Council, by more than one recognized political party or independent group.

Oath or affirmation by members

4. No member of a Provincial Council shall sit or vote as such member until he has taken or subscribed the oath, or made or subscribed the affirmation, set out in the Fourth Schedule to the Constitution.

Vacation of seats

5. (1) If a member of a Provincial Council—

- (a) becomes subject to any disqualification mentioned in section 3; or
- (b) resign his seat by writing under his hand addressed to the Chairman,

his seat in the Provincial Council shall thereupon become vacant.

(2) If for a period of ninety days a member of the Provincial Council is without permission of the Council absent from all meetings thereof, the Council may declare his seat vacant :

Provided that in computing the said period of ninety days no account shall be taken of any period during which the Council is prorogued for more than four consecutive days.

Penalty for sitting and voting before making oath or when disqualified.

6. If a person sits or votes as a member of a Provincial Council before he has complied with the requirements of section 4 or when he knows that he is not qualified or that he is disqualified, for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the state.

PART II

Chairman and Deputy Chairman

7. (1) Every Provincial Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) A member holding office as Chairman or Deputy Chairman of a Provincial Council.—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office;
- (c) may be removed from his office by a resolution of the Council passed by a majority of the whole number of members of the Council (including those not present).

Provided further that whenever the Council is dissolved, the Chairman shall not vacate his office until immediately before the first meeting of the Council after the dissolution.

(3) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as may be determined by the rules of procedure of the Council.

(4) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council shall act as Chairman.

(5) There shall be paid to the Chairman and the Deputy Chairman of the Provincial Council such salaries and allowances as may be respectively fixed by the Provincial Council, by statute and, until provision in that behalf is so made, such salaries and allowances as the Governor may, with the approval of the President, by order determine.

Chairman and Deputy Chairman not to preside while resolution for his removal under discussion.

8. (1) At any sitting of the Provincial Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside and the provisions of subsection (4) of section 7 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of the Provincial Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in section 10, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Powers and privileges of members of Provincial Councils.

9. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of a Provincial Council, there shall be freedom of speech in every Provincial Council.

(2) No member of the Provincial Council shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Council or any Committee thereof, and no person shall be liable in respect of the publication by or under the authority of such Council, of any report, paper, votes or proceedings.

(3) The provisions of subsections (1) and (2) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in the proceedings of, a Provincial Council or any committee thereof as they apply in relation to members of that Council.

Voting in Council

10. (1) Save as otherwise provided in this Act, all questions at any sitting of the Provincial Council shall be determined by a majority of votes

of the members present and voting other than the Chairman or person acting as such.

(2) The Chairman or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(3) A Provincial Council shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in any such Council shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(4) The quorum to constitute a meeting of a Provincial Council shall be one-third of the total number of members of the Council. Where one-third of the number of members is an integer and fraction, the integer immediately higher to that integer and fraction shall be deemed to be the one-third the number of members for the purpose of this section.

(5) If at any time during a meeting of a Provincial Council there is no quorum, it shall be the duty of the Chairman, or person acting as such, either to adjourn the Council or to suspend the meeting until there is a quorum.

Rules of Procedure

11. A Provincial Council may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business ;

Provided that the Provincial Council shall, after consultation with the Chairman of such Council and with the approval of the President, make rules—

- (a) for securing the timely completion of financial business;
- (b) for regulating the procedure of, and the conduct of business in, the Provincial Council in relation to any financial matter or to any Statute for the appropriation of moneys out of the Provincial Fund of Province;
- (c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Governor in so far as he is required by this Act to act in his discretion.

**THIS SECTION TO BE DISCUSSED FURTHER.
Court not to inquire proceedings of Provincial Council :**

12 (1) The validity of any proceedings in a Provincial Council shall not be called in question on the ground of an alleged irregularity of procedure.

(2) No officer or member of a Provincial Council in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order in such Council shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Exemption of State property from taxation.

13. The property of the State shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by or under any Statute made by a Provincial Council.

TO BE DISCUSSED FURTHER WITH THE TREASURY OFFICIALS ALONG WITH OTHER PROVISIONS RELATING TO FINANCE.

Lapsing of Bills

14. (1) A statute pending in a Provincial Council shall not lapse by reason of the prorogation of such Council.

(2) A statute pending in a Provincial Council shall lapse on a dissolution of the Council.

Conduct of Business

15. (1) The Governor shall make rules for the more convenient transaction, of the administration of the Province, and for the allocation among the Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

(2) Save as otherwise provided in this Act, all executive action of the Governor, whether taken on the advice of his Ministers or otherwise, shall be expressed to be taken in the name of the President.

(3) Orders and other instruments made and executed in the name of the President, shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

THIS MATTER TO BE DISCUSSED FURTHER.

Contracts and suits

16. (1) All contracts entered into in the exercise of the executive power of the Governor of the province, shall be entered into, and performed in the name of the Provincial Council constituted for that province, as if such Provincial Council were a body corporate.

(2) All actions in relation to the exercise of such executive power shall be brought by, or against such Provincial Council, as if such Provincial Council were a body corporate.

THIS SECTION TO BE DISCUSSED FURTHER.

17. THE TULF REQUESTED THE INCLUSION OF A PROVISION SIMILAR TO ARTICLE 187 OF THE INDIAN CONSTITUTION.

AMENDED SECTION 17.

Secretariat

17. (1) A Provincial Council shall have its own Secretarial staff.

(2) A Provincial Council may, by statute, regulate the recruitment, and conditions of service, of persons appointed to its secretarial staff.

18. SECTION 36 OF DRAFT III amended to bring it in line with Article 23 of the Constitution.

AMENDED SECTION

Language to be used in Council

18. (1) A member of the Provincial Council shall be entitled to perform his duties and discharge his functions in either of the National languages.

(2) Statutes shall be made by a Provincial Council in both National languages, together with a translation in the English language.

19. SECTION 37 OF DRAFT III amended to include all Judicial Officers.

AMENDED SECTION

Restriction on discussion in Provincial Council

19. Subject to paragraph (5) of Article 154B of the Constitution, no discussion shall take place in a Provincial Council with respect to the conduct of the President or the Governor or a Judicial officer or a Member of Parliament.

20. SECTION 38 OF DRAFT III amended at the request of the TULF.

AMENDED SECTION

Power of President to remove difficulties

20. If any difficulty arises in giving effect to the provisions of this Act, and, in particular in relation to the constitution of a Provincial Council for a province, the President may, by Order, take such action not inconsistent with the provisions of this Act, as appears to him to be necessary, or expedient, for the purpose of removing such difficulty.

SECTIONS 13, 19, 22, 23, 24, 25, 26, 27, 32, 34 and 35 of Draft III

TO BE DISCUSSED FURTHER WITH TREASURY OFFICIALS.

LISTS OF SUBJECTS : SENT BY SLG

on Sept. 23, 1986

INTRODUCTION

The Reserved List (List II), the Provincial List (List I) and the Concurrent List (List III) are forwarded herewith.

In the Note on Provincial Councils sent to the Government of India after discussion with the Indian Delegation led by Hon. P. Chidambaram, Minister of State, it was indicated that—

“after further discussion, subjects broadly corresponding to the proposals contained in Annex I to the Draft Framework of Accord and Understanding of 30.08.85 and the entries in List II and List III of the seventh Schedule of the Indian Constitution shall be devolved upon the Provincial Council.”

In Annex I to the Draft Framework of Accord and Understanding initialled on 30.08.85, while specifying some of the more important powers and functions to be exercised by Provincial Councils, it was clearly stated that—

“for the removal of doubts, the subjects and functions that would be exclusively reserved for Parliament are specified in Annex II.”

The subjects and functions specified in the Reserved List (List II) now forwarded, are identical to Annex II of the Draft Framework of Accord and Understanding, except for certain minor changes (vide. Defence and National Security; Maritime Zones, including historical waters, territorial waters, exclusive economic zone and continental shelf and Internal waters, Archaeological activities and sites and antiquities declared by or under any law made by Parliament to be of national importance). For drafting reason certain terminological changes have been made (vide. Law and Order and prevention and detection of crime except to the extent specified in Item I of List I; Elections, including Presidential, Parliamentary, Provincial Councils and local authorities; Inter-province Trade and Commerce; State Lands and Foreshore, except to the extent specified in item 26 of List I).

The Provincial List (List I) and the Concurrent List (List III) contain the proposals of the Government of Sri Lanka after discussion with the TULF. Specification of subjects in the Provincial List (List I) and the Concurrent List (List III) is more

detailed than in Annex I and broadly corresponds to List II and List III of the Seventh Schedule of the Indian Constitution.

We have with us a Paper on the Administrative Structure consequent to devolution which can be made available. We believe however, that this matter should be discussed after the Lists are determined.

Provision relating to Finance can be determined only after the Lists are finalized.

LIST II

(RESERVED LIST)

[Article 154G (7)]

NATIONAL POLICY ON ALL SUBJECTS AND FUNCTIONS

DEFENCE AND NATIONAL SECURITY; INTERNAL SECURITY; LAW AND ORDER AND PREVENTION AND DETECTION OF CRIME EXCEPT TO THE EXTENT SPECIFIED IN ITEM I OF LIST I.

This would include—

- a) Defence of Sri Lanka and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation;
- b) Naval, military and air forces; any other armed forces of the Government of Sri Lanka;
- c) Deployment of any armed force of the Government of Sri Lanka or any other force subject to the control of the Government of Sri Lanka or any contingent or unit thereof in any Province in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment;
- d) Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas;
- e) Naval, military and air force works ;
- f) Arms, firearms, ammunition and explosives;
- g) Atomic energy and mineral resources necessary for its production;

h) Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war;

i) Criminal Investigation Department;

j) Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of Sri Lanka; persons subjected to such detention; and

k) Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area outside that Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in any area outside that Province without the consent of the Provincial Council in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any province to railway areas outside that Province.)

FOREIGN AFFAIRS.

This would include—

a) Foreign affairs; all matters which bring the Government of Sri Lanka into relation with any foreign country;

b) Diplomatic, consular and trade representation;

c) United Nations Organisation;

d) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

e) Entering into treaties and agreements with foreign countries and implementing treaties, agreements and conventions with foreign countries;

f) war and peace; and

g) Foreign jurisdiction.)

POSTS AND TELECOMMUNICATION; BROADCASTING; TELEVISION.

(This would include—

a) Posts and telegraphs; telephones; wireless, broadcasting and other like forms of communications; and

b) Sanctioning of cinematograph films for exhibition.

JUSTICE IN SO FAR AS IT RELATES TO THE JUDICIARY AND THE COURTS STRUCTURE.

This would include—

a) Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court, Court of Appeal and other Courts;

b) Constitution, organisation, jurisdiction, and powers of the Court of Appeal, and the fees taken therein; and

c) Jurisdiction and powers of all courts, except the Supreme Court and the Court of Appeal.

FINANCE IN RELATION TO NATIONAL REVENUE, MONETARY POLICY AND EXTERNAL RESOURCES; CUSTOMS.

This would include—

a) Public debt of the Government of Sri Lanka;

b) Currency, coinage and legal tender; foreign exchange;

c) Foreign loans;

d) Central Bank;

e) National Savings Bank;

f) Lotteries organised by the Government of Sri Lanka or a Provincial Council;

g) Banking;

h) Bills of exchange, cheques, promissory notes and other like instruments;

i) Insurance;

j) Stock exchanges and futures markets;

k) Audit of the accounts of the Government of Sri Lanka and of the Provinces;

l) Taxes on income other than agricultural income;

m) Duties of customs including export duties;

n) Duties of excise on tobacco and other goods manufactured or produced in Sri Lanka;

o) Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies;

- p) Duties in respect of succession to property other than agricultural land;
- q) Terminal taxes on goods or passengers carried by railway, sea or air taxes on railway fares and freights;
- r) Taxes other than stamp duties on transactions in stock exchanges and futures markets;
- s) Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares debentures, proxies and receipts;
- t) Taxes on the sale or purchase of newspapers and on advertisements, published therein;
- u) Taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-province trade or commerce;
- v) Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-province trade or commerce;
- w) Corporation tax;
- x) Estate duty in respect of property other than agricultural land).

FOREIGN TRADE; INTER-PROVINCE TRADE AND COMMERCE.

(This would include—

- a) Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers; and
- b) Inter-province trade and commerce).

PORTS AND HARBOURS

(This would include—

- a) Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein; and
- b) Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

AVIATION AND AIRPORTS

(This would include—

Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by provinces and other agencies.)

NATIONAL TRANSPORT

This would include—

- a) Railways;
- b) Highways declared by or under law made by Parliament to be national highways; and
- c) Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.)

RIVERS AND WATERWAYS; SHIPPING AND NAVIGATION; MARITIME ZONES INCLUDING HISTORICAL WATERS, TERRITORIAL WATERS, EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF AND INTERNAL WATERS; STATE LANDS AND FORESHORE, EXCEPT TO THE EXTENT SPECIFIED IN ITEM 26 OF LIST I.

This would include—

- a) Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air;
- b) Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways;
- c) Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by Provinces and other agencies;
- d) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;
- e) Regulation and development of inter-province rivers and river valleys to the extent to which such regulation and development

under the control of the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest;

- f) Fishing and fisheries beyond territorial waters; and
- g) Property of the Government of Sri Lanka and the revenue therefrom, but as regards property situated in a province, subject to statutes made by the province save in so far as Parliament by law otherwise provides.

MINERALS AND MINES

(This would include—

- a) Regulation and development of oilfields and mineral oil resources: petroleum and petroleum products: other liquids and substances declared by Parliament by law to be dangerously inflammable; and
- b) Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest.

IMMIGRATION AND EMIGRATION AND CITIZENSHIP.

(This would include—

- a) Citizenship, naturalisation and aliens;
- b) Extradition; and
- c) Admission into, and emigration and expulsion from Sri Lanka; passports and visas.)

ELECTIONS, INCLUDING PRESIDENTIAL, PARLIAMENTARY, PROVINCIAL COUNCILS AND LOCAL AUTHORITIES.

(This would include—

Elections to Parliament, Provincial Councils, local authorities and to the office of President; the Department of Elections.

CENSUS AND STATISTICS.

(This would include—

- a) Census; and
- b) Inquiries, surveys and statistics for the purpose of any of the matters in this List).

PROFESSIONAL OCCUPATIONS AND TRAINING.

(This would include—

- a) Institutions, such as Universities, declared by Parliament by law to be institutions of national importance;
- b) Institutions for scientific or technical education by the Government of Sri Lanka wholly or in part and declared by Parliament by law to be institutions of national importance;
- c) Provincial agencies and institutions for—
 - (i) professional, vocational or technical training, including the training of police officers; or
 - (ii) the promotion of special studies or research; or
 - (iii) scientific or technical assistance in the investigation or detection of crime; and
- d) Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions).

NATIONAL ARCHIVES; ARCHAEOLOGICAL ACTIVITIES AND SITES AND ANTIQUITIES DECLARED BY OR UNDER ANY LAW MADE BY PARLIAMENT TO BE OF NATIONAL IMPORTANCE.

(This would include—

Ancient and historical monuments and records, and archaeological sites and remains declared by or under law made by Parliament to be of national importance).

ALL SUBJECTS AND FUNCTIONS NOT SPECIFIED IN LIST-I OR LIST III including—

- a) Pilgrimages to places outside Sri Lanka;
- b) Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies;
- c) Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one province, but not including universities;

- d) Patents, inventions and designs; copyright; trade marks and merchandise marks;
- e) Establishment of standards of weight and measure;
- f) Establishment of standards of quality for goods to be exported out of Sri Lanka or transported from one province to another;
- g) Industries, the control of which by the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest;
- h) Regulation of labour and safety in mines;
- i) Manufacture, supply and distribution of salt by agencies of the Government of Sri Lanka; regulation and control of manufacture, supply and distribution of salt by other agencies;
- j) Cultivation, manufacture, and sale for export, of opium;
- k) Industrial disputes concerning employees of the Government of Sri Lanka;
- l) Institutions such as Museums and War Memorials financed by the Government of Sri Lanka wholly or in part and declared by Parliament by law to be institutions of national importance;
- m) The Survey of Sri Lanka, the Geological, Botanical, Zoological and Anthropological Surveys of Sri Lanka; Meteorological organisations;
- n) National Public Services; National Public Service Commission;
- o) Pensions, that is to say, pensions payable by the Government of Sri Lanka or out of the Consolidated Fund;
- p) Salaries and allowances of members of Parliament, and the Speaker and Deputy Speaker of Parliament;
- q) Powers, privileges and immunities of Parliament and of the members and the Committees of Parliament; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament;
- r) Emoluments, allowances, privileges, and rights in respect of leave of absence

of the President and Governors; salaries and allowances of the Ministers of the Government of Sri Lanka; the salaries, allowances and rights in respect of leave of absence and other conditions of service of the Auditor-General;

- s) Inter-province migration; inter-province quarantine;
- t) Offences against laws with respect to any of the matters in this List; and
- u) Fees in respect of any of the matters in this List, but not including fees taken in any Court.)

NINTH SCHEDULE

LIST I

PROVINCIAL COUNCIL LIST

[Article 154G (1)]

1. Police and Public order—

Public order and the exercise of police powers, to the extent set out in Appendix (1), within the Province, but not including National Defence, National Security and the use of any armed forces or forces under the control of the Government of Sri Lanka in aid of the civil power.

2. Planning—

Implementation of provincial economic plans.

3. & 4. Education and Educational Services—
Education to the extent set out in Appendix III.

6. Local Government—

6:1 Local authorities for the purpose of local government and village administration, such as Municipal Councils, Urban Councils and Pradesheeya Sabhas, except that, the constitution, form and structure of local authorities shall be determined by law;

6:2 Supervision of the administration of local authorities established by law, including the power of dissolution (subject to such quasijudicial inquiries into the grounds for dissolutions and legal remedies in respect thereof, as may be provided by law, and subject to provisions relating to audit as may be provided by law);

6:3 Local authorities will have the powers vested in them under existing law. Municipal

Councils and Urban Councils will have the powers vested in them under the Municipal Councils Ordinance and the Urban Councils Ordinance. Pradesheeya Sabhas will have the powers vested in Urban Councils, Town Councils and Village Councils under existing law. It will be open to a Provincial Council to confer additional powers on local authorities.

6:4 Gramodaya Mandalayas will have the powers vested in Gramodaya Mandalayas under existing law. It will be open to a Provincial Council to confer additional powers on Gramodaya Mandalayas.

7. Provincial Housing and Construction—

7:1 Implementing, coordinating, supervising and monitoring provincial housing development programmes and projects (other than National Housing Development Authority projects) including aided self-help housing projects, housing loans and the provision of building materials;

7:2 the implementation of the Protection of Tenants Act and the Rent Act within a province;

7:3 construction activity in respect of subjects in this List.

9. Roads, bridges and ferries within the Province, other than—

- (a) national highways;
- (b) bridges and ferries on national highways.

10. Social Services and Rehabilitation—

10:1 Probation and Child Care Services;

10:2 The Rehabilitation of Destitute Persons and Families;

10:3 Rehabilitation and Welfare of Physically, Mentally and Socially handicapped persons;

10:4 Relief of the disabled and unemployable.

12. Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the province and the provision of intra-provincial road transport services,

13 & 14. Agriculture and Agrarian Services—

:1 Agriculture, including agricultural extension, promotion and education for provin-

cial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, state land and plantation agriculture);

:2 rehabilitation and maintenance of minor irrigation works;

:3 agricultural research, save and except institutions designated as national agricultural research institutions.

15. Rural Development—

16. Health—

16:1 The establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries (other than teaching hospitals and hospitals established for special purposes);

16:2 Public health services, health education, nutrition, family health, maternity child care, food and food sanitation, environmental health;

16:3 Formulation and implementation of Health Development Plan, and of the Annual Health Plan for the Province;

16:4 The provision of facilities for all institutions referred to in 1 above within the Province, excluding the procurement of drugs;

16:5 Awarding of Scholarships for Post-Graduate Education within Sri Lanka to personnel attached to the Institutions specified in 1 above.

