#### Recommended Constitutional Proposals

#### As A Basis for Resolution of the Tamil National Question

#### in Sri Lanka

This document contains a statement of the principles and specific constitutional provisions that the Tamil National Alliance (TNA) considers to be paramount to the resolution of the question of the Tamil speaking Peoples in Sri Lanka. The proposals relate mainly to the sharing of power. This document is intended to emphasise the salient features of power sharing which in the opinion of the Tamil speaking Peoples is fundamental to the realisation of their legitimate aspirations and to achieve lasting peace and development for all the peoples of Sri Lanka.

- Power sharing should be founded on the principle of internal self determination in areas of historic habitation of the Tamil Speaking Peoples, based on a federal structure within a united Sri Lanka
- A merged Northern and Eastern Provinces will be one such Federal State
- The powers of the Centre and States must be distinct and separate
- There must be meaningful devolution of powers over land, law and order, socio-economic development including health and education, resources and fiscal powers
- There must be meaningful de-militarization resulting in the return to the pre-military conflict situation as it existed in 1983 by the removal of armed forces, military apparatuses and High Security Zones from the Northern and Eastern Provinces

#### 1. Introduction

The Tamils are a distinct People.

(2) The Tamil speaking People have historically inhabited the Northern and Eastern provinces in the island and the North-Eastern State is thus the homeland of the Tamil People and the Tamil speaking Muslim People.

(3) The Tamil People have the right to self-determination.

#### 2. The State

Sri Lanka shall be a Federation of States.

(2) One of the said States shall be the "North-Eastern State" comprising the Northern and Eastern provinces as demarcated under the Constitution of 1978.

(3) Within the framework of the North-Eastern State as above constituted, provision shall be made encompassing arrangements in regard to the exercise of autonomous governance by the Tamil speaking Muslims.

(4) There shall be other States as maybe determined.

(5) Wherever Tamils of Recent Indian Origin are concentrated in substantial numbers, provision shall be made for the exercise by them of powers in respect of defined subjects.

#### 3. Sovereignty

 Sovereignty vests in the Peoples and is inalienable. Sovereignty includes powers of government, human rights and franchise.

(2) The legislative power of the Peoples shall be exercised on behalf of the Peoples by the Centre and the States, exclusively within their spheres of competence according to the powers vested in them by the Constitution.

(3) The executive power of the Peoples shall be exercised on behalf of the Peoples by the Centre and the States, according to the powers vested in them by the Constitution. There shall not be an Executive Presidency.

(4) The judicial power of the Peoples shall be exercised on behalf of the Peoples by the Constitutional Court, the judicial bodies of the Centre and the States,

exclusively within their spheres of competence according to the powers vested in them by the Constitution.

(5) The Peoples of Sri Lanka are diverse. The Centre and the States are obliged to recognize, respect and protect the diversity of the Peoples.

## 5. Language

(1) Sinhala, Tamil and English shall be the National languages and Sinhala and Tamil shall be the official languages of Sri Lanka.

(2) Any person, shall have the right to make a statement to the Police, communicate with and receive communication from, any arm of the government, including giving information with regard to birth, death or marriage, and will also have the right to be issued with certificates of same, whether in the Centre or in the State, in Sinhala, Tamil or in English.

(3) A national official languages commission and official languages commissions for each State shall be established to supervise the implementation of the official languages policy.

(4) The language of courts and the language of public records will be Tamil in the North Eastern State and Sinhala in the rest of the States and wherever appropriate all National Languages may be used in all States.

#### 6. Secular State

Sri Lanka shall be a secular state that guarantees the freedom of religion to all persons.

## 7. Constitution

The Constitution is the foundational and the supreme law of the Centre and the States. All actions of the Centre and the States shall be in accordance with the Constitution.

## 8. Constitutional Court

(1) There shall be a Constitutional Court vested with the sole power to determine the interpretation of the Constitution. The Constitutional Court shall be the highest court of the land and sit as a collective court on all matters.