17. Indigenous Medicine—Ayurveda, Siddha and Unani—

17:1 Establishment of Ayurvedic Dispensaries and Hospitals, Grants to such Dispensaries and Hospitals;

17:2 Establishment and maintenance of Herbaria.

18. 18:1 Resthouses maintained by local authorities; and

18:2 Circuit Bungalows presently administered by Government Departments whose functions are exclusively specified in this List.

22. Pawn Brokers—

Pawn Brokers other than Pawn Brokers business carried on by Banks.

23. Markets, Fairs.

24. Food supply and distribution within the Province.

25. Co-operatives—

25:1 Co-operative undertakings and the organization, registration, supervision and audit of co-operative societies within the Province;

25:2 Co-operative development within the Province including Co-operative education and propaganda;

25:3 Provincial Co-operative Employees Commission;

25:4 Matters connected with employment, promotion, retirement and other connected matters of employees of Co-operative Societies within the Province.

26. Land—

Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix (II).

29. Irrigation—

Planning, designing, implementation, supervision and maintenance of all irrigation works, other than irrigation schemes relating to rivers running through more than one province.

33. Animal Husbandry—

Preservation, protection and improvement of stock and prevention of animal diseases within the province.

39, 40 & 47.

Subject to the formulation and implementation of National Policy in regard to development and planning, the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects, within the province without prejudice to the power of the Central Government and public Corporations to have such enterprises and projects.

(This would include the promotion of scientific and industrial research within the province and the preparation, coordination and the implementation of industrial development plans for the province).

42. Reformatories, Borstal institutions and other institutions of a like nature and persons detained therein, arrangements with other provinces for the use of such institutions.

43. Possession, transport, purchase and sale of intoxicating liquors.

44. Burials and burial grounds, cremation and cremation grounds, other than those declared by or under law made by Parliament to be national memorial cemeteries.

45. 45:1 Libraries, Museums and other similar institutions controlled or financed by a Provincial Council;

45:2 Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.

46. The regulation of mines and mineral development, to the extent permitted by or under any law made by Parliament, within the Province.

48. Incorporation, regulation and judicial winding up of Corporations with objects confined to the province, excluding trading corporations, banking, insurance and financial corporations.

49. Regulation of unincorporated trading, literary, scientific, religious and other societies and associations.

11, 31 & 50.

:1 Theatres and dramatic performances, music, cinemas, entertainments and amusements, excluding the sanctioning of cinematograph films for exhibition and public performances.

:2 Encouragement and development of sports (other than national sports associations).

51. Betting and gambling, other than the imposition of licence fees and taxes.

(53), (54) & (55)—

To be considered later once the structure of the Public and Provincial Service is determined.

56. Provincial debt.

57. Offences against statutes with respect to any of the matters specified in this List.

59. Fees in respect of any of the matters in this List, excluding fees taken in any Court.

65. Development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy (other than hydro-electric power and power generated to feed the national grid).

69 & 70.

The borrowing of money and direct taxation within the Province in order to raise revenue for provincial purposes, to the extent permitted by or under any law made by Parliament.

(A) Protection of the environment within the Province, to the extent permitted by or under any law made by Parliament.

NOTE: Numbering of the above items is in accordance with the numbering in the TULF List.

APPENDIX I

NOTE ON DEVOLUTION OF POWER IN RESPECT OF LAW AND ORDER.

1. The subject devolved shall be described as follows :—

Public Order and exercise of Police powers as set out in this Schedule within the Province, but not including—

(a) national defence;

(b) national security; and

(c) the use of any armed forces or any other forces under the control of the Government of Sri Lanka in aid of the civil power.

2. The I.G.P. shall be the head of the Sri Lanka Police Force.

The Sri Lanka Police Force shall be divided into—

(a) the National Division (including Special Units); and

(b) a Provincial Division for each Province.

2.1 The National Division shall consist of the I.G.P., D.I.G.G., S.S.P.P., A.S.P.P. and other ranks recruited at the national level.

2.2 A Provincial Division shall consist of the D.I.G., S.S.P.P., S.P.P. and A.S.P.P., all seconded from the National Division and Provincial Assistant Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors, Sergeants and Constables recruited in the Province. Members of the Provincial Division shall be eligible for promotion to the National Division.

3. Recruitment to the National Division and promotions of Police Officers in the Provincial Division and Provincial Divisions to the National Division shall be made by a National Police Commission composed of three members, namely—

(a) the I.G.P.,

(b) a person nominated by the Public Service Commission in consultation with the President; and

(c) a nominee of the Chief Justice.

3.1 The National Police Commission shall before promoting any Police Officer serving in any Provincial Division to the National Division, call for a Confidential Report on such Officer from the relevant Provincial Police Commission and take the matters specified in such report into consideration in deciding whether to promote such Officer or not.

3.2 The Commission shall also be responsible for promotions, transfers, and disciplinary control of members of the National Division other than the I.G.P. subject to paragraph 4.1 below.

3.3 It shall hear and determine appeals from officers seconded to Provincial Divisions against whom disciplinary action has been taken by Provincial Police Commissions.

3.4 It shall set standards for recruitment and promotion of Police Officers of all Divisions and such standards shall be uniform for all Provincial Divisions.

4. Recruitment to each Provincial Division shall be made by a Provincial Police Commission composed of three members, namely—

(a) the D.I., G. of the Province;

(b) a person nominated by the Public Service Commission in consultation with the President; and

(c) a nominee of the Chief Minister of the Province.

4.1 A Provincial Police Commission shall be responsible for transfers, promotions and disciplinary control over officers in the Provincial Division; for promotion of Officers of the National Division seconded to the Provincial Division up to the rank of S.S.P.; and for transfer and disciplinary control over officers seconded to the Provincial Division, except the D.I.G.

Provided that any Officer of the National Division seconded to any Provincial Division against whom disciplinary action has been taken by a Provincial Police Commission, shall have the right to appeal to the National Police Commission, whose decision on such appeal shall be final.

5 The National Police Commission or a Provincial Police Commission shall be entitled to delegate such of its powers as may be prescribed to such other person or authority as may be prescribed.

6. The I.G.P. shall appoint a D.I.G. for each Province with the concurrence of the Chief Minister of the Province. However, where there is no agreement between the Inspector General of Police and the Chief Minister, the matter will be referred to the President, who, after due consultations with the Chief Minister, shall make the appointment.

7. The cadres of Police Officers of all ranks of the National Division shall be fixed by the Government of Sri Lanka. The cadre of Officers and other ranks of each Provincial Division shall be fixed by the President, having regard to—

- (a) the area of the Province;
- (b) population of the Province; and
- (c) such other criteria, as may be agreed to or Prescribed.

These principles shall be uniformly applied to all Provincial Divisions.

7.1 The cadres of the Provincial Divisions shall be fixed on ascertained principles such as population, area, number of Police Stations involved and other relevant considerations. These principles shall be applied to all Provincial Divisions without distinction.

7.2 The salary scales and perquisites of office enjoyed by the various ranks in the National and Provincial Divisions shall be determined by the Government of Sri Lanka after consultation with the Chief Ministers of the Provinces. The salary scales

and perquisites of office as enjoyed by Members of the Provincial Divisions shall apply uniformly to all Provincial Divisions.

8. The nature, type and quantity of fire-arms and ammunition and other equipment for the National Division shall be determined by the National Police Commission. The nature, type and quantity of fire-arms and ammunition and other equipment for all Provincial Divisions shall be determined by the National Police Commission after consultation with Provincial Police Commission and uniform standards and principles shall be applied for all Provincial Divisions.

9. Recruitment to the National Division shall be made at the ranks of P.C., S.I., and A.S.P. Recruitment to the Provincial Division shall be made at the ranks of P.C., S.I., and P.A.S.P. (rank referred to in para 2.2 above).

9.1 Recruitment to the National Division shall be made by the National Police Commission and recruitment to the Provincial Division shall be made by the Provincial Police Commission having regard to the standards of recruitment and other criteria prescribed in this behalf. Provided also that a recruit may, on appointment set out his preferences as to the Division in which he wishes to serve and that he shall, if possible, be posted to the Division of his choice, with the consent of the Division concerned.

9.2 The Government of Sri Lanka shall be responsible for the training of all recruits to and of members of all Divisions of the Sri Lanka Police Force.

The President may, where he considers it necessary, provide for alternative training for members of any Provincial Division.

10. Members of the National Division and the Provincial Divisions shall wear the same uniforms of the members of each Division shall bear a distinctive shoulder flash, indicating the Division to which he belongs.

10.1 There shall be one uniformed Police force in each Province, comprising of the Provincial Divisions and the officers seconded thereto. Members of the National Division shall ordinarily be in plain clothes provided that they may wear uniforms when performing any duties in respect of the maintenance or restoration of public order as set out in paragraphs 12.2, 12.3 and 12.4 Provided also that the I.G.P. and such other Officers as may be specified ordinarily be attired in uniforms.

11. All Police Officers serving in units of the National Division and Provincial Division in any Province shall function under the direction and control of the D.I.G. of such Province.

11.1 The D.I.G. of the Province shall be responsible to and under the control of the Chief Minister thereof in respect of the maintenance of public order in the Province and the exercise of Police powers in the Province as set out in this Schedule.

11.2 The provisions of paragraph 11.1 above are subject to the qualifications that—

- (a) Upon the declaration of an emergency in the Province, the President may assume such powers and responsibilities of the Chief Minister and the Provincial Administration in respect of public order within the Province as he may, by regulation, provide; and
- (b) Where the President is of the opinion that the security of or public order in a Province is threatened by grave internal disturbance, he may, without the declaration of an emergency, but in consultation with the Chief Minister of such Province, and 'subject to the provisions' of the Public Security Ordinance, by order, deploy in aid of the civil power, any unit of the National Division, in the Province for the purpose of restoring public order.

Provided that every such order shall cease to be in force as soon as the President is satisfied that public order has been restored or on the expiry of thirty days from the date of the order, whichever is earlier.

12.1 The Provincial Division shall be responsible for the preservation of public order within the Province and the Prevention, detection and investigation of all offences (except the offences specified in the Schedule) and subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, the institution of prosecutions in the relevant Courts in respect of such offences.

The National Division of the Sri Lanka Police Force shall be responsible for the prevention, detection, and investigation of all offences specified in the Schedule and subject to the powers of the Attorney-General in terms of the Code of Criminal Procedure Act, for the institution of prosecutions in the relevant Courts in respect of such offences.

12.2 Where the Chief Minister seeks the assistance of the National Division to preserve public order within a Province, the I.G.P. shall deploy such personnel of the National Division as are necessary for the purpose, and place them under the control of the D.I.G. of the province.

12.3 Where a State of Emergency is declared in the Province, the I.G.P. may deploy such units of the National Division as he deems necessary in any Province for the restoration and maintenance of public order within such Province.

12.4 Any offence which may ordinarily be investigated by a Provincial Division may be investigated by the C.I.D. or any other unit of the National Division.

- (a) Where the Chief Minister requests, that such investigation be undertaken by the C.I.D. or any other unit of the National Division; and
- (b) where the I.G.P. is of opinion that an investigation of such offence by the C.I.D. or any other unit of the National Division is necessary, in the public interest, and directs, after consultation with the Chief Minister, and the approval of the Attorney-General, that such offence be investigated by the C.I.D. or any other unit of the National Division.

13. The National Division shall perform all the functions vested in a Provincial Division, in any Province, for a period of one year or until a Provincial Division is established in such Province, whichever is earlier.

14. All gazetted officers of the National Division and Provincial Divisions shall be required to attain the prescribed standard in Sinhala and Tamil. All Officers of the rank of A.S.P. and above shall also be required to attain the prescribed standard of English.

Every recruit to the Sri Lanka Police Force shall have proficiency in his mother tongue. For the first promotion he shall acquire proficiency in a language other than his mother tongue. For the next promotion he shall acquire a knowledge of the third language. The three languages recognized for this purpose are Sinhala, Tamil and English.

APPENDIX II

LAND AND LAND SETTLEMENT

The subject of land, that is to say, rights in or over Land, Land tenure, transfer and alienation of

land, Land use, Land settlement and land improvement will devolve on Provincial Councils which devolution will be subject to the following proposals :

1. Lands which are vested in the State (State Land)

1.2 Lands required for the purposes of the Government of Sri Lanka in respect of subjects not devolved on the Provincial Councils may be utilized in accordance with National Land-use Policy, with out any restriction by the Government of Sri Lanka. The Government of Sri Lanka would consult the relevant Provincial Council with regard to the utilization of such land in respect of such subjects.

1.3 The Provincial Councils shall administer, control and utilize State land within its Province for the subjects devolved on them. Such land shall be utilized for such purposes in accordance with National Land-use Policy.

1.4 The alienation or disposition of such lands under such schemes to any citizen or to any organisation will be made by the Governor of that Province on the advice of the Provincial Council, in accordance with statutes of that Provincial Council and such other laws under which the Provincial Councils shall be entitled to act.

2. Inter-Provincial Irrigation and Land Development Projects.

2.1 Such Projects would comprise irrigation and land development schemes—

(a) Within the Province initiated by the State and which utilize water from rivers flowing through more than one Province; a Provincial Council however, may also initiate irrigation and Land development schemes within its Province utilizing water from such rivers;

(b) within the Province which utilize water through diversions from water systems from outside the Province; and

(c) all schemes where the command area falls within two or more Provinces such as the Mahaweli Development Project.

2.2 These Projects will be the responsibility of the Government of Sri Lanka.

2.3 The principles and criteria regarding the size of holdings of agricultural and homestead lands arising out of these Projects will be determined by the Government of Sri Lanka in consultation with the Provincial Councils.

2.4 The selection of allottees for such lands will be determined by the Government of Sri Lanka having regard to settler selection criteria including degree of landlessness, income level, size of family and agricultural background of the applicants. The actual application of these principles, selection of allottees and other incidental matters connected thereto will be within the powers of the Provincial Councils.

2.5 The distribution of allotments of such land in such projects will be on the basis of national ethnic ratios. In the distribution of allotments according to such ratios, priority will be given to persons who are displaced by the project, landless of the District in which the project is situated and thereafter, the landless of the Province.

2.6 Where the members of any community do not, or are unable to, take their entitlements of allotments from any such project they would be entitled to receive an equivalent number of allotments in another Inter-Provincial Irrigation or Land Development Scheme. This unused quota should be utilized within a given time-frame.

2.7 The distribution of allotments in such projects on the basis of the aforesaid principles would be done as far as possible so as not to disturb very significantly the demographic pattern of the Province and in accordance with the principle of ensuring cohesiveness in human settlements.

2.8 The administration and management of such projects will be done by the Government of Sri Lanka.

3. National Land Commission

3.1 The Government of Sri Lanka shall establish a National Land Commission which would be responsible for the formulation of national policy with regard to the use of State land. This Commission will include representatives of all Provincial Councils in the Island.

3.2 The National Land Commission will have a Technical Secretariat representing all the relevant disciplines required to evaluate the physical as well as the socio-economic factors that are relevant to natural resources management.

3.3 National policy on land use will be based on technical aspects (not on political or communal aspects), and the Commission will lay down general norms in regard to the use of land, having regard to soil, climate, rainfall, soil erosion, forest cover, environmental factors, economic viability etc.

3.4 In the exercise of the powers devolved on them, the powers shall be exercised by the Provincial Councils having due regard to the national policy formulated by the National Land Commission.

APPENDIX III

EDUCATION

The manner in which devolution will be implemented in the area Education has been spelt out in the Annexure to the Report of the Committee-I—Committee on General Devolution. Accordingly, the following powers and functions will go to the Provincial Authority.

1. Provision of facilities for all State Schools other than specified schools. (Specified Schools will be National Schools, Special Schools for Service personnel and schools for specified development schemes).

2. Supervision of the management of—

(a) all Pre-schools; and

(h) all Government schools other than specified schools indicated above

(In order to ensure standards the Ministry of Education too will need to retain the right to inspect and supervise the management of schools).

3. Transfer and disciplinary control of all educational personnel, i.e. teachers, Principals and Education Officers. Officers belonging to a National Service but serving the Provincial Authority on secondment will have the right of appeal to the P.S.C. Officers belonging to the Provincial Service will have the P.S.C. against dismissal.

4. Recruitment into the Teaching Service of those with diplomas and degrees from Colleges of Education and Universities recognised as teaching qualification.

5. Until adequate numbers of these categories are available recruitment into the Teaching Service of others will be on the results of recruitment examinations conducted by the P.S.C. On the results of these examinations interviews and selection will be conducted together with the Provincial Authorities.

6. Appointment of Principals of all schools other than those in 1A, B, C categories. (Criteria

will be laid down by the Minister of Education /E.S.C.)

7. Appointment of Principals of 1A, B, C schools will be by the Ministry in concurrence with the Provincial Authority.

8. Training of teachers and other educational personnel will come within the purview of the National Institute of Education. Provincial Authorities will indicate their needs to the N. I. E.

9. Appointment of Provincial Boards of Education which will have advisory functions, will be the responsibility of the Minister of Education. However, this will be done in concurrence with the Chief Minister of the Provincial Authority.

10. Provincial Authorities will establish School Boards conforming to the specifications laid down by the Ministry of Education.

11. Provincial Authorities will supervise the working of School Boards.

12. Preparation of plans (educational development plan and annual implementation plan) will be the responsibility of the Provincial Authority.

13. Implementation of the Annual Education Development Plan.

14. Appraisal of the performance of Principals, Teachers and Education Officers.

15. Conducting of In-service training programmes for which prior approval of the N.I.E. has been obtained.

16. Conducting of local examinations approved by the Commissioner General of Examinations.

17. Implementation of Non-formal Education programmes.

18. Registration and supervision of Pre-schools.

19. Obtaining the approval of the N.I.E. for local variations in the Primary curriculum and selected subjects in the Secondary curriculum.

20. Construction and maintenance of educational buildings, libraries and playgrounds.

21. Procuring and distribution of teaching aids, visual aids and audio visual materials, furniture and other equipment.

22. Procuring and distribution of science equipment other than certain specified items indicated by the Ministry.

23. Production and distribution of school text books after approval by the Ministry.

24. Organization and development of school libraries in accordance with guidelines given by the given by the National Library Services Board.

LIST III
(CONCURRENT LIST)
[Article 154G (5)]

(1) Planning-

1:1 Formulation and appraisal of plan implementation strategies at the provincial level;

1:2 Progress control;

1:3 Monitoring progress of public and private sector investment programmes;

1:4 The evaluation of the performance of institutions and enterprises engaged in economic activities;

1:5 The presentation of relevant data in the achievement of plan targets;

1:6 The dissemination of information concerning achievement of plan targets;

1:7 Publicity of implementation programmes;

1:8 Manpower planning and employment Data Bank;

1:9 Nutritional planning and programmes.

3 & 4. Education and Educational Services—

Education, except to the extent specified in items 3. & 4. of List I.

5. Higher Education—

5:1 The establishment and maintenance of new Universities;

5:2 To establish degree awarding institutions under the Universities Amendment Act, No. 7 of 1985, and other institutions for tertiary, technical and post-school education and training.

7. National Housing and Construction—

The promotion of integrated planning and implementation of economic, social and Physical development of urban development areas.

8. Acquisition and Requisitioning of Property.

10. Social Services and Rehabilitation—

10:1 Relief, rehabilitation and resettlement of displaced persons;

10:2 Relief of distress due to floods, droughts, epidemics or other exceptional causes and rehabilitation and resettlement of those affected;

10:3 Restoration, reconstruction and rehabilitation of towns, villages, public institutions and properties, industries, business places, places of worship and other properties destroyed or damaged, grant of compensation or relief to persons or institutions who have sustained loss or damage and the reorganization of civil life.

13 & 14. Agriculture and Agrarian Services—

13:1 Establishment and promotion of agro-linked industries, the establishment and maintenance of farms and supervision of private nurseries;

13:2 Soil conservation;

13:3 Plant pests.

16. Health—

16:1 Schools for training of Auxiliary Medical Personnel;

16:2 The supervision of private medical care, control on nursing homes and of diagnostic facilities within a province;

16:3 Population control and family planning;

16:4 Constitution of Provincial Medical Boards.

19. Registration of births, marriages and deaths.

20. Renaming of Towns and Villages.

22. Private lotteries within the Province.

23. Festivals and Exhibitions.

24. Rationing of food and maintenance of food stocks.

25. Co-operatives—
Co-operative Banks.

28. Surveys—

For the purpose of any of the matters enumerated in the Provincial or Concurrent List.

29. Irrigation—

29:1 Water storage and management, drainage and embankments, flood protection, planning of water resources;

29:2 Services provided for inter-provincial land and irrigation schemes, such as those relating to rural development, health, education, vocational and technical training, co-operatives and other facilities.

30. Social Forestry and protection of wild animals and birds

32. Fisheries—

Other than fishing beyond territorial waters.

33. Animal Husbandry—

33:1 Production, processing, distribution and sale of livestock and livestock products;

33:2 Veterinary training services and research inclusive of the provision of science laboratories and science equipment;

33:3 Animal breeding, care and health;

33:4 The establishment of pastures.

34. Employment—

34:1 Employment planning at Provincial level;

34:2 Special Employment programmes relating to the Province;

34:3 Promotion of youth employment activities relating to the Province;

34:4 Technical Manpower Development Programmes in relation to the province.

36. Tourism—

Development and control of the Tourist Industry in the Province.

39, 40 & 47. Trade and commerce in, and the production, supply and distribution of—

(a) the products of any industry where the control of such industry by the Central Government is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; and

(b) foodstuffs and cattle fodder.

45. Newspapers, books and periodicals and printing presses.

57. Offences against statutes with respect to any matters specified in this List.

59. Fees in respect of any of the matters in this List, excluding fees taken in any Court.

60. Charities and charitable institutions, charitable and religious endowments and religious institutions.

61. Price control.

62. Inquiries and statistics for the purpose of any of the matters in this List or in the Provincial List.

63. Adulteration of foodstuffs and other goods.

64. Drugs and Poisons.

65. Extension of electrification within the Province and the promotion and regulation of the use of electricity within the province.

(A) Protection of the environment.

(B) Archaeological sites and remains, other than those declared by or under any law made by Parliament to be of national importance.

(C) Prevention of the extension from one Province to another of infectious or contagious diseases or pests affecting human beings, animals or plants.

(D) Pilgrimages.

NOTE: Numbering of the above items is in accordance with the numbering in TULF List.

XVIII

TULF Response to the Draft Amendments to the Constitution sent by SLG

SEPT. 30, 1986

**Shri P. SHIV SHANKAR,
Minister for External Affairs,
NEW DELHI.**

My Dear Minister,

The draft amendments to the Constitution of Sri Lanka for the establishment of Provincial Councils have been considered by us.

We have had the benefit of a full discussion with Shri S. Balakrishnan, the constitutional expert who has been associated with finding a solution to the Tamil problem in Sri Lanka.

We are sending herewith our reactions to the various proposals contained in the above document. We are also giving our own revised formulations on some of the clauses.

We shall scrutinise the Draft Provincial Councils Bill as well as the entries in the three Lists of Subjects and give our reactions shortly. We request that the assistance of Shri S. Balakrishnan may be given to us for this also.

The reactions given in the annexed document are meant for the use of the Government of India only.

With kind regards,

**Yours sincerely,
(A. AMIRTHALINGUM)
Secretary General,
T.U.L.F.**

PREAMBLE

The formulation by the SLG is unacceptable. The following is suggested :

1. "Nothing in this Chapter or in any law made in pursuance of the provisions thereunder shall affect or derogate from, or be read or construed as affecting or derogating from, Article 1 or 2 or 3 or 6 or 7 or 8 or 9 or 10 or 11 or 30(2) or 62(2) or 83, but save as aforesaid, nothing contained in any other provisions of the Constitution or any other law shall be interpreted to derogate from the provisions contained in this Chapter, and of any law or statute made in pursuance of it."

2. Any law for the amendment or repeal of all or any of the provisions of this Chapter or of the Ninth Schedule, made after satisfying the requirement of Article 82, shall apply to a Province for which a Provincial Council has been established, only if it is ratified by such Provincial Council by a Resolution passed with 2/3 majority.

Provided that such ratification shall not be necessary if the amendment seeks to confer additional powers on the Provincial Councils.

ARTICLE 154A

154A (1) "A Provincial Council is hereby established for every Province specified in the Eighth Schedule, with effect from the date on which this 11th Amendment of the Constitution comes into force."

2. Clause 2 may be omitted.

Note 1: When Provinces are enumerated in the Eighth Schedule, one Tamil linguistic Province, consisting, of the Northern and Eastern Provinces shall be included in the Schedule.

Note 2: Once the Provinces are enumerated in the Eighth Schedule, no changes in the boundaries of such Provinces shall be made except with the consent of the Provincial Councils concerned.

ARTICLE 154B

154B (1) There shall be a Governor for each province. (Omit the rest).

2. The Governor shall be appointed by the president by warrant under his hand and shall hold office during the pleasure of the President.

3. No change

4. (a) The Provincial Council may, subject to sub-paragraph (b) adopt a resolution advising the removal of the Governor on the ground that the Governor—

- (i) has intentionally violated the provisions of the Constitution;
- (ii) is guilty of misconduct or corruption involving the abuse of the powers of his office; or
- (iii) is guilty of bribery or an offence involving moral turpitude,

Every such resolution shall be passed by not less than two-thirds of the whole number of members of the Council (including those not present) and shall thereafter be forwarded by the Chief Minister of the Province to the President.

(b) No such resolution, as is referred to in sub-paragraph (a), shall be entertained by the Chairman of the Provincial Council or discussed at the Council unless notice of such resolution is signed by not less than one half of the whole number of members of the Council.

(c) On receipt of a resolution referred to in sub-paragraph (a), the president shall withhold his pleasure under paragraph (2).

5. No change.

6. No change.

7. No change.

8. (a) No change.

(b) No change.

(c) The Governor may dissolve the Provincial Council.

(d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister.

9. Without prejudice to the powers of the president under Article 34, the Governor of a province shall have the power to grant a pardon to any person convicted of an offence against a law or statute on a matter in respect of which the Provincial Council has power to make statutes and to grant a respite or remission of punishment imposed by Court on any such person.

10. (a) No change.

(b) No change.

11. (a) No change.

(b) No change.

(c) No change.

12. No change.

ARTICLE 154C

154C. In every Province executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province in accordance with Article 154F either directly or through Ministers of the Board of Ministers or through officers subordinate to him.

ARTICLE 154D

154D 1. No change.

2. (a), (b), (c) : Since all political parties who participated in the Conference have unanimously expressed the view that Members of parliament should only have the right of audience and not to sit and vote, the TULF suggests the retention of the earlier provisions as contained in (2) (a) and (b) on page 5. In any event, the TULF is opposed to this provision being given effect to in the Tamil linguistic province.

ARTICLE 154E

154E. No change.

ARTICLE 154F

154F 1. Omit "or under" in line 5 of that paragraph.

2. Omit "or under" in line 3.

3. No change.

4. The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for that Province, who, in his opinion, is most likely to command the confidence of the Council.

Provided that where more than one half of the members elected to a Provincial Council are members of one political party, the Governor shall appoint the leader of that political party in the Council as Chief Minister.

5. No change.

6. No change.

7. A person appointed to the office of the Chief Minister or member of the Board of Ministers shall not enter upon the duties of his office until he takes and subscribes the oath or makes and subscribes the affirmation set out in the Fourth schedule.

Note: TULF suggests a limitation being placed on the number of Ministers of the Board of Ministers that it shall not exceed $\frac{1}{5}$ the number of members of the Council.

ARTICLE 154G

154G (1) Every Provincial Council may make statutes applicable to the Province for which it is established with respect to any matter set out in List I of the Ninth Schedule (hereinafter referred to as "the Provincial Councils List").

2. No Bill for enactment by Parliament of a law in respect of any matter set out in the Provincial Councils List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and

(a) Where every such Council, by a Resolution passed in this behalf, agrees to the passing of the Bill, such Bill is passed by a majority of the members of Parliament present and voting; or

(b) Where one or more of such Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82.

Provided that any law made by Parliament in accordance with sub-paragraph (b) shall not come into effect in a province unless the Provincial Council, by resolution, so decides.

3. Where one or more Provincial Councils request Parliament, by resolution, to make law on any matter set out in the Provincial Council List, Parliament may make law on that matter by a majority of members of Parliament sitting and voting, but such law shall apply only to the Provinces for which those Provincial Councils are established.

4. (a) Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule (hereinafter referred to as "the Concurrent List") after consultation with the Provincial Councils of Provinces to which that law is to apply.

(b) Every Provincial Council may make statutes applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after consultation with Parliament.

5. If any provision of any Statute made by a Provincial Council is inconsistent with the provisions of any law made after the commencement of this Chapter in accordance with the preceding provisions of this Article, the provisions of such law shall prevail and the provisions of such Statute shall, to the extent of such inconsistency, be void.

6. A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule (hereinafter referred to as "the Reserved List").

7. Where there is a law with respect to any matter in the Concurrent List, in force on the date on which this Chapter comes into force and a Provincial Council established for a Province subsequently makes a statute on the same matter in accordance with the provisions of this Article, then, the provisions of the law shall, with effect from the date on which that statute receives assent, be inoperative within that Province.

8. Nothing in this Article shall be read or construed as derogating from the powers conferred on Parliament by this Constitution to make laws in accordance with the provisions of the Constitution, with respect to any matter, not enumerated in the Concurrent List or Provincial Council List.

9. Notwithstanding anything in paragraph (2) of this Article, Parliament may make laws,

otherwise than in accordance with the procedure set out in that paragraph, in respect of any matter set out in the Provincial Council List for implementing any treaty, agreement or convention with any other country or countries or any decisions made at an international conference, association, or other body.

ARTICLE 154H

154H (1) No change.

2. Every statute made by a Provincial Council shall be presented to the Governor for his assent, forthwith on the making thereof, and the Governor shall either give assent forthwith or within 2 weeks return the Bill, if it is not a Money Bill, to the Provincial Council together with a message requesting the Council to re-consider the Bill or any specified provision thereof, and in particular, requesting it to consider the desirability of introducing such amendment as may be recommended in the message.

3. Where a Bill is returned to a Provincial Council by the Governor under paragraph (2), the Provincial Council shall re-consider the Bill having regard to the Governor's message and may pass such a Bill with or without amendment and present it to the Governor for his assent.

4. Upon presentation of a Bill to the Governor under paragraph (3), the Governor shall not withhold assent to the Bill unless within two weeks of the presentation of the Bill to the Governor for the second time, the President invokes the jurisdiction of the Supreme Court on the grounds of constitutional invalidity (*ultra vires*) and the Supreme Court shall make its determination on the matter within one month of such a reference. The determination of the Supreme Court shall be conclusive.

ARTICLE 154-I

The proposed amendment on page 10.a is not acceptable to TULF and the following is suggested:

154-I (1) If the President is satisfied that a grave emergency exists whereby the security of Sri Lanka or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect in respect of the whole of Sri Lanka or of such part of the territory thereof as may be specified in the Proclamation.

Explanation

(A Proclamation of emergency declaring that the security of Sri Lanka or any part of the territory

thereof is threatened by war or by external aggression or by armed rebellion, may be made before the actual occurrence of war or of any such aggression or rebellion, if the president is satisfied that there is imminent danger thereof).

2. A Proclamation issued under Clause (1) may be varied or revoked by a subsequent Proclamation.

3. Upon the making of such a Proclamation, the occasion thereof shall, subject to the other provisions of this Article, be forthwith communicated to Parliament, and, accordingly—

- i) if such Proclamation is issued after the dissolution of Parliament, such Proclamation shall operate as a summoning of Parliament to meet on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting which shall not be less than three days from the date of the Proclamation; and the Parliament so summoned shall be kept in session until the expiry, or revocation of such or any further Proclamation or until the conclusion of the General Election whichever event occurs earlier and shall thereupon stand dissolved;
- ii) if Parliament is, at the date of the making of such Proclamation, separated by any such adjournment or Prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days.

4. Where a proclamation under paragraph (1) has been made by the President, such Proclamation shall, subject to the succeeding provisions of this Article, be in operation for a period of one month from the date of the making thereof, but without prejudice to the earlier revocation of such Proclamation or to the making of a further Proclamation at or before the end of that period.

5. Where a Proclamation has been made under para (1) above, such Proclamation shall expire after a period of 14 days from the date on which such Proclamation shall have come into operation unless such Proclamation is approved by a resolution of Parliament.

Provided that if—

- (a) Parliament stands dissolved at the date of the making of such Proclamation, or

(b) Parliament is at such date separated by any such adjournment or prorogation as is referred to in paragraph (3) (ii) of this Article ; or

(c) Parliament does not meet when summoned to meet as provided in paragraphs (3) (i) and (3) (ii) of this Article,

then such Proclamation shall expire at the end of ten days after the date on which Parliament shall next meet and sit, unless approved by a resolution at such meeting of Parliament.

6. Upon the revocation of a Proclamation referred to in paragraph (1) above, within a period of 14 days from the date on which such Proclamation comes into operation, or upon the expiry of such a Proclamation in accordance with the provisions of paragraph (5) above, no Proclamation made within 30 days next ensuing shall come into operation until the making thereof shall have been approved by a resolution of Parliament. In any event, no such Proclamation shall continue in force for a period of more than one year from the date of the first Proclamation.

7. While a Proclamation of emergency as stated in paragraph (1) above is in operation, the President may give directions to any Governor as to the manner in which the executive power exercisable by the Governor is to be exercised. The directions so given shall be only in relation to the grounds specified in such Proclamation for the making thereof.

Provided that—

Where a proclamation of emergency is in operation only in any part of Sri Lanka, the power of the President to give directions under this Article shall also extend to any Province other than a Province in which or in any part of which the Proclamation of emergency is in operation if and in so far as the security of Sri Lanka or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of Sri Lanka in which the Proclamation is in operation.

ARTICLE 154J

No change.

ARTICLE 154K

154K (1) In line 2 after the word 'Province' interpolate the words 'sent in his discretion' and change the word 'administration' in line 3 to 'Government'.

(1) (a) The word 'administration' in line 2 be changed to 'Government'.

The TULF is totally opposed to paragraph (6).

ARTICLE 154M

No change.

ARTICLE 154N

154N (1) No change.

(2) No change.

(3) No change.

(4) (a) No change.

(b) The TULF only agrees to the omission of the words 'including the judges of the Supreme Court and the High Courts'.

ARTICLE 154-O

Article 154-O (4) (b) (ii) Any statute made by the Provincial Council established for that Province in respect of any matter set out in the Provincial Council List or the Concurrent List of the Ninth Schedule.

ARTICLE 154P

No change.

ARTICLE 154 Q

154Q (1) On the enactment of this Eleventh amendment of the Constitution, and at the end of every fifth year, the President shall constitute a Finance Commission which shall consist of—

(a) the Governor of the Central Bank;

(b) the Secretary to the Treasury; and

(c) three other members to represent the three major communities and each of whom shall be a person who has distinguished himself or held a high office in the financial, legal, administrative, business or academic fields.

2. No change.

3. It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Government and the Provinces of the net proceeds of taxes which are to be or may be divided between them and the allocation between the Provinces of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the Provinces out of the Consolidated Fund; and

(c) any other matter referred to the Commission by the President in the interests of sound finance.

4. No change.

5. The President shall cause every recommendation made by the Finance Commission under this Article, together with an explanatory memorandum as to the action taken thereon, to be laid before Parliament.

Page 19

Regarding the provision enabling Provincial Councils to hand back power to the Centre, the TULF does not see the need for any such provision.

155 (3) (a) is totally unacceptable and be omitted.

Article 170: No change.

OCT. 4, 1986

Shri. P. SIVASHANKAR,
Minister of External Affairs,
Government of India,
New Delhi.

My dear Minister,

Further to our letter of 30th September we have scrutinised the draft Provincial Council Bill as well as the entries in the three lists of subjects, with the assistance of Shri. S. Balakrishnan.

We are sending herewith:

- (1) Two additional Provisions to the Main Constitutional amendments relating to the Provincial Public Service Commission and the vesting of Property and assets.
- (2) Our reactions to the draft Provincial Council Bill along with our formulations for certain additional Provisions in the Bill.
- (3) The revised formulations with suggested additions and deletions in respect of Provincial Council List, Reserved List and the Concurrent list as well as the two appendices. The schedule of offences to be reserved for the National Police Division will be finalised shortly.

We wish to repeat that the reactions given in all the annexed documents are meant for the use of the Government of India only.

Apart from the above, certain other matters of great importance such as the Trincomalee Port, representation in the Armed Forces, Public Services etc., Official language, employment and matters relating to the Central Government remain to be discussed with the Sri Lanka Government.

With kind regards.

Yours sincerely,

(A. AMIRTHALINGUM)
Secretary General,
T.U.L.F.

15A

T.U.L.F. suggests the following provision regarding Provincial Public Service :—

ARTICLE 154R

1. There shall be a Provincial Public Service Commission which shall consist of not less than five persons appointed by the Governor, one of whom shall be nominated as the Chairman.

2. Every member of the Provincial Public Service Commission shall hold office for a period of five years from the date of his appointment, unless he earlier resigns his office by a writing under his hand addressed to the Governor or he is removed from office by the Governor for cause assigned, but shall be eligible for reappointment.

3. All other matters relating to the Provincial Public Service Commission or its members shall be regulated by statute.

4. The Provisions of Article 55 shall apply in relation to Public officers serving in connection with the affairs of a province as they apply to Public officers of the Government of Sri Lanka mutatis mutandis and any reference in that Article to a Cabinet of Ministers or a Minister or the Public Service Commission shall be deemed to be reference to Board of Ministers, Minister of the Province and the Provincial Public Service Commission respectively.

15B

T.U.L.F. suggests a provision regarding vesting of Property and Assets etc.: —

ARTICLE 154S

1. All property and assets which immediately before the commencement of this Eleventh Amend-

ment of the Constitution, were vested in the Government of Sri Lanka shall, as from such commencement, vest in the Provincial Council if the purpose for which such property and assets were held immediately before such commencement will thereafter be purposes of the Provincial Council relating to any of the matters with respect to which such Provincial Council has power to make statutes.

2. All rights, liabilities, and obligations of the Government of Sri Lanka, whether arising out of any contract or otherwise, shall be the rights, liabilities, and obligations of the Provincial Council, if the purposes for which such rights were acquired or such liabilities or obligations were incurred before such commencement will thereafter be the purposes of the Provincial Council relating to any matter with respect to which it has power to make statutes.

TULF RESPONSE TO DRAFT PROVINCIAL COUNCILS ACT SENT BY SLG

PART I

Clause 2.

- (a) Where a Provincial Council is established for a Province by virtue of Article 154 A of the Constitution the President shall, by order published in the Gazette, assign a name to such Council.
- (b) Every such Provincial Council shall consist of such number of members as may be determined by a notification of the President on the basis of one member for every one thousand square kilometers and one member for every thirty thousand population.

Clause 3. No change.

Clause 4. No change.

Clause 5. No change.

Clause 6. No change.

PART II

Clause 7. (1), (2), (3), (4). No change.

5. There shall be paid to the Chairman and the Deputy Chairman of the Provincial Council such salaries and allowances as may be respectively fixed by the Provincial Council by statute and, until provision in that behalf is so made, such salaries and allowances as the President may by order determine.

Clause 8. No change.

Clause 9. 1, & 2. No change.

3. In other respects powers, privileges and immunities of the Provincial Council and its members shall be such as may be determined by the Provincial Council by statute and until such determination shall be same as that of Parliament and Members of Parliament.