(2) Appointments to the Constitutional Court shall reflect the pluralistic character of Sri Lanka and adequate ethnic and religious representation shall be ensured. To ensure such representation, there shall be consultation and agreement with the North-East State and such other State(s) as maybe appropriate.

(3) Wherever any constitutional issues arise before a court, it shall be referred to the Constitutional Court for adjudication. The Constitutional Court shall have exclusive jurisdiction to adjudicate upon all constitutional issues.

## 9. Emergency Powers

(1) Where the Head of the Centre is satisfied that the government of a State is seeking to secede from the Centre and that the secession of that State from the Centre is imminent, he may declare a state of emergency and the Governor shall take over such executive functions and powers of the Chief Minister and the Council of Ministers as may be necessary in the circumstances.

(2) Any declaration of emergency shall be reviewed and pronounced upon by the Constitutional Court ex mero motu within a period of one month from the date of declaration. Where the Constitutional Court rules that the declaration of emergency was justified, the head of the Centre shall dissolve the Legislative Assembly and hold fresh elections within a period of six months from the date of declaration of emergency. In the event the Constitutional Court rules that the said declaration of emergency was not justified, the said state of emergency shall forthwith cease to have any force or effect.

(3) Upon the cessation of the state of emergency as aforesaid, the Chief Minister and the Council of Ministers shall continue in office and carry out their functions without being bound by any act or thing done in the interim.

## 10. Power Sharing between the Centre and the States

(1) Powers of government shall be shared between the Centre and the States.

(2) The Reserved list of the Constitution shall determine the powers to be exercised by the Centre.

(3) The States shall exercise all powers not falling within the Reserved list.

(4) The Centre and the States shall be supreme in their respective spheres of competence.

## 11. Unit of Devolution

(1) There shall be two tiers of government, the Centre and the States.

(2) The unit of devolution is the State. One of the said States shall be the "North-Eastern State" comprising the Northern and Eastern provinces as demarcated under the Constitution of 1978.

(3) Legislative power shall be exercised at the Centre by Parliament comprising of the lower house and the upper house or the Senate. The lower house shall be elected by the People. The members of the Senate shall be elected by the States, and the States will have equal representation. In the case of any legislation affecting a particular community, the majority of that community must assent to the passage of any such legislation in both houses of Parliament. The States' legislative power shall be exercised by the State Legislative Assembly.

(4) Executive power shall be exercised at the Centre by the Prime Minister and the Cabinet of Ministers. The State executive power shall be exercised by the Chief Minister and the Council of Ministers.

## 12. Distribution of Powers of Government between the Centre and the States

The Reserved list shall consist of the following subjects and functions;

- National Defence
- Foreign Affairs
- National Fiscal Policy
- Immigration/Emigration
- Citizenship
- Customs
- Posts
- Telecommunications
- International Airports
- Major Harbours
- Railways
- National Highways
- Maritime Zones

(2) All other powers shall be exercised by the States.

(3) The above represents the distribution of powers between the Centre and the North Eastern State. The devolution of powers to the other States may vary.

## 13. Governance of the States

 There shall be a Governor for each State, appointed by the President with the concurrence of the Chief Minister of the State. (2) The Governor shall appoint as the Chief Minister of the State, a Member of this State Legislative Assembly, who in his opinion commands the confidence of the majority of the members of the State Legislative Assembly.

(3) The Chief Minister shall appoint the Council of Ministers.

#### 14. Local Government

(1) All Municipal Councils, Urban Councils and other local government bodies shall have the power to adopt by-laws that are consistent with the Constitution.

(2) Such local government bodies shall be accountable to the respective States, and

(3) Shall exercise such functions as are allocated to them by law and will carry out those functions as agents of the relevant State.

## 15. Administration of Justice

 The exercise of judicial power shall comprise of national judicial powers and state judicial powers.

(2) The Centre shall be vested with the power to appoint Judges to the Constitutional Court and the Supreme Court. The States will be vested with the power to appoint judges to the other courts, including the State High Courts.