4. The Provisions of subsections (1), (2) and (3) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in the proceedings of, a Provincial Council or any committee thereof as they apply in relation to members of that Council.

Clause 10. 1, 2 & 3. No change.

4. The quorum to constitute a meeting of a Provincial Council shall be ten or one-fifth of the total number of members of the Council whichever is higher. Where one-fifth of the numbers of members is an integer and a fraction the integer immediately higher to that integer and fraction shall be deemed to be the one-fifth the number of members for the purpose of this section.

5. No change.

Clause 11. (1) A Provincial Council may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business: including rules as to—

(a) & (b) No change.

(c) Omit.

2. Until provisions are made under sub-section (1) the standing orders of Parliament with appropriate modifications shall apply in respect of procedure.

Clause 12. No change.

Clause 13. (1). No change.

2. The property and income of the Province shall be exempt from Taxation by Parliament.

3. Nothing in clause (2) shall prevent the State from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a Province, or any operations connected therewith, or any property used or

occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

4. Nothing in clause (3) shall apply to any trade or business or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functioning of Government.

Clause 14. No change.

Clause 15. (1) in line 2 change word "administration" to "Government" and omit "or under" in line 5.

2. & 3. No change.

Clause 16. (1) All contracts entered into in the exercise of the executive power of the Government of the Province, shall be entered into and performed, in the name of the Province as if such Province were a juristic person.

2. All actions in relation to the exercise of such executive power shall be brought by, or against such Province as if such Province were a juristic person.

Clause 17. No change.

Clause 18. No change.

Clause 19. Subject to paragraph (5) of Article 154R of the constitution, no discussion shall take place in a Provincial Council with respect to the conduct of the President or a Judicial Officer.

Clause 20. (This section should be redrafted restricting it to transitional provision and what is absolutely necessary for the transition.)

MONEY BILLS AND ANNUAL FINANCIAL STATEMENT.

Clause 21. (1) A Bill shall be deemed to be a Money Bill if it contains only provision dealing with all or any of the following matters, namely :—

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money the giving of any guarantee by the Province, or the amendment of the statute with respect to any financial obligations undertaken or to be undertaken by the Province.
- (c) the custody of the Provincial Fund or the Emergency Fund of the Province, the pay-

ment of moneys or the withdrawal of moneys from any such Fund;

- (d) the appropriation of moneys out of this Provincial Fund of the Province;
- (e) the declaring of any expenditure to be expenditure charged on the Provincial Fund of the Province, or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Provincial Fund of the Province or the public account of the Province or the custody or issue of such money; or
- (g) any matter incidental to any of the matters specified in sub-clause (a) to (f).

2. A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

Clause 22. (1) The Governor of a Province shall in respect of every financial year cause to be laid before the Provincial Council of that Province, a statement of the estimated receipts and expenditure of the Province for that year, in this Act referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this law as expenditure charged upon the Provincial Fund of the Province, and

Clause 22. 2. (b) the sums required to meet other expenditure proposed to be made from the Provincial Fund of the Province; and shall distinguish expenditure on revenue account from other expenditure.

3. The following expenditure shall be expenditure charged on the Provincial Fund of the Province:—

- (a) the emoluments and allowances of the Governor and other expenditure relating to his office as determined by law;
- (b) the charges payable in respect of loans advanced in respect of the Province from

the consolidated Fund of Sri Lanka including interest, sinking fund charges and redemption charges, and other expenditure connected therewith;

- (c) the salaries and allowances of the Chairman and the Deputy Chairman of the Provincial Council;
- (d) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (e) any other expenditure declared by the Act or by statute made by the Provincial Council to be so charged.

Clause 23. (1) So much of the estimates as relates to expenditure charged upon the Provincial Fund of the Province shall not be submitted to the vote of the Provincial Council, but nothing in this subsection shall be construed as preventing the discussion in the Provincial Council of any of those estimates.

2. So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Provincial Council, and the Provincial Council shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

3. No demand for a grant shall be made except on the recommendation of the Governor.

Clause 24. (1) As soon as may be after the grants under section 25, have been made by the Council, there shall be introduced a statute to provide for the appropriation out of the Provincial Fund of the Province of all moneys required to meet—

- (a) the grants so made by the Provincial Council, and
- (b) the expenditure charged on the Provincial Fund of the Province but not exceeding in any case the amount shown in the statement previously laid before the Council.

(2) No amendment shall be proposed to any such statute in the Provincial Council which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Provincial Fund of the Province and the decision of the person presiding as to whether an amendment is inadmissible under this subsection shall be final.

(3) Subject to other provisions of this Act, no money shall be withdrawn from the Provincial Fund of the Province except under appropriation made in accordance with the Provisions of this section.

Clause 25. (1) The Governor shall—

- (a) if the amount authorised by any statute made in accordance with the Provisions of Section 24 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the Provincial Council of the Province another statement showing the estimated amount of that expenditure or cause to be presented to the Provincial Council of the Province a demand for such excess, as the case may be.

(2) The Provisions of Sections 22, 23 and 24 have effect in relation to any such statement and expenditure or demand and also to any statute, to be made authorising the appropriation of moneys out of the Provincial Fund of the Province to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the statute to be made for the authorisation of appropriation of money out of the Provincial Fund of the Province to meet such expenditure.

Clause 26. (1) Notwithstanding anything in the foregoing provision of this Act, the Provincial Council shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in Section 23 for the voting of such grant and the passing of the statute in accordance with the provisions of Section 24 in relation to that expenditure and the Provincial Council shall have power to authorise by statute the withdrawal of moneys from the Provincial Fund of the Province for the purposes for which the said grant is made.

(b) To make a grant for meeting an unexpected demand upon the resources of the Province when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year; and the Provincial Council of the Province shall have power to authorise by statute the withdrawal of moneys from the Provincial Fund of the Province for the purposes for which the said grants are made.

2. The provisions of Sections 23 and 24 shall have effect in relation to the making of any grant under subsection (1) or to any statute to be made under that subsection as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the statute to be made for the authorisation of appropriation of moneys out of the Provincial Fund of the Province to meet such expenditure.

Clause 27. Auditor General.

The Auditor General shall perform all the duties and functions referred to in clause 1 and 2 of Article 154 of the Constitution in relation to the accounts of the Province.

Clause 28. Advocate General.

(1) The Governor of each Province shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the Province upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Act or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.

Clause 29. In performing the duties and functions under this Act the Governor shall act on the advice of the Board of Ministers.

TULF RESPONSE TO THE DRAFT LISTS OF SUBJECTS SENT BY SLG.

LIST II

(RESERVED LIST)

[Article 154G (7)]

Omit—National Policy on all subjects and functions.

1. Defence and National Security; Internal Security; law and Order and Prevention and Detection of Crime subject to the provision of item I in List I and the Appendix thereto.

Omit "This would include"

(a) No change

(b) No change

(c) Omit

(d), (e), (f), (g), (h), (i), (j)—No change.

(k) Line 6. Alter words "Provincial Council" to "Government of the Province"

2. Foreign Affairs

Omit "this would include"

No other change

3. Posts and Telecommunications: Broadcasting; Television.

Omit "this would include".

No other change

4. Supreme Court, Court of Appeal and other Courts

Omit "This would include".

(a), (b) No change

(c) At the end add words "with respect to matters in this list; Admiralty jurisdiction"

5. Finance in relation to National revenue, Monetary Policy and External resources; Customs.

Omit "this would include".

(a) to (f) No change

(g) Banking other than Provincial and Co-operative banking,

(h) to (m) No change

(n) Duties of excise on tobacco and other goods manufactured or produced in Srilanka except alcoholic liquors for human consumption.

(o) to (x) No change.

6. Foreign Trade; Inter Province Trade and Commerce.

Omit "this would include".

No other change.

7. Ports and Harbours.

Omit "this would include".

(a) Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation for port activities and the constitution and powers of port authorities therein;

(b) No change.

8. Aviation and Air Ports.

Omit "This would include".

No other change.

9. National Transport.

Omit "This would include".

No other change.

10. Shipping, Navigation and other Allied matters.

Omit "This would include".

No other change.

11. Minerals and Mines.

Omit "This would include".

No other change.

12. Immigration and Emigration and Citizenship.

Omit "This would include".

No other change.

13. Elections.

Omit "this would include".

Elections to Parliament, Provincial Councils, and to the office of President; the Department of Elections.

14. Census and Statistics.

Omit "This would include".

No other change.

15. Professional Occupations and Training.

Omit "this would include".

No other change.

16. National Archives and other Allied matters.

Omit "This would include".

No other change.

17. All subjects and functions not specified in list I or List III.

Omit (i) and (s).

LIST—III

(CONCURRENT LIST)

[Article 154G (5)]

1. Planning—Formulation and implementation of National Policies in Planning, its appraisal, and other matters incidental thereto.

2. National Housing and Construction—The promotion of integrated planning and implementation of economic, special and physical development of Urban development areas,—by means of schemes to be formulated in consultation with the Province concerned.

3. Acquisition and Requisitioning of property.

4. Social Services and Rehabilitation.

4.1. Relief of distress due to floods, cyclones, droughts, epidemics or other exceptional causes and rehabilitation and resettlement of those affected;

5. Agriculture and Agrarian Services.

5.1. Soil Conservation.

5.2. Plant pests.

6. Health.

6.1. Schools for training of Auxiliary Medical Personnel.

6.2. The supervision of private medical care, control of nursing homes, and of diagnostic facilities within the Province.

- 6.3. Population Control and Family Planning
7. Registration of Births, Marriages and Deaths.
8. Rationing of Food and Maintenance of Food Stocks.
9. Surveys—For the purpose of any of the matters enumerated in the Provincial or Concurrent list.
10. Social Forestry and protection of Wild Animals and Birds.
11. Social Security and Social insurance; employment and unemployment.
12. Welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions, and maternity benefits.
13. Tourism—Development and control of the Tourist Industry in the Province.
14. Trade and Commerce in, and the production supply and distribution of—
 - (a) the products of any industry where the control of such industry by the Central Government is declared by Parliament by-law to be expedient in the Public interest, and imported goods of the same kind as products.
 - (b) food stuffs.
15. Newspapers, books and periodicals and printing presses.
16. Offences against statutes with respect to any matter specified in this list.
17. Fees in respect of any of the matters in this list, excluding fees taken in any court.
18. Charities and charitable institutions, charitable and religious endowments and religious institutions.
19. Price control.
20. Inquiries and statistics for the purpose of any of the matters in this list or the Provincial list.
21. Adulteration of foodstuffs and other goods.
22. Drugs and poisons.
23. Archeological sites and remains other than those declared by or under law made by Parliament to be of national importance.
24. Prevention of the extension from one Province to another of infectious or contagious diseases, or pests affecting human beings, animals or plants.
25. Protection of the environment—
26. Criminal law, including all matters included in the Sri Lankan Penal Code at the commencement of this eleventh amendment but excluding offences against laws with respect of any of the matters specified in List I or List II and excluding the use of naval, military or air force or any other armed forces of the Central Government in aid of the civil power.
27. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the Commencement of this eleventh amendment.
28. Preventive detention for reasons connected with the security of a State, the maintenance of Public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
29. Removal from one Province to another Province, accused persons and persons subjected to preventive detention for reasons specified in Entry 28 of this List.
30. Marriage and divorce, infants and minor; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial Proceedings were immediately before the commencement of this eleventh amendment to the constitution subject to their personal law.
31. Transfer of property other than agricultural land; registration of deeds and documents.
32. Contracts including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
33. Actionable wrongs.
34. Bankruptcy and insolvency.
35. Trust and Trustees.
36. and Official trustees.
37. Administration of justice; constitution and organisation of all courts, except the Supreme Court and High Courts.

38. Evidence and oaths; recognition of laws Public acts and records, and judicial Proceedings.

39. Civil procedure, including all matters included in the Code of Civil Procedure at the Commencement of this eleventh ammendment to the constitution, limitation and arbitration.

40. Contempt of court, but not inculding contempt of the Supreme Court.

41. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

42. Prevention of cruelty to animals.

43. Forests.

44. Protection of wild animals.

45. Trade unions; industrial and labour disputes.

46. Legal, medical and other professions.

47. Ports other than those declared by or under law made by Parliament or existing law to be major Ports.

48. Shipping and navigation on inland water ways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List-II with respect to national waterways.

49. The Products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the Public interest, and imported goods of the same kind as such products.

50. Mechanically Propelled vehicles including the principles on which taxes on such vehicles are to be levied.

51. Factories.

52. Boilers.

53. Recovery in a Province of claims in respect of taxes and other Public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that Province.

54. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

55. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

56. Fees in respect of any of the matters in this List, but not including fees taken in any court.

NINTH SCHEDULE

LIST—I

PROVINCIAL COUNCIL LIST

[Article 154 G (1)]

1. POLICE AND PUBLIC ORDER :

Public order and the exercise or police powers, to the extent set out in Appendix (1) within the Province, but not including National Defence, National Security, and the use of any armed forces, or any other forces, under the control of the Government of Sri Lanka in aid of Civil Power.

2. PLANNING :

Formulation, implementation and monitoring progress of plans, and other matters in regard to planning other than those referred to in Concurrent List.

3. EDUCATION :

Education and Educational services, including all existing State Universities other than those declared by law of Parliament to be of National importance, but excluding matters specified in Reserved List. Technical Education, Medical Education and Universities subject to the provisions of Entries.....of the Reserved List - Vocational and Technical training of Labour.

4. LOCAL GOVERNMENT :

4.1 Local Authorities for the purpose of local Government and village administration such as Municipal Councils, Urban Councils, Pradeshya Sabhas, Gramodya Mandalayas, and all other such bodies for urban or rural development except that the form and structure of such authorities shall be determined by law.

4.2 National Housing Development Authority, Urban Development Authority and such other National Bodies, in so far as their activities relate to the Province.

4.3 Local Government service within the Province.

5. PROVINCIAL HOUSING AND CONSTRUCTION :

5.1 Implementing, coordinating, supervising and monitoring provincial housing development programmes and projects, including aided self-help housing projects, housing loans, and the provision of building materials.

5.2 The implementation of the Protection of Tenants Act and the Rent Act within a Province.

5.3 Construction Activity in respect of subjects in this list.

6. Roads, Bridges and Ferries within the province other than,

(a) National Highways.

(b) Bridges and Ferries on National Highways.

7. SOCIAL SERVICES AND REHABILITATION:

7.1 Probation and child care services.

7.2 The relief rehabilitation and resettlement of destitute and displaced persons and families.

7.3 Rehabilitation and welfare of physically, mentally and socially handicapped persons.

7.4 Relief of the disabled and unemployable.

8. Regulation of road passenger carriage services and the carriage of goods by Motor Vehicles, within the Province, and the provision of intra-Provincial road transport services.

9. AGRICULTURE AND AGRARIAN SERVICES:

9.1 Agriculture, including agricultural extension, promotion and education for Provincial purposes and agricultural services.

9.2 Rehabilitation and maintenance of minor irrigation works,

9.3 Agricultural research, save and except institutions designated as national agricultural research.

9.4 Establishment and promotion of agro-linked industries, the establishment and maintenance of farms, and supervision of private nurseries.

9.5 Relationship between Land Lord and Tenant in respect of Agricultural land.

9.6 Seri Culture - and Cashew Cultivation.

10. RURAL DEVELOPMENT :

11. HEALTH :

11.1 The establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries, (other than teaching hospitals and hospitals established for special purposes)

11.2 Public health services, health education, nutrition, family health, maternity child care, food and food sanitation, environmental health.

11.3 Formulation and implementation of Health Development plan, and the Annual Health plan for the Province.

11.4 The provision of facilities for all institutions referred to in I above within the Province.

11.5 Awarding of scholarships for post-Graduate education within Sri Lanka to personnel attached to the Institutions specified in I above.

11.6 Constitution of Provincial Medical Boards.

11.7 Appointment, transfer and disciplinary control of all personnel attached to the institutions, specified in I above, and to constitute Provincial Health Boards for such purposes.

12. INDIGENOUS, MEDICINE - AYURVEDA, SIDDHA AND UNANI.

12.1. Establishment of Ayurvedic Dispensaries, and Hospitals, Grants to such Dispensaries and Hospitals.

12.2 Establishment and maintenance of Herbaria.

13.

13.1 Resthouses maintained by local authorities—and

13.2 Circuit Bangalows, presently administered by Government Departments, whose functions are exclusively specified in this list.

13.3 Inns and Inn - Keepers.

14. RENAMING OF TOWNS AND VILLAGES :

15. Redemarcation including creation of Districts Assistant Government Agent's Divisions and Grama - Sevaka's Divisions.

16. PAWN BROKERS :

Pawn Brokers other than Pawn Brokers business carried on by people's Bank.

17. Markets, Fairs.

18. Festivals and Exhibitions.

19. Private Lotteries within the Province.

20. Food supply and Distribution within the Province.

21. CO-OPERATIVES :

21.1 Co-operative undertakings, and the organisation, registration, supervision and audit of co operative societies within the Province.

21.2 Co-operative Banks.

21.3 Co-operative Developments within the Province including co-operative education and propaganda.

21.4 Provincial Co-operative Employees Commission.

21.5 Matters connected with employment promotion, retirement, and other connected matter of employees of Co-operative societies within the Province.

22. LAND :

Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix (II).

23. Regulation, Possession, disposal of all natural produce, timber and wood on such lands.—

24. IRRIGATION :

24.1 Planning, designing, implementation, supervision and maintenance of all irrigation works, other than irrigation schedules relating to running through more than two Provinces.

24.2 Water storage and management, drainage, and embankments, flood protection, planning of water resources.

25. ANIMAL HUSBANDRY :

25.1 Production, distribution, and sale of milk and milk products.

25.2 Preparation, protection and improvements of livestock and prevention of animal diseases.

25.3 Veterinary training, services and research inclusive of the provision of science laboratories, and science equipments.

25.4 Animal breeding and care.

25.5 The establishment of pastures.

26. FISHERIES :

other than fishing beyond Territorial waters.

27. Restoration, reconstruction and rehabilitation of Towns, Villages, Industries, Business Places, Places of worship, and other properties destroyed or damaged since JUNE 1983 grant of compensation or relief to persons or institutions who have sustained loss or damage and the reorganization of civil life in the said areas.

28.1. Over all development of Palmyrah plantation and other matters relating to the Palmyrah industry.

28.2. Over all development of coconut plantation and industrial activity related thereto.

29. Industries save and except those declared by parliament by law to be necessary for the purposes of defence or the prosecution of war, or the control of which by the Central Government is declared by parliament by law to be expedient in the Public interest.

30. Trade and Commerce within the Province subject to the provisions of Entry-14 in the Concurrent List.

31. Production, supply and distribution of goods subject to the provisions of Entry-14 in the Concurrent List.

32. The ownership, management and control of all presently state-owned industrial enterprises within the Province dependent wholly or mainly on raw materials found in such Province.

33. Prisons, Reformatories, Borstal Institutions and other institutions of a like-nature and persons detained therein arrangements with other Provinces for the use of prisons and other institutions.

34. Intoxicating liquors, that is to say, the production, manufacture, Possession, transport, purchase and sale of intoxicating liquors.

35. Burials and Burial Grounds, cremations and cremation grounds, other than those declared by or under law made by parliament to be national memorial cemeteries.

- 36.1 Libraries, Museums and other similar institutions controlled or financed by a Provincial council. "
- 36.2 Ancient and historical monuments and records, other than those declared by or under law made by parliament to be of national importance.
37. Regulation of Mines, and Mineral Development subject to the provisions of the Reserved list within respect to regulation and development under the control of the central government.
38. Incorporation, regulation, and winding up of corporations, with objects confined to the province, including trading corporations, banking, insurance and financial corporations with such objects.
39. Regulation of unincorporated trading, literary, scientific religious and other societies and associations.
- 40.1. Theatres and dramatic performances, cinemas, entertainments and amusements, excluding the sanctioning of cinematograph films for exhibition.
- 40.2. Fostering and promotion of Music and Dancing.
- 40.3. Fostering and promotion of Arts and Crafts.
- 40.4. Encouragements and developments of sports (other than national sports associations) and recreational facilities.
41. Betting and Gambling.
42. Elections to local authorities within a Province.
43. Works, lands and buildings vested in or in the possession of the state.
44. Provincial public Services, Provincial public services commission.
45. Provincial pension, that is to say pensions payable by the Provinces or out of the Provincial fund of the Province.
46. Powers, privileges and immunities of the Provincial council, and of the members and the committees thereof, enforcement of attendance of persons for giving evidence or producing documents before committees of the Provincial Council.
47. Gas and Gas works.
48. Pilgrimages other than Pilgrimages to places outside Sri Lanka.
49. Power and Energy, development, conservation and management of sites and facilities in the Province, for the generation and promotion of electrical energy, other systems of power generation, within the Province, extension of electrification within the Province, and the promotion and regulation of the use of electricity within the Province (other than hydro-electric power, and power generated to feed the national grid).
50. Public debt of the Province.
51. Treasure Trove.
52. Land Revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
53. Taxes on Agricultural Income.
54. Duties in request of succession to agricultural land.
55. Estate duty in respect of agricultural lands.
56. Taxes on lands and buildings.
57. Taxes on Mineral rights subject to any limitations imposed by parliament by law relating to mineral development.
58. Duties of excise on Alcoholic liquors for human consumption, manufactured or produced in the state, and counter-vailing duties at the same or lower rates, on similar goods manufactured or produced elsewhere in Sri Lanka.
59. Taxes on the entry of goods into a local area for consumption, use or sale therein.
60. Taxes on the consumption or sale of electricity.
61. Taxes on the sale or purchase of goods other than newspapers and other than where such sale or purchase takes place in the course of inter-state trade or commerce.
62. Taxes on advertisements other than advertisements published in the Newspapers and advertisements Broadcast by Radio and Television.
63. Taxes on goods and passengers carried by Road or on inland waterways.
64. Taxes on vehicles, whether mechanically propelled or not suitable for use on roads.

65. Taxes on Animals and Boats.
66. Tolls.
67. Taxes on professions, trade, callings and employments.
68. Capitation Taxes.
69. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
70. Rates of stamp duty in respect of documents other than in respect of Bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
71. Offences against laws with respect to any of the matters in this list.
72. Jurisdiction and powers of all courts, other than the supreme courts and the Court of Appeal with respect to any of the matters in this List.
73. Fees in respect of any of the matters in this List, but not including fees taken in any court.
74. Borrowing to the extent permitted by or under Law made by parliament.
75. Generally all matters of a merely local or private nature in the Province.

APPENDIX-I

DEVOLUTION OF POWER IN RESPECT OF PUBLIC ORDER AND POLICE

Paras — (1) to (4) — No change.

(5) After the word "prescribed" in line 3 add words "by rules made by the appropriate authority".

(6) No change.

(7) (c) After word "prescribed" add words 'as aforesaid'.

(8) No change.

(9) 9.2. The Government of Sri Lanka shall be responsible for the training of all recruits to and of members of all divisions of the Sri Lanka police Force.

The President may, where he considers it necessary, provide for alternative and additional training for members of any Provincial Division.

(10) No change.

10.1. After word 'specified' in last line add words "in the rules".

(11) 11.1. - No change.

11.2. (a) In line 1 after word 'emergency add words "under Articles 154-I" and delete words after the word Province" in last line and add "to the extent regulated by the said Articles".

12.1. & 12.2 - No change.

12.3. Where a Proclamation is made in the Province under Article 154-H and 154-I the I.G.P. may deploy etc.

12.4. No changes.

13. After word "Province" in line 2 add words under the control of the Chief Minister of such Province".

14. No change.

APPENDIX-II

LAND AND LAND SETTLEMENT

The Appendix on land should be suitably revised to bring about the following basic principles :

1. Formulation of the subject devolved will be as agreed upon.

2. All State Land in a Province other than State Land presently used by Central Government, for Central Government functions (but excluding lands vested in State Corporations-to be examined) shall vest in the Province.

3. State Land within a Province required by the Central Government for Central Government function may be used without restriction by the Central Government in consultation with the Provincial Council.

4. All existing laws in respect of State Land within a Province shall be administered by the Province.

5. All alienation or disposition on State Land within a Province shall be executed only by the Province.

6. Multi-Provincial and Inter-Provincial Irrigation Schemes.

Multi Provincial Irrigation Schemes to be executed by the Central Government.

Inter Provincial Irrigation Schemes to be executed by the two Provinces by agreement, or by either Province—or by the Central Government. Settlement under all schemes to be administered by the Province. Areas from which allottees shall be chosen to be determined by the Province.

T.U.L.F. does not accept National Ethnic Ratio under any scheme. However in Multi Provincial Irrigation Schemes like Mahawelli, cumulative entitlement of Tamil speaking people to be worked on the basis of National Ethnic Ratio.

In Inter Provincial schemes, Provincial Ethnic Ratio to be applied with reference to Base Date.

The following priorities to be observed.

- (1) Peasants displaced by Project**
- (2) Cumulative entitlement of Tamil speaking people.**
- (3) Peasants within district.**
- (4) Peasants within Province.**

Provincial Ethnic Ratio as at Base Date to be observed.

XIX

Regarding Eastern Province after Trifurcation Proposals by J. R. at Bangalore.

14th Dec. '86

Shri RAJIV GANDHI,
Prime Minister of India,
NEW DELHI.

Dear Prime Minister,

We state below our views regarding the Eastern Province in relation to a political settlement of our problem.

The Eastern Province has been historically a Province inhabited by the Tamil speaking people, the Tamil speaking Christians and Hindus, and the Tamil speaking Muslims. This is an undisputed fact. Provisions in respect of the language of administration, and the Courts, in both the 1972 and 1978 Constitutions, enacted under the rule of the two major Sinhala political Parties the Sri Lanka Freedom Party, and the United National Party, even without the participation of the Tamils, accept this fact. In respect of its linguistic character, the Eastern Province has been accorded the same status as the Northern Province, and *this linguistic chain runs through the entire length of Eastern Province from North to South*. At the time of independence (1948) only 9.87% of the population in the Eastern Province was Sinhala speaking, the rest were Tamil speaking.

Brief history of Sinhala Colonisation and its impact.

State aided settlement of Sinhalese, from other parts of the country on State Land in the Eastern Province, (Sinhala Colonisation) particularly in the Districts of Trincomalee and Amparai, in violation of the law of the land which requires that citizens

living in the vicinity of State land proposed to be alienated are entitled to be given preference, there by discriminating against the Tamil speaking people, carried out in the teeth of the Tamil opposition and in violation of two written pacts entered into by two Prime Ministers, Mr. S.W.R.D. Bandaranayake of the S.L.F.P. in 1957 and Mr. Dudley Senanayake of the U.N.P. in 1965, with the Tamil leader, Mr. S.J.V. Chelvanayakam, is the cause for the rise in Sinhala percentage in the demographic composition of the Eastern Province, to the present 24.92% and the diminution in the percentage of the Tamil speaking people.

In 1957 Mr. Bandaranayake accepted that colonisation in the Northern and Eastern Provinces would be entrusted to Regional Councils, while in 1965 Mr. Senanayake accepted that in the matter of alienation of State land, Tamil speaking people of the Northern and Eastern Provinces, and Tamil citizens from the rest of the country, would be entitled to preference over others, from other parts of the country

President Jayawardene did not oppose colonisation being entrusted to the Regional Councils in 1957, and he was party to the pact in 1965.

If either of these pacts was implemented, Sinhala Colonisation would have ended and the Sinhala percentage in the Eastern Province, would not have risen to its present level. Both pacts were unilaterally abrogated, and Sinhala Colonisation on a preferential basis in the Trincomalee and Amparai Districts continued.

In its Election Manifesto of 1977, the ruling U.N.P. accepted that colonisation was one of the

major grievances of the Tamils, which had led to the demand for a separate State, and undertook to resolve this, amongst other grievances, to the satisfaction of the Tamils. The U.N.P. Government reneged on this undertaking. Government obduracy rendered the District Development Councils of 1951, entrusted with some powers over land use and land settlement, infructuous, and Sinhala colonisation continued.

The above facts demonstrate that Sinhala political leadership accepted the Injustice of Sinhala Colonisation, and even agreed on how it should be redressed; it only lacked the political honesty and will to implement what it recognised.

Between 1947 and 1981, while the national increase in the Sinhala population was 238%, the Sinhala population in the Eastern Province increased by 883%. In the same period, the Sinhala population in the Trincomalee District increased by 549.73%, and in the Amparai District by over 1250% (Demographic percentages in the Eastern Province and its Districts since 1827 are set out in the schedule hereto).

New Electoral and Administrative Units.

Along with the policy of Sinhala Colonisation, newly demarcated parliamentary electorates, and intra-district administrative units, such as Assistant Government Agent's divisions and Grama-Sevaka's divisions were created in such new settlement areas, to the advantage of the Sinhalese, encompassing substantial extents of unoccupied land, with the object of giving the false impression that large parts of the district were under Sinhala occupation. An objective of this exercise was also to ensure that such unoccupied land in these new units would be freely available for further Sinhala settlement. Even traditionally Tamil speaking administrative units, in the Trincomalee District, were eroded, and vacant State land available therein alienated to Sinhalese, discriminating against Tamil speaking people. The Government Agent, the Chief Administrative Officer in the Trincomalee District, in the past twenty five years has been a Sinhalese, though over two-thirds of the people in the district have been Tamil speaking. Since independence no Tamil speaking officer has ever served in this pivotal position. A racially constituted administration zealously executed the Government's blatantly unjust policies.

For the reasons stated above, the Tamils do not accept these newly created intra-district administrative units.

All undeveloped land within such units.

The substantial extents of undeveloped and unoccupied State land, within the newly created Assistant Government Agent's divisions, and Grama-Sevaka's divisions, constitute almost the entirety of the State land yet available within the district, whether, it be for the purpose of residence, agriculture or other economic activity. Designedly created intra-district administrative units cannot deprive the Tamil speaking people of all such lands.

Tamils and Sinhalese displaced and their attitudes.

Since 1983, very many Tamil villages, have been deliberately destroyed (as many as 42, in the Trincomalee district), by the Armed Forces, Sinhala Home Guards and hoodlums, large numbers of Tamils driven out, and, rendered refugees. These people know of no other place in the World, except these villages, wherein they and their ancestors were born and have lived for generations and centuries. They anxiously await the day when they can return with safety.

In 1983 Tamil Refugees in Trincomalee were forcibly removed out of the district, to distant places, in Government vehicles by the Armed Forces at the point of the gun.

Since 1985, consequent to some retaliatory attacks and in fear, substantial numbers of recent Sinhala settlers, from many rural areas of the Trincomalee District, have left and returned to their native villages, in Sinhala parts of the country. Many have refused to return, despite Government inducement, and it has even been reported that legal action has been instituted seeking a declaration that Government should not pressurise them to return, and that they should be provided with alternative accommodation and economic opportunities in Sinhala districts. This situation has been the unfortunate, but inevitable fall-out of the racially motivated and unjust policies pursued by successive Governments. It never-the-less reflects the attitude of the new Sinhala settlers.

It is submitted that these facts be borne in mind, in considering the future of the Eastern Province, and the security and well being of the Tamil people therein.

Proposal re-trifurcation of the Eastern Province.

The recent proposal for the trifurcation of the Eastern Province into three new Provinces, has

sinister cannotations. According to the last official Census-1981, (though census figures, particularly in the Eastern Province have always been questionable), in the Batticaloa District, the Tamils are an absolute majority—71.98%, the Tamil speaking Muslims - 23.97% (the Tamil speaking people 95.95%) and the Sinhalese 3.21%; in the Trincomalee District, the Tamils are the single largest ethnic group, 36.40%, the Tamil speaking Muslims 28.97% (the Tamil speaking people 65.37%) and the Sinhalese 33.62%; while in the Amparai District, the Tamil speaking Muslims are the single largest ethnic group 41.53%, the Tamils 20.50% (the Tamil speaking people 62.03%) and the Sinhalese 37.64%. In no district in the Eastern Province, according to the last official census - 1981, are the Sinhalese the largest ethnic group. Any representation to the contrary is inaccurate and meant to mislead. The Tamil speaking people are a clear absolute majority in every district. In the entire Eastern Province, the Tamils are 42.13%, the Tamil speaking Muslims 32.27% (the Tamil speaking people 74.40%) and the Sinhalese 24.92%.

Trincomalee—Sinhala Province—astounding proposition.

The suggestion that the Trincomalee District, be treated as a Sinhala Province, is astounding. Since independence (1947), 23 Members in all have been returned to Parliament from the Trincomalee District, 22 of whom have been Tamil speaking, and a solitary Sinhala member was returned for the first time in 1977. In an electorate specially carved out so as to enable the return of only a Sinhalese. Of the 23 elected, 14 have been from the main Tamil political party, while 3 were independents with Tamil support. In the District Development Council Elections held as late as 1981, and conducted on a district basis, the T.U.L.F. defeated the ruling U.N.P. in a straight contest. In the Trincomalee City Elections held in 1983, out of twelve Members elected eleven were Tamil speaking and just one Sinhala speaking. Nine of the elected members were from the T.U.L.F.

Trincomalee is historically and culturally a Tamil district. Its renowned temple "Thiru Koneswaram" has been referred to as "Thakshinakailas" in the Puranas and Hindu Saints, Thirugnana Sambanthar, Arunagirinathar and others have sung hymns in praise of the Temple at least from the 7th century onwards. Dr. Paul Pieris the famous Sri Lankan Sinhala historian has stated as follows:—"Long before the arrival of Vijaya there were in Lanka, five recognised Isvarams of Siva, which claimed and received the adoration of all India.

These were Thirukoneswaram opposite the great bay of Koddigar " (Vijaya is believed to be the founder of the Sinhala race.) The history of the Tamils in the district is inter-twined with, and as ancient as the history of the Temple. It is unthinkable that the Hindus can be called upon to sacrifice a place so sacred to them as Trincomalee, ("திருக்கோணமலை - Thirukonamalai is derived from திருக்கோணேஸ்வரம் - Thirukoneswaram").

It is the Tamil contention that no district in the Eastern Province can be classified as Sinhala. Even if the Government for some reason or other, thought it necessary to lay claim on behalf of the Sinhalese to a District as presently constituted in the Eastern Province, it is not without significance, that the District chosen has been Trincomalee.

The characterisation of Trincomalee as a Sinhalese District is motivated by other strategic considerations and in doing so, the Government has let the cat out of the bag.

Aim of trifurcation - to grab maximum land for Sinhalese.

The proposal for the trifurcation of the Eastern Province, as suggested, is also clearly aimed at grabbing for the Sinhalese, the maximum possible land in the Eastern Province, particularly in the Trincomalee and Amparai Districts.

Newly carved out electoral and administrative units, encompassing substantial extents of undeveloped land, as pre-planned are sought to be used to achieve this objective. This would be clearly unacceptable.

Intrusion into pockets of such territory, that is how the entry of new Sinhala settlers could be characterised (the Government was aware that the law of the land was being violated to the detriment of local Tamil speaking people, and also that it was acting in breach of solemn pacts entered into with Tamil political leadership,—the Sinhala settlers were themselves aware of the favoured treatment being meted out to them, and also of Tamil opposition, and from the beginning developed an anti-Tamil psychosis, which fuelled by Government connivance emboldened them to unleash naked violence against the long resident Tamils, killing them, burning and looting their property, shamelessly condoned by successive Sinhala Governments,and the long resident Tamils who in their own country, suffered the injustices

of not merely being deprived of resources to which they had a just claim, but whose very right to existence, was now being challenged) *cannot deprive the Tamil speaking people for all time of vast extents of such territory.* The struggle, the sacrifices and suffering of the Tamils, particularly the Tamils of the Eastern Province over the past four decades has centred mainly around the question of State land. An acceptable settlement in regard to this fundamental question—both in relation to the overall territory, and in regard to powers over State land in future is a prerequisite to any overall solution.

Common danger faces all Tamil speaking People

The blatant attempt by Sinhala political leadership and chauvinistic Sinhala elements, to draw a distinction between the Tamil speaking Christians and Hindus, and the Tamil speaking Muslims, is clearly motivated by selfish considerations. Such a distinction serves only the interests of the Sinhalese people, to the detriment of all Tamil speaking people. The pitiable position to which the Tamil speaking Muslims in Amparai district, have been reduced, wherein, they who were the overwhelming majority at independence, are now being curtly told that they are entitled to only 10 to 15% of the land in the district, regrettably demonstrates the ulterior motives of Sinhala political leadership. The dangers facing all Tamil speaking people within the Eastern Province, flow from a common source, and in so far as the deprivation of resources, recognised as having been traditionally possessed by them, makes no distinction. Ironically, the distinction is drawn by a Government which claims unfailing adherence to the teachings of Gauthama Buddha and Mahatma Gandhi to unfairly strengthen Sinhala interests and deprive other citizens of their just claims.

Present Proposal - Totally Unacceptable.

The present proposal of the Sri Lanka Government would appear to suggest that the Tamil speaking people of the Eastern Province, who since independence have borne the brunt of Sinhala colonisation, should now hand over on a platter to the Sinhalese as much as 55 to 60% of the land within the Eastern Province, while the Sinhalese even as at present constitute only 24.92% of the population. At independence the Sinhala percentage in the Eastern Province was 9.87%. At the time of the Bandaranayake - Chelvanayakam Pact in 1957 the Sinhala percentage was 13.11% while at

the time of the Senanayake - Chelvanayakam pact in 1965 the Sinhala percentage was 19.90%.

In the Trincomalee District, the proposal envisages the Sinhalese claiming as much as 55 to 60% of the land, while the Sinhala ethnic percentage even as at present according to Government Statistics, is only 33.62%. Moreover, 37% of the Sinhala population would yet continue to remain in the areas, admitted by Government, as non-Sinhala, which would in effect mean, that 55 to 60% of the land is being claimed by Sinhalese who constitute only 22 to 23% of the total population in the district. In 1957 when the Bandaranayake - Chelvanayakam pact was signed the total Sinhala population in the district was 18.22% and in 1965 when the Senanayake - Chelvanayakam Pact was signed 28.90%. In the Amparai district, the proposal envisages the Sinhalese claiming as much as 80 to 85% of the land, while the Sinhala ethnic percentage even as at present, according to Government statistics, is only 37.64%. This would be a manifestly unjust position and totally unacceptable to the Tamil speaking people.

Future power over land.

In regard to future powers over State land, the Tamils contend that all State land within a Province other than such land as is being actually used for Central Government purposes, should be vested with the Provincial Government, and the Provincial Government should have absolute authority over State Land, within the Province, subject to the right of the Central Government to legitimately use such State land in consultation with the Provincial Government, in non devolved areas. Nothing short of this, will safeguard the future of the Tamil speaking people in the Eastern Province.

It is relevant that the pact of 1957 provided for the subject of colonisation to be entirely entrusted to Regional Councils.

Trincomalee Harbour and Port.

Another area of concern is the Trincomalee Harbour and Port. At the commencement of the negotiations, with the Sri Lanka Government, in late 1983, the future of the Port of Trincomalee was raised and while it was agreed that in keeping with the Indian pattern in relation to major Ports, a Port Authority under the Central Government would be set up for administering the Port and the Harbour; it was also agreed that the area which would come under the administration of the Port Authority as

well as its composition and the powers to be assigned to it, would be further discussed. It was clearly the position that this arrangement would be only in relation to Port and Port related activities. It is the fear of the Tamils that the activities centred around the Port would be used to their detriment, that it would lead to the influx of labour and other employees from outside-as has happened since the nationalisation of the Port, and the displacement of Tamil entrepreneurs, and more flagrantly since the ethnic disturbances of 1983. Since 1983, up to July 1986-215 persons were recruited for employment at various grades in the Trincomalee Port. 196 of them were Sinhalese, largely from other parts of the country only 19 were Tamil speaking-all Muslims. Not one Tamil was recruited. Arrangements pertaining to all such matters were to be embodied in the agreement relating to the Port. This matter too, remains to be finalised with the Sri Lanka Government.