(3) Appointments to the Supreme Court and the Constitutional Court shall reflect the pluralistic character of Sri Lanka.

(4) Appointments to the High Courts and other subordinate courts shall reflect the pluralistic character of the State.

(5) There shall be a State Attorney General for each State.

## 16. Fiscal Powers

These pertain to the North-East State.

(1) The States shall have the power of taxation within the State.

(2) The States shall have the power to receive direct domestic and foreign grants and donations. (3) Where a State wishes to receive foreign aid that will add to the national debt, such State shall have the right to seek out, and negotiate terms relating to such aid. The State shall then submit such aid proposal to the National Finance Commission, which shall be an independent body, for evaluation and approval. Such approval shall not be unreasonably denied.

(4) Where any State negotiates an agreement for foreign aid that does not contribute to the national debt, and where the aid relates to matters that are outside the reserved list, no approval is required from the National Finance Commission.

(5) The States shall have the power to receive grants and to invite and receive domestic and foreign developmental investment.

(6) The States shall have the power to negotiate and receive domestic and foreign loans for development.

(7) Provisions shall be made for the appointment of a National Finance Commission which shall reflect the pluralistic character of the country on the basis of whose recommendation resources will be allocated by the Centre to the States.

(8) The Centre and the States shall have their respective consolidated and contingency funds.

#### 17. Land

These proposals relating to land pertain to the North-East State.

North-East State shall succeed to all state land within the State.

(2) All land within the State presently under the control of the Centre, in relation to a subject falling within the reserved list shall revert to the State except for such land that may reasonably be required in relation to a subject within the reserved list.

(3) State land presently under the control of the Centre in relation to a subject no longer within the reserved list shall revert to the State.

(4) All private land within the State under the occupation or control of the Centre must be restored to the possession of its lawful owners.

(5) The subject of land is to be fully devolved to the States, and the States shall be entitled to exclusively exercise rights in or over such land, including land tenure, transfer and alienation of land, land use, land settlement, and land improvement.

(6) Any existing law, regulation or circular inconsistent with powers over land devolved to the State, shall be considered void.

(7) Where the Central Government wishes to make use of land within the State for the purpose of a subject within the Reserved List, the Central Government may request the State for such state land. And if there be any dispute, it may be referred to mediation and then finally resolved by the Constitutional Court.

(8) Any land acquired from the State for the purposes of a subject falling within the Reserved List by the Centre shall only be used for such purpose by the Centre.

#### 18. Defence, National Security, Law and Order

 National defence, national security, and the control of armed forces and the Coast Guard shall be subjects reserved exclusively for the Centre.

(2) Law and Order including public order and the exercise of police powers shall be devolved on the States, but may be reserved exclusively to the Centre, in the Capital territory of Colombo City and its environs, including Sri Jayawardenapura Kotte.

(3) There shall be a State Police Force in every State which shall be responsible for the preservation of public order within the State and the prevention, detection, investigation and prosecution in the relevant Courts in respect of such offences.

(4) There shall also be a National Police Force which shall be responsible for the prevention, detection and investigation and prosecution of offences, which may include offences against the Centre or specified persons such as the Head of the Executive, judges of the Superior Courts and members of the legislature; offences against the members of National Police and Armed Forces; any offence relating to national security and essential services; international crimes, and offences committed within the Capital Territory.

(5) There shall be a State Police Commission in each State, and a National Police Commission at the Centre.

(6) The National Police Commission will be responsible for the appointment, promotion, transfer and disciplinary control of officers coming under the purview of the National Police Commission including the IGP.

(7) The State Police Commission will be responsible for the appointment, promotion, transfer and disciplinary control of officers coming under the purview of the State Police Commission including the State IGP.

(8) The members of the National Police Commission shall be selected by an independent body. The members of each State Police Commission shall be selected by the Council of Ministers of the State, subject to the ratification of such selection by a majority of Members of the Legislative Assembly of the State.