Tamil Linguistic Region - Cause for Sinhala intransigence.

The unwillingness of Sinhala political leadership to honestly face up to these stark facts in the Eastern Province, has been the true reason behind their intransigent attitudes.

It is their determination to gobble the Eastern Province, in particular the strategic Trincomalee District, under Sri Lanka's Unitary Constitution, and Presidential form of Government, taking advantage of the erosion that has already been accomplished, which has made them unyielding, on the demand for a Tamil Linguistic Region. Apart from other considerations justifying the demand for a single region, the Tamils see a single region as the only means by which Eastern Province, can be salvaged from its present plight. From the inception of the negotiations between the Sri Lanka Government and the Tamils, the T.U.L.F. has made one Tamil linguistic region, the core of its proposals for a negotiated settlement.

During the discussions between the T.U.L.F. and the Sri Lankan Government in July/August, though the T.U.L.F. presented its own position in respect of the unit devolution, and offered to discuss the matter with the Government, the Government did not present any alternative to its proposal. The T.U.L.F. was thus denied the opportunity of presenting its views on the proposals reportedly placed before the Prime Minister of India, at Bangalore, by the Sri Lankan Government. Both

in relation to the facts, and the over-all content of the proposal, the T.U.L.F. contends that only the Sinhala case has been presented.

The concept of sharing power would be illusory unless such power can be effectively exercised with in a given territory, and such territory is not bereft of its resources.

We respectfully urge that you be pleased to give due consideration to the matters set out in this document.

We desire to reiterate that it would be unfair and unjust to expect the Tamils, to accept any settlement which is not commensurate with the suffering and sacrifices, to which they have been subjected, and which does not have the elements that will guarantee to them their security, honour and dignity and economic well being.

Map setting out the population density in the different Assistant Government Agent's divisions as presently constituted in the Trincomalee district is annexed hereto. It would be observed that in the newly constituted Assistant Government Agent's divisions, containing pockets of new Sinhala colonisation and substantial extents of unoccupied and undeveloped land, the population density is low. Map depicting the contiguous Tamil Linguistic Areas in Trincomalee district by Sinhala colonisation, proving that contiguity yet exists between the Northern Province, Trincomalee District, and Batticaloa district is also annexed hereto. The contiguity of the Tamil Linguistic Area extends beyond the Batticaloa District, - to the Southern part of the Amparai District.

Bar Charts showing the ethnic composition from 1827 to 1981 of (1) the Eastern Province (2) the Trincomalee District (3) Batticaloa. District prior to 1963 and (4) the Batticaloa and Amparai Districts after 1963 are also attached.

Thanking you,

Yours Sincerely,

M. SIVASITHAMPARAM,
President,
T.U.L.F.

A. AMIRTHALINGUM,
Secretary General,
T.U.L.F.

R. SAMBANTHAN,
Vice-President,
T.U.L.F.

and former member of
Parliament for Trincomalee.

XX

The Negotiation Process and the Situation in the Northern and Eastern Provinces.

6th MARCH 1987

Shri RAJIV GANDHI,
Prime Minister of India,
NEW DELHI.

Dear Prime Minister,

We thank you most sincerely on behalf of the Tamil people, for the steps you and your Government have taken towards the resolution of our problem.

We however, note with dismay the position purported to have been taken up by President Jayawardene, in response to your latest message, that it is the Sri Lankan Government which has at every stage come up with proposals for a political settlement. This is furthest from the truth. It is the Sri Lankan Government that has at every stage resiled from accepted positions, which could have carried forward the efforts towards a political settlement. The Government of India is aware that the T.U.L.F. has on the other hand always co-operated with the Indian Government and its officials in their efforts to find a reasonable and just solution to our problem.

President Jayawardene's act of resiling from the proposals of 19th December, considered "a basis and a starting point" for further negotiations is, we regret, to state, only the most recent instance of such duplicity. From the Commencement of the process of negotiations with India's good offices in late 1983, during the time of the late revered Prime Minister Shrimathi Indira Gandhi, Sri Lanka has been consistently guilty of deliberate delay, evasion, and retraction. This record of betrayal had indeed been the bitter experience of the Tamils, from the time the country attained independence in 1948.

Ever since, India's good offices became operative, the Tamils pinned their faith absolutely on Shrimathi Indira Gandhi, and now repose their trust wholly in you.

The Tamil people face today, the most critical period, in their long history. While the tortuous process of negotiations have continued during the past three and a half years, the Sri Lankan Government has utilised the time so gained, to prepare itself to deal with the Tamils militarily.

The Sri Lankan Government has since the formation of the Ministry of National Security under Minister Lalith Athulathmudali in March 1984, unleashed unbridled state terror and violence against the Tamil people in both the Northern and Eastern Provinces. In support of its policies of State repression of the Tamil people, the Sri Lankan Government has inducted Israeli and Pakistani Military personnel, and mercenaries from the United Kingdom and the United States in addition to the purchase of an assortment of sophisticated military hardware, including Helicopter Gun - Ships, Bomber Planes, and Naval Gun - Boats, from various sources including South Africa, Israel, China, South - Korea and United Kingdom.

In brief, the Sri Lankan Government is waging a war against the Tamil people of the Northern and Eastern Provinces. The victims of this aggression have mainly been the non - combatant Tamil civilian population.

while the death toll in the anti - Tamil racial pogrom of June/July 1983, which prompted India's diplomatic intervention was estimated to be in the region of three thousand (3000), the number of non - combatant Tamil civilians killed since the for-

mation of the Ministry of National Security and up to now, on the basis of a realistic assessment, is in the region of Eight to Nine Thousand (8000 to 9000) Since June/July 1983, more than eleven thousand (11,000) innocent Tamil civilians, men, women and children, have been mercilessly massacred in Sri Lanka.

while in the period June/July 1983, Tamil civilians were massacred by Sinhala thugs and hoodlums, in the period since the formation of the Ministry of National Security, Tamil Civilians have been killed by the racially constituted Armed Forces, and para - military forces specially trained and armed by the Government. Aerial and Naval attacks have been persistently carried out against civilian targets. Thickly populated habitations, have been shelled through heavy artillery from Army Camps, and Naval Gun Boats, and strafed and bombed from the Air.

Over Two hundred (200) Tamil villages in the Northern and Eastern Provinces, have been devastated and destroyed. More than Twenty Five Thousand (25,000) houses and other buildings owned by Tamils have been destroyed in the said two Provinces. In every one of the ravaged areas, Hindu Temples, and in some areas Churches, have either been destroyed or desecrated.

No less than Five Hundred Thousand (500,000) Tamils have been rendered homeless and destitute. In many areas, Tamil civilians attempting to return to their villages have either been killed or driven out.

Foreign military personnel and mercenaries have participated in these attacks along with the Sri Lankan Armed Forces, and para-military Personnel.

It is in this background and shortly after President Jayawardene resiled from the proposals of 19th December that the Sri Lankan Government imposed, in early January 1987, an economic and communications blockade of the Jaffna peninsula. The communications blockade has since been extended to other districts in the Northern Province.

Meanwhile the military operations have continued in the Northern and Eastern Provinces. In late January 1987, the Sri Lankan Armed Forces without any cause, suddenly launched major military offensives including aerial attacks in the Batticaloa and Trincomalee districts in the Eastern Province, killing over two hundred (200) Tamil civilians, and destroying substantial civilian property.

This was followed by further major military offensives including naval and aerial attacks in early February 1987, in the mainland of the Northern Province, in the Mannar, Kilinochchi and Mullaitheevu districts. Over a further three hundred (300) Tamil civilians were killed in these attacks and there was immense destruction of civilian property. More than Five Hundred (500) Tamil civilians were wantonly killed by these military offensives within the short space of a fortnight.

In the context of the on - going peace efforts pursued by the Indian Government, these military offensives were unwarranted and unjustified and clearly established the mala - fides of the Sri Lankan Government. In further proof of its real intention to beat down the Tamils, and impose what in effect would be a military solution, the Sri Lankan Government continues with its military offensive, particularly within the Jaffna peninsula. Tamil civilians continue to be killed every day.

By all reports over twenty thousand (20,000) troops have been massed within and on the periphery of the Jaffna peninsula, so heavily armed as to engage at very short notice in a swift and ferocious operation aided by aerial attacks from helicopter gunships and bomber planes, and Naval attacks from gun boats.

All circumstances point to the imminence of a massive military offensive within the Jaffna peninsula, the civilian casualties, in which event, would be unprecedentedly high.

Meanwhile, the economic and communications blockade, which has been in force within the Jaffna peninsula for the past two months, has subjected the civilian population to immense deprivation and suffering. Starvation stalks the peninsula, and people have already been compelled to skip at least one meal a day. The fuel embargo has paralysed all transport and economic activity. Hospitals, Co-operatives, Schools and other institutions have all been crippled.

Despite the intimation of the Government of India of 9th February that the economic and communications blockade be lifted, and that the military operations be suspended, the Sri Lankan Government has persisted with its actions. Statements attributed to President Jayawardene, the Minister of National Security, and other Military Sources indicate that both the Military operations and the Economic and Communications blockade will continue.

To demand that Tamil militants abandon their struggle and lay down arms in the face of the Government's continued tyranny and oppression, without redressing the causes, that have fuelled revolt amongst a peaceful people, is to expect surrender. The Tamil militants have always expressed a willingness to participate in evolving an acceptable political solution.

The population of Eight hundred thousand (800,000) Tamils within the Jaffna peninsula, face imminent danger and are in grave peril. We earnestly plead that they should be saved. It would be doubly tragic if the fate that has already befallen the Tamil population in most of the areas of the Eastern Province, and the mainland of the Northern Province, was to overtake the bulk of the Tamil population who live within the Jaffna peninsula.

We respectfully contend that the Sri Lankan Government should not be permitted while continuing to abuse India's good offices, to steadily and surely thrust upon the Tamils a military solution. The Tamil people have suffered immeasurably through the manoeuvres and manipulations of President Jayawardene and his Government.

Several reports of International Groups bear ample testimony to the sad plight of the Tamils.

While we deeply appreciate the steps that have been taken by you and your Government, we have to appeal that the following further steps also be taken.

(i) that as a humanitarian measure, food and fuel be provided to the deprived and suffering Tamil populace through the good offices of the Indian Government.

(ii) that the continuous gross violation of human rights, and genocidal attacks, against the

Tamil people in Sri Lanka be appropriately raised at International Fora, and an International campaign be launched for the taking of such measures and steps, as would compel Sri Lankan to comply with its national and international obligations, in respect of its own Tamil civilian population.

(iii) that the Government of India consider on humanitarian grounds the taking of such action, as would ensure the physical protection and survival of the Tamil people in the Northern and Eastern Provinces pending a final solution.

All that has continuously happened, lead us to the irresistible conclusion, that the real aim of the Sri Lankan Government is the total suppression and annihilation of the Tamil people in Sri Lanka.

Since Shri. Tiwari the Minister for Foreign Affairs has stated in Parliament, that leaders of opposition parties are to be consulted shortly on the Sri Lankan ethnic question, we have also addressed a letter to them, outlining the relevant facts in relation to the negotiatory process and the present situation in the Northern and Eastern Provinces of Sri Lanka.

We remain deeply convinced that it is only through the efforts of the Prime Minister, the Government and the people of India, that the Tamils of Sri Lanka can be saved from their tragic plight.

Thanking you, and with our regards,

Yours sincerely,

M. SIVASITHAMPARAM,
President,
T.U.L.F.

A. AMIRTHALINGUM,
Secretary General,
T.U.L.F.

XXI

Evaluation of the Situation and the Future Negotiatory Process

April 1, 1987

Shri. RAJIV GANDHI,
Prime Minister of India,
NEW DELHI.

Dear Prime Minister,

The T.U.L.F. thanks you for the sustained interest you have taken towards the resolution of the Tamil ethnic problem.

We seek your indulgence to apprise you of certain matters which we submit are relevant to a proper evaluation of the present situation and the future negotiatory process.

Your communication of 9th February stipulated three conditions for fulfilment by the Sri Lankan Government.

(1) the suspension of military operations in the Northern and Eastern Provinces;

(2) the lifting of the economic and communications embargo of the Jaffna peninsula;

(3) an unequivocal commitment to the proposals of 19th December as "a basis and only a beginning point for further negotiations".

The suspension of Military operations.

The events in the Tamil areas clearly indicate that military operations continue in both the Northern and Eastern Provinces. The wrath of the Sri Lankan Armed Forces is directed against Tamil civilians, and Tamil civilians in considerable numbers are killed or grievously injured daily. Tamil civilian property, houses, schools, temples and churches continue to be damaged and destroyed. The latest target is the Jaffna General Hospital—which has been shelled by the Armed

Forces on 30th March resulting in the death of eleven patients, serious injury to thirty others and the destruction of Wards.

The Eastern Province, the mainland of the Northern Province, and even parts of the Jaffna peninsula are besieged by the Sri Lankan Armed Forces. The Armed Forces and Para - military personnel in the years 1984, 1985, and 1986 had driven out the Tamils from very substantial territories in the Eastern Province, the mainland of the Northern Province, and parts of the Jaffna peninsula and destroyed their habitations. New Army Camps have been established in these areas, and continuous army atrocities particularly in the Eastern Province, and most severely in the Trincomalee District, have deterred the Tamil population from returning to these areas. Tamil civilians who attempt to return to their homes in these areas, have been killed by the Armed Forces and para - military personnel. In the Trincomalee District, in particular, in the rural areas both on the north and south of the Trincomalee harbour such killings have been a regular occurrence.

In the Trincomalee and Vavuniya Districts, armed Sinhalese are being settled on lands from which Tamils have been evicted.

Over a hundred camps of the Armed Forces exist today in the Northern and Eastern Provinces.

Since the emergence of the proposals of 19th December, the military operations pursued by the Sri Lankan Government in the Northern and Eastern Provinces, have resulted in the death of around seven hundred Tamil civilians and the fleeing of tens of thousands of Tamil civilians from their homes. New Army Camps have been established in these areas.

These operations have been carried out with the deliberate objective of reducing the Tamils to a position of weakness in future negotiations.

We submit that a just and fair political solution cannot be attained if the Sri Lankan Government were to be permitted to take advantage of these unfair and unjust military gains.

We further submit that the suspension of military operations should lead to the creation of conditions that would enable the restoration of normal civilian life, in both the Northern and Eastern Provinces.

The lifting of the Economic and Communications embargo.

The Sri Lankan Government on 11th March announced a limited relaxation of the fuel embargo imposed on the Jaffna peninsula. Three weeks after the announcement of its proposal, the civilian population, continue to be deprived of fuel, and the situation remains unchanged. The announcement of the Government has the overtones of a propaganda ploy and does not reflect a genuine desire to alleviate the sufferings of the Tamils, as envisaged in your request of 9th February. The failure of the Government to make any announcement in respect of the communications embargo is most disturbing. The Northern Jaffna District continues to be cut off from the rest of the world.

While there has been no improvement in the extreme hardships experienced by the civilian population within the Jaffna peninsula, and continues to worsen every day, the position of very substantial sections of the Tamil civilian population driven out of their houses in the mainland of the Northern Province, and more so in the Eastern Province, continues to be pathetic. Being unable in view of army atrocities, to return to their habitations, and earn their livelihood even in a restricted way, these refugees face starvation.

All actions of the Sri Lankan Government and its Armed Forces clearly establish an unwillingness to permit these people to return to their homes, in which they have lived for generations and centuries.

Proposals of 19th December and efforts at a Political solution

The proposals of 19th December have been appropriately characterised by you as "a basis and only a beginning point" for further negotiations.

Statements attributed to Mr. Lalith Athulathmudali, the Minister for National Security, in respect of the December 19th proposals, and his reference to the proposals of June 1986 as "the main framework" reflect a degree of dubiousness in the Sri Lankan Government's attitude. Reference to the proposals of June 1986 as "the main framework" implies an attempt to reverse a certain measure of progress achieved during the negotiations held with the T.U.L.F. in July and August 1986. The memorandum submitted by the T.U.L.F. to the Indian Government in September/October 1986 sets out the basis upon which the T.U.L.F. held discussions with the Sri Lankan Government. The negotiations centred around the pattern of an Indian State.

While some progress has been made towards evolving a political solution, the calculatedly harsh and genocidal actions pursued by the Sri Lankan Government against the Tamil people, particularly in the past three years, have accentuated the need for a permanent political solution, that would fulfil vital Tamil aspirations and be acceptable to a broad section of the Tamil people.

The proposal of the Sri Lankan Government to hold parliamentary elections to the vacant seats in the Eastern Province, and the mainland of the Northern Province, further demonstrate its lack of good faith. On a modest estimate at least five hundred thousand Tamils have been displaced from their homes in the Northern and Eastern Provinces, since 1983. As much as 40% to 60% of the Tamil population in electorates such as Mullaitheevu, Vavuniya, Mannar and Trincomalee do not any longer reside in these areas. Over the past three years, the electoral registers, in these areas, particularly in Trincomalee and Vavuniya have been doctored in a manner gravely prejudicial to the Tamils. New Sinhalese being settled in Trincomalee and Vavuniya are being registered as Voters. The holding of elections in these circumstances would be not merely undemocratic but fraudulent. These actions of the Sri Lankan Government are aimed at forestalling the process of finding an acceptable political solution.

India's mediatory efforts we respectfully submit should achieve for the Tamils a political solution commensurate with their suffering and sacrifice.

If it be the aim of the Sri Lankan Government to deny this to the Tamils, we state that the Tamils look up to India to ensure that they are not left in the lurch.

As Sri Lanka has failed to honour any assurances it may have given India in respect of the suspension of the military operations and the Fuel and Communications embargo, we respectfully urge that India should initiate independent action as suggested in our letter of 6th March to you to bring to an end the suffering of the Tamil people in the Northern and Eastern Provinces.

The prospects for a Political solution, we submit, would greatly improve in such a situation.

We wish to assure you that the T.U.L.F. will at all times, extend its fullest co-operation to the Indian Government in its efforts.

With regards,

Yours Sincerely,

M. SIVASITHAMPARAM,
President,
T.U.L.F.

A. AMIRTHALINGUM,
Secretary General,
T.U.L.F.

XXII

Our Reservations on the Agreement

28-07-1987

Shri RAJIV GANDHI
Prime Minister of India
NEW DELHI

Dear Prime Minister,

On the eve of your departure to Colombo to finalise an agreement between India and Sri Lanka relating to the Tamil problem, we wish to convey to you and the Government and people of India the deep gratitude of the Tamil people for your continuing concern and help to them. We also wish to assure you of the support of the T.U.L.F. in your present efforts to find a solution to our problem, put an end to our suffering and enable us to live in safety and security with freedom, honour and dignity.

We wish to bring to your notice certain matters arising from the draft agreement on which we have explained our reservations to the Foreign Secretary:

1. We are totally opposed to the holding of any referendum in any part of the country and certainly not after one year as proposed. The peace sought to be achieved will be shattered and there will be conflict and turmoil again. Besides the Tamil people of the Eastern Province more than half of whom are destabilised and driven out of their homes and villages will hardly be able to return to their villages, rebuild their homes and settle down to a normal life.

2. Not merely the army camps set up after May, 1987 but all the camps and mini camps established all over the Northern and Eastern Provinces after 1983 should be dismantled. The Sinhala homeguards who have been armed by the Government should be disarmed immediately and the S.T.F. Commandos removed from the Eastern Province.

3. The use of the Sinhala Police and the Army for enforcement of law and order in the Northern and Eastern Provinces will not ensure the safety and security of the Tamil people. Effective Indian involvement in ensuring the safety and security of the Tamil people in the Northern and Eastern Provinces is imperative in the transition period.

4. The draft agreement provides for further negotiations regarding some aspects of devolution. Tamil rights in relation to the Central Government should also be discussed. We would request the participation of Indian constitutional experts along with us in the negotiations.

5. The amnesty contemplated should be extended to cover all persons charged or convicted under the Prevention of Terrorism Act or Emergency regulations. The Prevention of Terrorism Act should be repealed.

6. Victims of violence by the military and para-military forces as well as during the ethnic riots should be adequately compensated and fully rehabilitated.

7. Voters lists certified after 1982 have been prepared without Tamil participation and after thousands of Tamil voters were displaced. Any election held should be on the registers certified in 1982.

8. The administration of the Port of Trincomalee and the extent of land to be utilised for activities related to the port should be discussed and finalised.

We thank you again,

With our kind regards,

Yours sincerely,

M. SIVASITHAMPARAM
President
T.U.L.F.

A. AMIRTHALINGUM
Secretary General
T.U.L.F.

XXIII

Indo-Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka

JULY 29, 1987

The Prime Minister of the Republic of India, His Excellency Mr. Rajiv Gandhi and the President of the Democratic Socialist Republic of Sri Lanka, His Excellency Mr. J. R. Jayewardene, having met at Colombo on July 29, 1987.

Attaching utmost importance to nurturing, intensifying and strengthening the traditional friendship of India and Sri Lanka, and acknowledging the imperative need of resolving the ethnic problem of Sri Lanka, and the consequent violence, and for the safety, well-being and prosperity of people belonging to all communities in Sri Lanka.

Have this day entered into the following Agreement to fulfil this objective.

In this context,

1.1 *desiring* to preserve the unity, sovereignty and territorial integrity of Sri Lanka ;

1.2 *acknowledging* that Sri Lanka is a multi-ethnic and a multi-lingual plural society consisting, inter alia, of Sinhalese, Tamils, Muslims (Moors), and Burghers ;

1.3 *recognising* that each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured ;

1.4 *also recognising* that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups ;

1.5 *Conscious* of the necessity of strengthening the forces contributing to the unity,

sovereignty and territorial integrity of Sri Lanka, and preserving its character as a multi-ethnic, multi-lingual and multi-religious plural society, in which all citizens can live in equality, safety and harmony, and prosper and fulfil their aspirations ;

2. *Resolve that :*

2.1 Since the Government of Sri Lanka proposes to permit adjoining Provinces to Join to form one administrative unit and also by a Referendum to separate as may be permitted to the Northern and Eastern Provinces as outlined below :

2.2 During the period, which shall be considered an interim period, (i. e. from the elections to the Provincial Council, as specified in para 2.8 to the date of the referendum as specified in para 2.3, the Northern and Eastern Provinces as now constituted, will form one administrative unit, having one elected Provincial Council. Such a unit will have one Governor, one Chief Minister and one Board of Ministers.

2.3 There will be a referendum on or before 31st December, 1988 to enable the people of the Eastern Province to decide whether :

- (a) The Eastern Province should remain linked with the Northern Province as one administrative unit, and continue to be governed together with the Northern Province as specified in para 2.2, or
- (b) The Eastern Province should constitute a separate administrative unit having its own distinct Provincial Council with a separate Governor, Chief Minister and Board of Ministers.

The President may, at his discretion, decide to postpone such a referendum.

2.4 All persons who have been displaced due to ethnic violence, or other reasons, will have the right to vote in such a referendum. Necessary conditions to enable them to return to areas from where they were displaced will be created.

2.5 The referendum, when held, will be monitored by a committee headed by the Chief Justice; a member appointed by the President, nominated by the Government of Sri Lanka; and a member appointed by the President, nominated by the representatives of the Tamil speaking people of the Eastern Province.

2.6 A simple majority will be sufficient to determine the result of the referendum.

2.7 Meetings and other forms of propaganda, permissible within the laws of the country, will be allowed before the referendum.

2.8 Elections to Provincial Councils will be held within the next three months, in any event before 31st December 1987. Indian observers will be invited for elections to the Provincial Council of the North and East.

2.9 The Emergency will be lifted in the Eastern and Northern Provinces by August 15, 1987. A cessation of hostilities will come into effect all over the Island within 48 hours of the signing of this Agreement. All arms presently held by militant groups will be Surrendered in accordance with an agreed procedure to authorities to be designated by the Government of Sri Lanka.

Consequent to the cessation of hostilities and the surrender of arms by militant groups, the Army and other security personnel will be confined to barracks in camps as on 25 May 1987. The process of surrendering of arms and the confining of security personnel moving back to barracks shall be completed within 72 hours of the cessation of hostilities coming into effect.

2.10 The Government of Sri Lanka will utilise for the purpose of law enforcement and maintenance of security in the Northern and Eastern Provinces the same organisations and mechanisms of Government as are used in the rest of the country.

2.11 The President of Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism

Act and other Emergency laws, and to combatants as well as to those persons accused, charged and/or convicted under these laws. The Government of Sri Lanka will make special efforts to rehabilitate militant youth with a view to bringing them back into the mainstream of national life. India will co-operate in the process.

2.12 The Government of Sri Lanka will accept and abide by the above provisions and expect all others to do likewise.

2.13 If the framework for the resolution is accepted, the Government of Sri Lanka will implement the relevant proposals forthwith.

2.14 The Government of India will underwrite and guarantee the resolutions, and co-operate in the implementation of these proposals.

2.15 These proposals are also conditional to an acceptance of the proposals negotiated from 4-5-1986 to 19-12-1986. Residual matters not finalised during the above negotiations shall be resolved between India and Sri Lanka within a period of six weeks of signing this Agreement. These proposals are also conditional to the Government of India co-operating directly with the Government of Sri Lanka in their implementation.

2.16 These proposals are also conditional to the Government of India taking the following actions if any militant groups operating in Sri Lanka do not accept this framework of proposals for a settlement, namely,

- (a) India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.
- (b) The Indian Navy/Coast Guard will co-operate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.
- (c) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals the Government of India will co-operate by giving to the Government of Sri Lanka such military assistance as and when requested.
- (d) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there,

concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.

- (e) The Governments of India and Sri Lanka will co-operate in ensuring the physical security and safety of all communities inhabiting the Northern and Eastern Provinces.

2.17 The Governments of India and Sri Lanka shall ensure free, full and fair participation of voters from all communities in the Northern and Eastern Provinces in electoral processes envisaged in this Agreement. The Government of India will extend full co-operation to the Government of Sri Lanka in this regard.

2.18 The official language of Sri Lanka shall be Sinhala. Tamil and English will also be official languages.

3. This Agreement and the Annexure thereto shall come into force upon signature.

IN WITNESS WHEREOF we have set our hands and seals hereunto.

DONE IN COLOMBO, SRI LANKA, on this the Twenty Ninth day of July of the year One Thousand Nine Hundred and Eighty Seven, in duplicate, both texts being equally authentic.

RAJIV GANDHI Prime Minister of the Republic of India	Junius Richard JAYEWARDENE President of the Democratic Socialist Republic of Sri Lanka
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ANNEXURE TO THE AGREEMENT

1. His Excellency the Prime Minister of India and His Excellency the President of Sri Lanka agree that the referendum mentioned in paragraph 2 and its sub-paragraphs of the Agreement will be observed by a representative of the Election Commission of India to be invited by His Excellency the President of Sri Lanka.

2. Similarly, both Heads of Government agree that the elections to the Provincial Council mentioned in paragraph 2.8 of the Agreement will be observed by a representative of the Government of India to be invited by the President of Sri Lanka.

3. His Excellency the President of Sri Lanka agrees that the Home Guards would be disbanded and all para-military personnel will be withdrawn from the Eastern and Northern Provinces with a view to creating conditions conducive to fair elections to the Council.

The President, in his discretion, shall absorb such para-military forces, which came into being due to ethnic violence, into the regular security forces of Sri Lanka.

4. The Prime Minister of India and the President of Sri Lanka agree that the Tamil militants shall surrender their arms to authorities agreed upon to be designated by the President of Sri Lanka. The surrender shall take place in the presence of one senior representative each of the Sri Lanka Red Cross and the Indian Red Cross.

5. The Prime Minister of India and the President of Sri Lanka agree that a joint Indo-Sri Lankan observer group consisting of qualified representatives of the Government of India and the Government of Sri Lanka would monitor the cessation of hostilities from 31 July, 1987.

6. The Prime Minister of India and the President of Sri Lanka also agree that in terms of paragraph 2.14 and paragraph 2.16 (C) of the Agreement, an Indian Peace Keeping contingent may be invited by the President of Sri Lanka to guarantee and enforce the cessation of hostilities, if so required.

Excellency,

Please refer to your letter dated the 29th July 1987 which reads as follows :—

Excellency,

Conscious of the friendship between our two countries stretching over two millenia and more, and *recognizing* the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudicial to each other's unity, territorial integrity and security.

2. In this spirit you had, during the course of our discussions, agreed to meet some of India's concerns as follows :—

(i) your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lankan relations.

(ii) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.

(iii) The work of restoring and operating the Trincomalee Oil tank farm will be undertaken as a joint venture between India and Sri Lanka.

(iv) Sri Lanka's agreements with foreign broadcasting organizations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.

3. In the same spirit, India will :

(i) deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.

(ii) provide training facilities and military supplies for Sri Lankan security forces.

4. India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para 1 and specifically to

monitor the implementation of other matters contained in this letter.

5. Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,
Sd/-
(RAJIV GANDHI)

His Excellency
Mr. J. R. JAYEWARDENE,
President of the Democratic Socialist,
Republic of Sri Lanka,
COLOMBO.

This is to confirm that the above correctly sets out the understanding reached between us.

Please accept, Excellency, the assurances of my highest consideration.

(J. R. JAYEWARDENE)

XXIV

Certain Outstanding Matters that Required Resolution

03-08-1987

Shri. RAJIV GANDHI,
Prime Minister of India,
NEW DELHI.

My Dear Prime Minister,

As you are aware, certain vital aspects of the scheme of Devolution, are yet to be finalised, and the accord signed takes note of this fact.

At the end of the negotiations between President Jayawardene, his Cabinet Colleagues, and the T.U.L.F. in July and August 1986, the following position emerged, which was confirmed by the draft proposals sent by the Sri Lankan Government to New Delhi on 4th and 23rd Sept. '86.

- (i) Certain matters were not agreed upon.
- (ii) Certain matters agreed upon were not incorporated in the draft proposals referred to above.
- (iii) Certain matters on which discussion commenced—such as Finance, Provincial Public Service etc. were not concluded, pending finalisation of other matters.
- (iv) Certain other matters referred to in our letter of 4th October to the Minister of External Affairs were not discussed at all.

These include (a) The Port of Trincomalee (b) Tamil representation in the Armed Services, Public Services etc. (c) Employment under the Central Government and (d) Other matters relating to the Central Government.

The full implementation of the accord would be dependent upon the adoption of a satisfactory scheme of devolution and its proper implementation. Resolution of the above outstanding matters is essential for the formulation of a satisfactory scheme of devolution.

The T.U.L.F. has been wholly involved in the negotiations pertaining to the scheme of devolution. The T.U.L.F. would like to be of assistance in finalising the scheme of devolution.

We thank you for all your efforts on our behalf, and earnestly request you to ensure that the powers of the Province will be comparable to those of a State in the Indian Union.

With kind regards,

Yours sincerely,

A. AMIRTHALINGUM,
Secretary General,
T.U.L.F.

XXV

Our disappointment with proposals contained in the two Bills

28th Oct. '87

Shri RAJIV GANDHI,
Prime Minister of India,
NEW DELHI.

Dear Prime Minister,

We thank you once again for all your efforts on behalf of the Tamil people. We repeat our deep anguish at the tragic turn of events in Jaffna.

We feel it our duty to also express our disappointment with the proposals to solve the Tamil problem contained in the two Bills—the 13th Amendment to the constitution and the Provincial Councils Bill—presented to Parliament by the Sri-Lankan Government. These proposals do not meet the aspirations of the Tamil people nor are in any way commensurate with the loss of life, sufferings and privations suffered by the Tamil people. Since 1983, the T.U.L.F. has always negotiated with the Government of Sri Lanka directly, utilising the good offices of the Government of India, and through the Government of India in the hope of evolving a comprehensive scheme of devolution which the T.U.L.F. could commend to the Tamil people.

The T.U.L.F. regrets it cannot recommend the contents of these Bills to the Tamil people as being satisfactory, just and durable.

On the eve of your departure to Sri Lanka to sign the Agreement, we requested you among other things, that a team of experts from India along with their counterparts from Sri Lanka draft the necessary legislation. You agreed that this was a reasonable request.

Now the legislation is sought to be foisted on us without any Indian expert playing a part in the drafting.

The T.U.L.F. expected all along that a copy of the draft legislation would be made available to the Government of India at some reasonable time before it was made public. Apprehending that this might not happen, a delegation of the T.U.L.F. met President Jayewardene on the 29th of September 1987 and made this formal request. We regret that the Bills were gazetted without being made available to the Government of India.

This is not merely cavalier treatment of India but a clear breach of para 2.15 of the Agreement which states inter-alia that “residual matters shall be resolved between India and Sri Lanka”. The Bills are certainly not the result of any such resolution.

We do not wish to burden you with a detailed analysis of the Bills. But please permit us to draw your attention to some important matters.

1. Single Administrative Unit.

After a great deal of persuasion, you got President Jayewardene to agree to one administrative unit of the Northern and Eastern provinces as now constituted having one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers. The continuance of such a unit was to be subject to a referendum in the Eastern Province by 31st December 1988, which could be postponed by the President. We objected to such a referendum and we believed that it would eventually never be held.

The provisions of the Bills have made this political arrangement of such importance to the Tamils a farce. The setting up of a single administrative unit is to be done by an executive act of the President, in the form of a mere proclamation, which can always be revoked, and this too has to

depend on the President being satisfied on a number of imponderables.

It was the Tamil expectation that a single administrative unit of the Northern and Eastern Provinces, would be firmly created by an adequate constitutional provision. The provision in Section 154 of the 13th Amendment, however, is of a dubious nature, and could be interpreted to mean that a perpetual power is vested in Parliament to legislate on this all important matter. The resulting position would be that a single administrative unit of the Northern and Eastern Provinces, even when finally established would be an impermanent arrangement.

2. Legislative and Executive Power.

All parties to the negotiations have always understood that the powers to be devolved to the Provincial Council will be the same as those enjoyed by a State in India with suitable adaptations. This was to be particularly so in the field of legislative and executive power.

During the discussions between the Sri Lankan Government and the T.U.L.F. in July/August 1986, it was agreed that the Legislative Power of the Province in respect of Provincial subjects would be near absolute, and that the Governor would be a ceremonial head, with his discretionary powers clearly defined.

The Bills retain the power of Parliament to amend or repeal the chapter pertaining to Provincial Councils, and the Lists of Subjects, and also the power of Parliament to legislate even on subjects transferred to Provincial Councils, by a 2/3rds. majority, and the approval of the people of the whole country at a referendum. This would indeed be a simple exercise in Sri Lanka, where the majority community constitutes 74% of the population.

In the field of executive power, the Executive Power of the President is sought to be retained by providing that the Governor shall hold office in accordance with Article 4 (b), which provides that 'executive power of the people shall be exercised by the President of the Republic', through the wide and undefined discretionary powers of the Governor, which according to Section 154F (2) have to be exercised on the President's directions; and through powers exercisable on the Proclamation of an emergency on very wide grounds.

It would be relevant to recall that between 1970 and 1987, Sri Lanka has been under Emer-

gency Rule for more than ten years. The Sri Lankan Government has declined to accept the T.U.L.F.'s persistent demand that the Indian pattern pertaining to the proclamation of emergency be followed. Not merely have the justiciability of Proclamations of Emergency and Break down of Constitutional Machinery been specifically denied, power has even been vested with the President, to make Emergency Regulations with respect to any matter set out in the Provincial Council List, or having the effect of overriding amending or suspending the operation of a statute made by the Provincial Council. Vide: Article 155 (3A).

These provisions were never accepted by the T.U.L.F.—some of them were not even proposed to the T.U.L.F., and we are certain that these provisions have not been accepted by India.

During discussions with the T.U.L.F., the Sri Lankan Government indicated that the number of Ministers of the Province should not exceed one-third the total number of members. The North Eastern Province would have seventy one members. The T.U.L.F.'s proposal was that the number of Ministers should not exceed one-fifth the total number of Members. The number of Ministers has now been restricted to four. This has been done with the ulterior motive of promoting discord amongst the different peoples of the Northern and Eastern Provinces, and so as to diminish the importance of the Provincial Council and hamper and impede efficient Provincial Government.

3. Lists of Subjects.

Though it was clearly understood that the Lists of Subjects would substantially conform to the Indian pattern, the Concurrent List has been heavily loaded, and the Provincial List clearly starved. Subjects such as Fisheries other than beyond Territorial Waters, Agriculture, Animal Husbandry, Industries, Redemarcation including creation of Districts, Assistant Government Agents divisions, and Grama Sevaka Divisions, Restoration, reconstruction of destroyed towns, villages, properties, compensation or relief to persons who have sustained loss or damage, Palmyrah plantation and Palmyrah Industry, coconut plantation and industry related thereto, the ownership management and control of State-owned industrial enterprises within the Province dependant wholly or mainly on raw materials found in the Province (recommended by the Political Parties Conference) Co-operative Banks, Prisons, Provincial Public Service, Provincial Public Services Commission, Local Government

Service, Inquiries, Surveys and Statistics for any of the purposes in the Provincial List and such others have not been included in the Provincial List, in keeping with the discussions held with the T.U.L.F. or on the basis of the Indian pattern. In the field of Education, the powers of the Provincial Council are substantially curtailed even in the matter of Secondary Education.

Both the Concurrent and Reserve Lists have been so framed as to minimise to the maximum possible extent, the scope and content of the Provincial Council's powers.

4. Land and Land Settlement.

On the all important subject of Land and Land Settlement, Appendix-II in the Bill is in many respects even worse than the Appendix attached to the proposals of 23rd September 1986 which itself was substantially deficient.

The following matters are clearly unacceptable :—

- (i) The inclusion of State Land in the Reserve List,
- (ii) The reference to State Land continuing to be vested in the Republic, and the power of disposition by the President,
- (iii) The denial of the right to the Province, though land is a devolved subject, of the ipso-facto use of State Land for devolved subjects,
- (iv) The restriction of the right of the Province to administer and control only such land as is made available to it,
- (v) The stipulation that the alienation and disposition of State Land within a Province to any citizen or organisation shall be by the President in accordance with "Laws" governing the matter contrary to even existing procedures for alienation,
- (vi) The wide definition given to Inter Provincial Irrigation and Land Development Projects, the principle of the National Ethnic Ratio in such projects, the right given to the Government of Sri Lanka to determine the selection of allottees for such lands, designedly to perpetuate the present pernicious practices,
- (vii) The failure to properly formulate the principle of the Cumulative Entitlement of

the Tamil speaking people in Schemes under the Mahaweli Project in the Eastern Province, and the failure to incorporate with Appendix-II the Annexure on settlement in the Eastern Province under the Mahaweli Project.

The above are clearly directed towards reducing the Provincial Council to the position of a Nonentity in respect of State Land even though Land is a devolved subject, and enabling the Central Government to have dominant power over State Land. Ample scope is also retained for the continued colonisation of the Northern and Eastern Provinces with members of the majority community.

Such a position would be completely contrary to the discussions held with the T.U.L.F. and is totally different from the Indian pattern where Land-Colonization etc., is a State subject with no power whatever reserved to the Union.

The Tamils can never accept any settlement which does not satisfactorily resolve the burning question of State Land. The Land Settlement programmes carried out by the Sri Lankan Government in the post Agreement period have been a major destabilising factor and do not inspire any confidence whatever in the Tamils.