(9) Recruitment to the armed forces and the National Police force shall reflect the national ethnic ratio and the State Police Force shall reflect the ethnic ratio of the State.

(9) Provided however that, the Chief Minister of a State may seek the intervention of the Head of the Centre including the deployment of armed forces as the Chief Minister considers necessary in any grave situation that may occur within the State.

(10) The request of the Chief Minister will lapse if the Legislative Assembly of the said State does not ratify it within a period of two weeks.

#### 19. Public Service

(1) The Chief Secretary of the State, the Secretary to the Chief Minister and the Secretaries of the Ministries of the State shall be appointed by the Chief Minister in consultation with the Council of Ministers.

(2) There shall be a State Public Service for the purposes of carrying out of the functions of the State in respect of matters within the competence of the State.

(3) There shall be a State Public Service Commission in every State established under the Constitution. The Commission will be responsible for recruitment (including the drawing up of recruitment schemes), appointment, transfer, dismissal and disciplinary control over the respective State Public Service cadre. Appointment to the State Public Service Commission shall be made by the Chief Minister of the State, provided the appointments receive the assent of no less than one half of the votes in the Legislative Assembly of the State.

(4) The State Public Service Commission shall appoint, transfer and have disciplinary control over the District and Divisional Secretaries and Grama Niladharis within the State. These officers will carry out the different functions allocated to them either by the Centre through the Chief Secretary or the State as the case maybe. (5) There shall be a Central Public Service Commission for the purposes of carrying out the functions of the Centre in respect of the matters within the competence of the Centre. Recruitment to the Central Public Service shall be on the basis of national ethnic ratio.

(6) The Central Public Service Commission will be responsible for the powers of recruitment, appointment, transfer, dismissal and disciplinary control over the Central Public Service. Appointments to the Central Public Service Commission shall be made by the President, upon the recommendation made to him by the Constitutional Council.

#### 20. Education

These proposals relating to education pertain to the North-East State.

(1) The subject of education shall be vested with the States. This includes primary, secondary and tertiary education including universities and other institutions providing technical and vocational training.

(2) The establishment and maintenance of any school, university or tertiary educational institution shall be within the competence of the State.

(3) The identification of schools as "National" shall not have the effect of transferring competence over the said institution to the Centre.

(4) The powers of recruitment transfer and disciplinary control over the personnel employed in educational institutions referred to in this Clause, shall lie with the Council of Ministers of the State, and the respective State Public Service Commission.

#### 21. Individual and Group Rights

(1) The Centre and the States shall respect, protect and promote the individual rights of all persons as recognized in international human rights law.

(2) Human rights are recognized as universal, indivisible and interdependent. Both civil and political rights; and economic, social and cultural rights shall be justiceable under the Constitution.

(3) The Centre and the States are obliged to recognise that historical, social and political factors inter alia could require that certain individual rights, such as language rights, be enjoyed as a group right. The Centre and the States shall respect, protect and promote other group rights such as the right of Peoples to self-determination.

# 22. Centre -State Co-operation

(1) The Centre and the States shall co-operate with each other in the spirit of comity, in carrying out their respective functions under the Constitution.

(2) One or several institutions shall be established through consensus among the Centre and the States, for the fostering and promotion of good relations.

# 23. Resolution of Centre-State and Inter-State Disputes

(1) In the event of a dispute arising between the Centre and a State or between two States, the dispute shall be referred directly to the Constitutional Court.

(2) The Constitutional Court shall be the final arbiter of such disputes.

# 24. Amendments to the Constitution

(1) Constitutional amendments proposed by the Centre, relating to the geographical territory of the States, the powers of States and all other matters relating to States can be amended only if such amendment is approved by 2/3 majority in both houses of Parliament and the majority in each of the Legislative Assemblies of all the States. Any constitutional amendment as aforesaid by the Centre but not approved by a given State(s), shall not apply to that State(s).

(2) Other Constitutional amendments shall be adopted if approved by a 2/3 majority vote of both the Lower and the Upper Houses of Parliament.