5. Trincomalee Port.

The subject of Ports has been included in the Reserve List and the Trincomalee Port as a Major Port would come under central control. Annexure 'C' specifically provided that "A Port Authority under the Central Government will be set up for administering the Trincomalee Port and Harbour. The area which will come under the administration of the Port Authority as well as the powers to be assigned to it will be further discussed". This matter was raised with the Sri Lanka Government and though apparently certain assurances were given the Bills do not contain any provision reflecting such assurances. Tamil apprehensions are greatly aggravated by the fact that in 1984 after the finalisation of Annexure "C" an extent of 5150 acres of land around the Trincomalee Port was vested in the Port Authority, which could result in the creation of a new Township with racial overtones around the Port, and be the cause for prolonged conflict. The manner of recruitment to employment in the Port since 1983 and the facilities provided to such employees clearly indicate this trend. The T.U.L.F. had given the Indian negotiators a comprehensive paper dealing with this subject. It is essential that this matter too be resolved in an acceptable manner,

6. Provincial Public Service.

The provisions in respect to the Provincial Public Service and the Provincial Public Service Commission have been included in the Provincial Councils Bill contrary to the Sri Lankan Government's draft proposals for the amendment of the constitution of 23rd September 1986 which categorically stated "Provision regarding Provincial Public Service to be included". The appointment, transfer, dismissal and disciplinary control of Provincial Public Servants being vested in the Governor who is subject to Presidential directions is contrary to the proposal made by the T.U.L.F. that the provisions of Article 55 which vests the appointment, transfer, dismissal and disciplinary control of Public Officers in the Cabinet of Ministers be made *mutatis-mutandis* applicable. This together with the omission of the subjects of the Provincial Public Service and the Provincial Public Service Commission from the Provincial List, suggest that the Provincial Public Service will not function under the executive control of the Provincial Board of Ministers. Effective Provincial Government would be an impossibility in this situation.

Contrary to the belief that the chapter pertaining to Provincial Councils would confer on the Provinces a measure of credible autonomy without derogating from the entrenched clauses in the constitution, the present Bills at every turn, enable Parliament and the Central Executive, to extend its tentacles into the Provincial sphere circumscribing and emasculating the exercise of even the powers conferred on the Province.

7. Tamil as Official Language and matters relating to the Central Government.

The provisions in Clause 2 of the 13th Amendment making Tamil also an Official Language has

been nullified by paragraph (4) which states that "Parliament shall by law provide for the implementation of the provisions of this Chapter".

In relation to Sinhala as the Official Language, the Constitution provides for the manner of its use. The same constitutional provisions should be made applicable to Tamil also as an Official Language.

Besides these there are other matters regarding the rights of the Tamils in relation to the Central Government which have to be discussed and resolved.

In view of the above we earnestly request you to ask President Jayewardene not to proceed with the two Bills in Parliament in the present form till the matters referred to herein, are discussed and resolved to the satisfaction of the Tamil people.

We request that we be granted an early appointment to discuss these matters more fully with you.

with kind regards,

Yours Sincerely,

M. SIVASITHAMPARAM.
President,
T.U.L.F.

A. AMIRTHALINGUM,
Secretary General,
T.U.L.F.

R. SAMPANTHAN,
Vice-President,
T.U.L.F.,
former M.P. for
Trincomalee.

APPENDIX

SCHEDULE.EASTERN PROVINCE

Year	Total Population	Tamil Population	%	Muslim Population	%	Tamil speaking Population	%	Sinhala. Population	%
1827	46641	34758	74.52	11533	24.72	46291	99.24	250	0.53
1881	127555	75408	59.11	43001	33.71	118409	92.82	5947	4.66
1891	148444	86701	58.40	51206	34.49	137907	92.89	7512	5.06
1901	173602	96926	55.83	62448	35.97	159374	91.80	8778	5.05
1911	183698	101181	55.08	70409	38.32	171590	93.40	6909	3.76
1921	192821	103251	53.54	75992	39.41	179243	92.95	8744	4.53
1946	279112	136059	48.74	109024	39.06	245083	87.80	27556	9.87
1953	354410	167898	47.37	135322	38.18	303220	85.55	46470	13.11
1963	546130	246120	45.06	186750	34.19	432870	79.25	108690	19.90
1971	717571	315566	43.97	248567	34.64	564133	78.61	148572	20.70
1981	976475	411451	42.13	315021	32.27	726652	74.40	243358	24.92

TRINCOMALEE DISTRICT

Year	Total Population	Tamil Population	%	Muslim Population	%	Tamil speaking Population	%	Sinhala Population	%
1827	19158	15663	81.52	3245	16.93	18908	98.45	250	1.53
1881	22197	14394	64.84	5746	25.88	20140	90.72	935	4.21
1891	25745	17117	66.48	6426	24.96	23543	91.44	1109	4.30
1901	28441	17069	60.01	8258	29.03	25327	89.04	1203	4.22
1911	29775	17233	57.90	9714	32.64	26947	90.54	1138	3.82
1921	34112	18586	54.48	12846	37.65	31432	92.13	1501	4.38
1946	75926	33795	44.51	23219	30.58	57014	75.09	15706	20.68
1953	83917	37517	44.70	28616	34.10	66133	78.80	15296	18.22
1963	138220	54050	39.10	42560	30.79	96610	69.89	39950	28.90
1971	188245	71749	38.15	59924	32.05	131673	70.20	54744	28.80
1981	256790	93510	36.41	74403	28.97	167913	65.38	86341	33.62

BATTICALOA DISTRICT.

(Which included the present Amparai District till 1963)

Year	Total Population	Tamil Population	%	Muslim Population	%	Tamil speaking Population	%	Sinhala Population	%
1827	27383	19095	69.47	8288	30.15	27383	99.62	—	—
1881	105358	61014	57.91	37255	35.36	98269	93.27	5012	4.75
1891	122699	69584	56.71	44780	36.49	114364	93.20	6403	5.21
1901	145161	79857	55.01	54190	37.33	134047	92.34	7575	5.21
1911	153943	83948	54.53	60695	39.42	144643	92.95	5771	3.74
1921	158709	84665	53.34	63146	39.78	147811	93.12	7243	4.56
1946	203186	102264	50.33	85805	42.22	188069	92.55	11850	5.83
1953	270493	130381	48.20	106700	39.44	237081	87.64	31174	11.52

BATTICALOA DISTRICT.

(Minus the new Amparai District.)

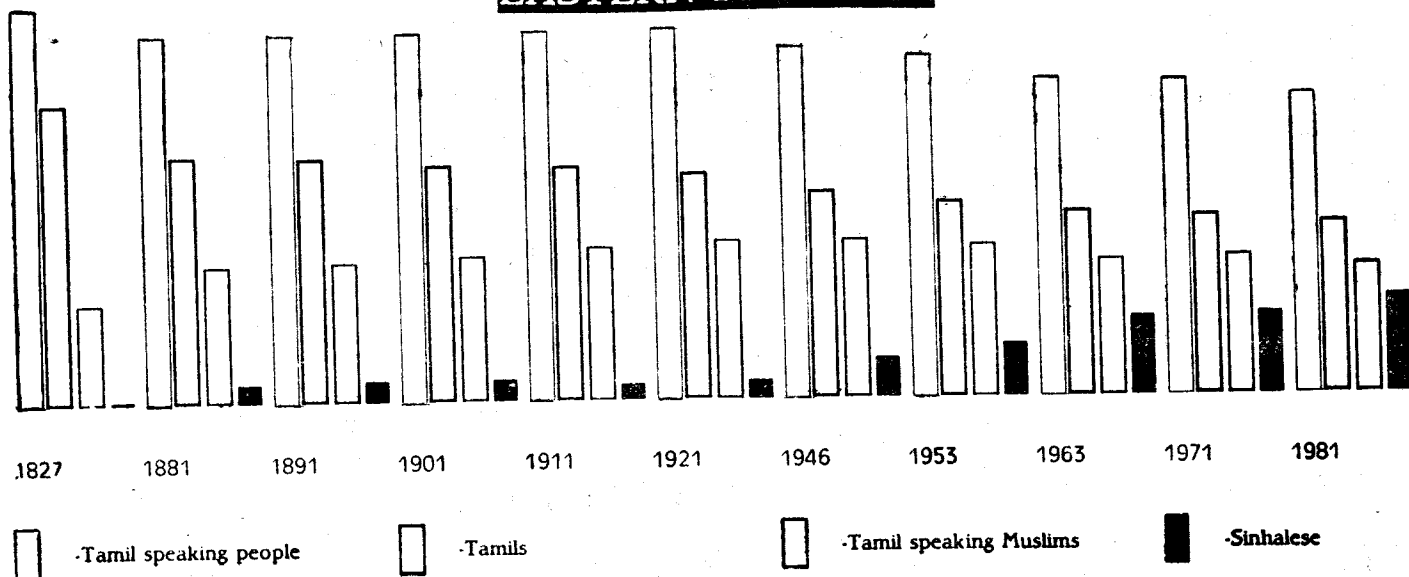
Year	Total Population	Tamil Population	%	Muslim Population	%	Tamil speaking Population	%	Sinhala Population	%
1963	196090	141590	72.20	45920	23.41	187510	95.61	6580	3.35
1971	256721	181527	70.70	61524	23.96	243051	94.66	11548	4.49
1981	330899	238216	71.98	79317	23.97	317533	95.95	10646	3.21

AMPARAI DISTRICT.

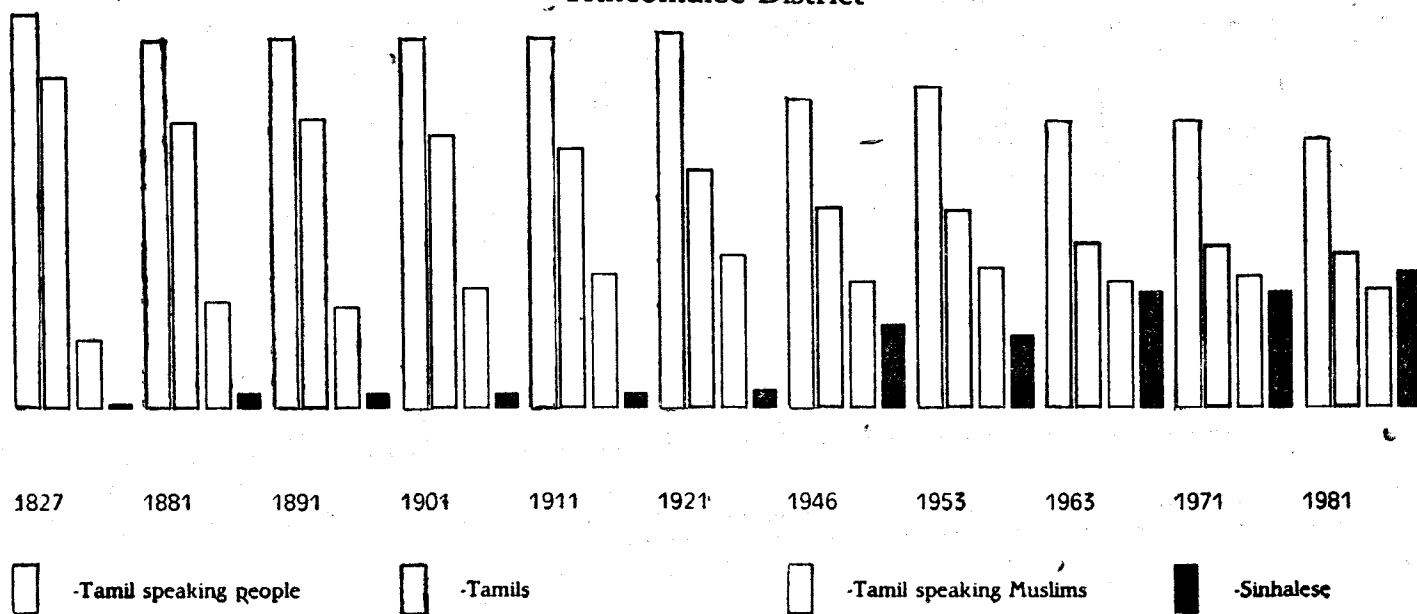
(Seperate from Batticaloa District since 1963)

Year	Total Population	Tamil population	%	Muslim Population	%	Tamil speaking Population	%	Sinhala Population	%
1963	211820	50480	23.83	98270	46.39	148750	70.22	62160	29.34
1971	272605	62290	22.84	127119	46.63	189409	69.47	82280	30.13
1981	388786	79725	20.50	161481	41.53	241206	62.03	146371	37.64

EASTERN PROVINCE

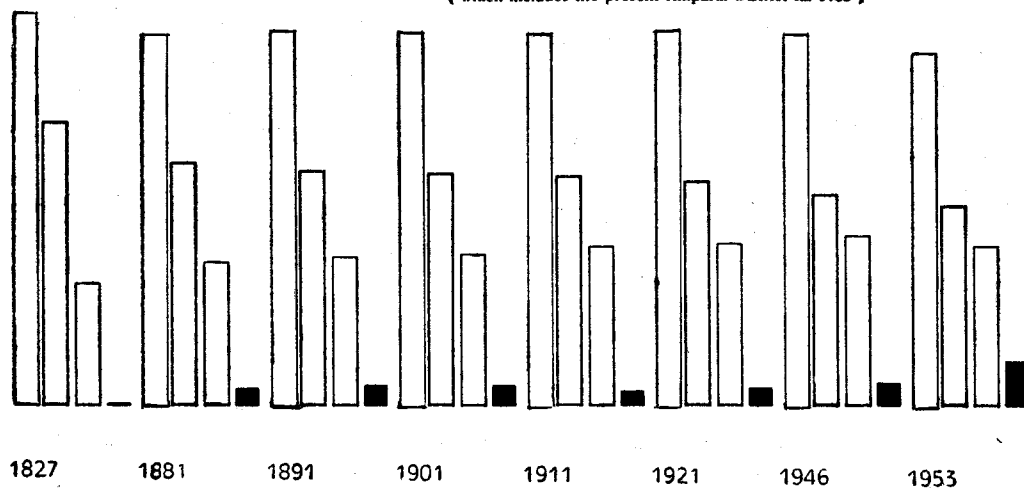


Trincomalee District



Batticaloa District

(which includes the present Amparai District till 1963)



-Tamil speaking people



-Tamils



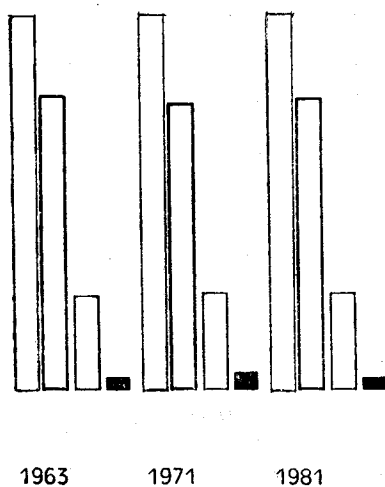
Tamil speaking Muslims



-Sinhalese

Batticaloa District

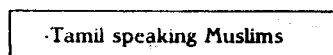
(minus the new Amparai District)



-Tamil speaking people



-Tamils



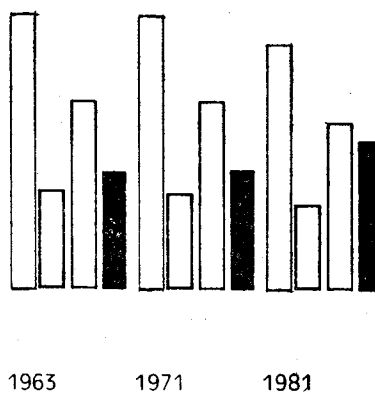
-Tamil speaking Muslims



-Sinhalese

Amparai District

(seperate from Batticaloa District from 1963)



1963

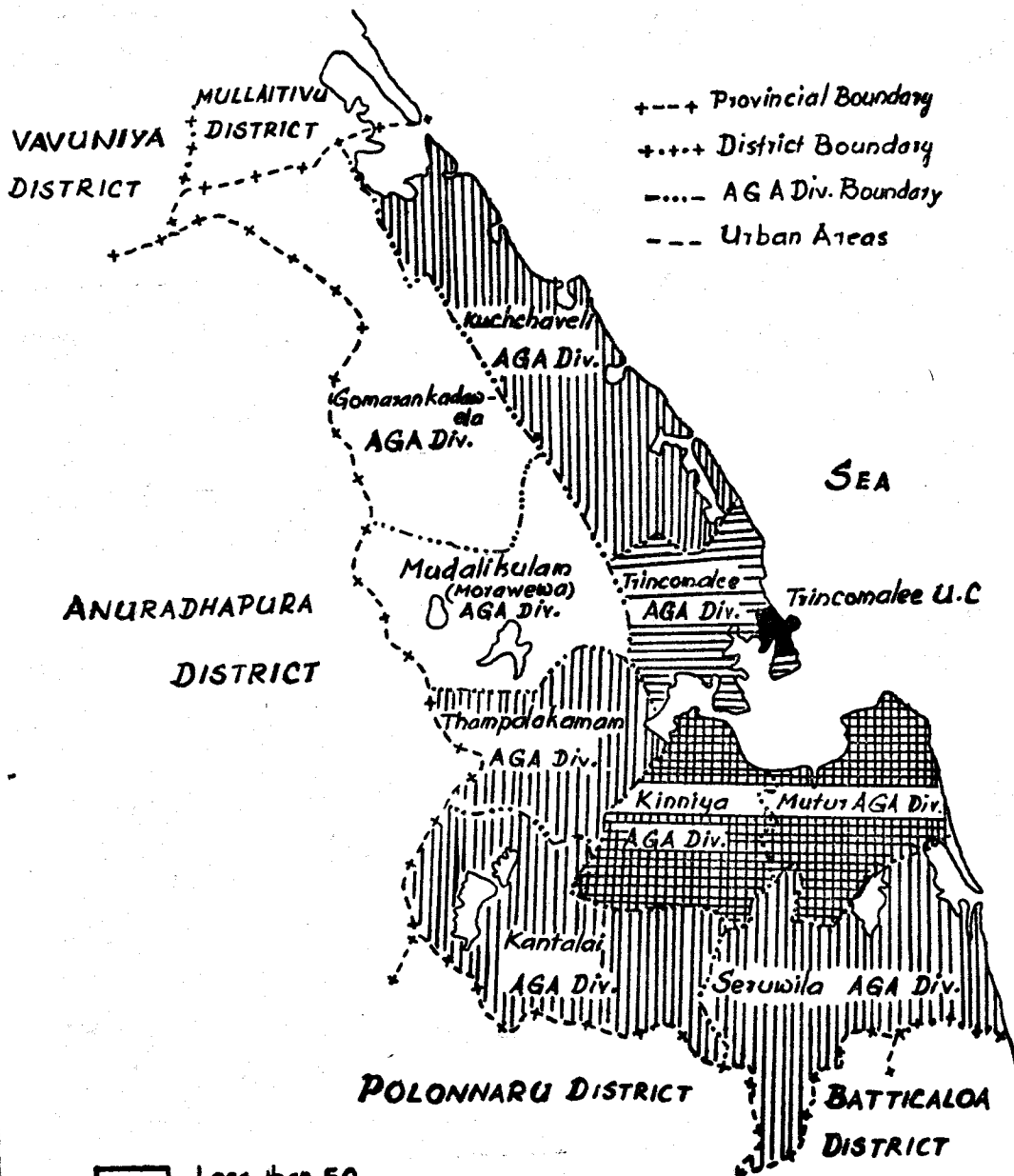
1971

1981

TRINCOMALEE DISTRICT

DENSITY OF POPULATION-1981

Scale 1:500,000



Less than 50

50 99

100 199

200 250

Over 5600

Town Councils are not included
in Urban Areas

MAP DEPICTING TAMIL LINGUISTIC CONTIGUITY

