

Proposals by Prof. Rajiva Wijesingha

Some years back the Council for Liberal Democracy produced an influential book called 'Ideas for Constitutional Reform', edited by Chanaka Amaratunga. A shorter version of this was issued a few years back, and I have now put together a brief outline of further Ideas for Constitutional Reform, based on principles that have emerged in recent consultations with regard to a [National Reconciliation Policy](#), and on the needs expressed in [Divisional Secretariat Reconciliation meetings](#).

Ideas for Constitutional Reform

1. Electoral Reform

To ensure responsibility of members for a limited area and accountability to a constituency
And

To ensure that Parliament as a whole is proportionate to the wishes of the electorate

The House of Representatives shall consist of two hundred Members elected on a mixed system. One hundred of them will be elected on the basis of constituencies in which the electors shall be similar in number. Such constituencies shall be prescribed by a Delimitation Commission which shall combine the Grama Niladhari Divisions into Constituencies which have commensurate numbers or as near commensurate as possible.

Voters shall vote for individuals in these constituencies. They may give up to three preferences in order, of which only the first shall be counted initially. This is in accordance with the alternative system of voting. After the first count, unless a candidate has received over half the votes cast, the candidate with least first preferences will be eliminated, and such candidate's preferences redistributed. The process shall be repeated until one candidate shall have received 50% plus one of the total votes cast.

Voters will also cast a second vote for a political party. The remaining hundred members of the House of Representatives shall be chosen so as to reflect the proportion of votes obtained by each party. Each party shall submit a list known as the Party List. After the constituency representatives are declared elected, parties shall receive an allocation that brings up their total representation in Parliament to the proportion they received in the Party vote. .

In the event of a party receiving more seats on the Constituency Vote than the proportion it receives on the Party Vote, it will not receive any seats on the Party Vote, but the surplus shall sit in the House of Representatives which, for that Parliament alone, may have more than 200 members. If independent candidates are elected on the Constituency Vote, without being part of any Independent Group obtaining Party Votes, they too may constitute a surplus for the life of that Parliament.

2. Limitations on the power of Parliament

To prevent elections being manipulated by arbitrary dissolutions of Parliament

To ensure stability of Government

To promote consultation of regional interests in legislation

Every Parliament shall continue for four years from the date appointed for its first meeting and no longer and the expiry of the said period of four years shall operate as a dissolution of Parliament.

No vote of No Confidence in a Cabinet of Ministers may be passed unless there is also an expression of Confidence in an alternative Cabinet.

There shall be a Second Chamber of Parliament known as a Senate. It shall be composed of five representatives from each Province elected on the Single Transferable vote system.

3. Establishment of Consultative Committees to formulate policy and monitor executive action

To promote consultation of Parliamentarians on policy issues

To ensure transparency of executive action and accountability to Parliament

To prevent concentration on individual concerns in Parliament but provide space for resolution of individual constituency related problems within the Ministry

Parliament shall have Standing Consultative Committees in the following areas. They will discuss policy issues and general administration, and the effectiveness and efficiency of the Ministry concerned. Ministers should allocate one day a week, in their offices, for addressing constituency issues which Parliamentarians wish to bring up.

1. Human Resource Development
2. Health
3. Agriculture and Irrigation
4. Fisheries and Livestock Development
5. Disaster Management
6. Industries
7. Labour
8. Human Rights and Reconciliation
9. Transport and Highways
10. Trade and Cooperatives
11. Environment
12. Land and Urban Development
13. Defence
14. External Affairs
15. Home Affairs
16. Economic Development
17. Public Administration
18. Justice
19. Finance
20. Aviation and Shipping
21. Energy, Petroleum and Mineral Resources

- 22. Archaeology and National Heritage
- 23. Media
- 24. Posts and Telecommunications

Members of Parliament elected from constituencies shall be allocated a Development Budget which may be used for development and social work within the constituencies they represent.

Members on the National List shall be assigned to not more than two Consultative Committees, with priority for the choices they make. They will be allocated a budget of half the amount allocated to Constituency Members for projects in their fields of involvement, which should be approved by the Consultative Committee.

4. The Cabinet of Ministers

To ensure separation of Executive and Legislative functions in accordance with practice in other countries which have an Executive Presidency

To provide for recruitment to the Executive of the most suitable and qualified persons available without restriction

To strengthen accountability of the Executive to Parliament

There shall be a Cabinet of Ministers charged with the direction and control of the Government of the Republic, which shall be collectively responsible and answerable to Parliament. The President shall be a member of the Cabinet of Ministers and shall be the Head of the Cabinet of Ministers.

The Cabinet shall consist of not more than 25 Ministers. Responsibility for the following functions shall be given to the Members of the Cabinet, though the President may reserve any subjects he chooses for himself. Members of the Cabinet shall not be Members of Parliament or any other elected body, and shall not undertake any other employment. Any Member of Parliament or other elected body appointed to the Cabinet shall resign from such body.

All Members of the Cabinet shall be approved by Parliament before they take up office, and shall be answerable to Parliament through Consultative Committees and through regular appearances in Parliament to answer questions. They shall be present in Parliament during the discussion of legislation pertaining to their Ministries, and may participate in debate but shall not be entitled to vote (see list at 3 above for suggestions for Ministries)

Where the President reserves any subject for himself, he shall appoint a Minister not of Cabinet rank who will liaise with Parliament with regard to the subject for which he is responsible. Such Ministers shall not be Members of Parliament or other elected bodies, nor undertake any other position.

5. Judicial Accountability

To ensure the independence of the judiciary whilst promoting transparency with regard to appointments

To promote professionalism in the judiciary

To institutionalize justiciability by making all decisions subject to review

To introduce alternate mechanisms of seeking justice whilst preserving the ultimate authority of the Courts

The Judicial Service Commission shall have the power to

(a) transfer judges of the High Court -

(h) appoint, promote, transfer, exercise disciplinary control and dismiss judicial officers and scheduled public officers.

The Judicial Service Commission shall formulate and make public rules with regard to such transfers etc and perform its functions in accordance with such rules. Appeals with regard to any actions of the Commission may be made to the Commission and shall be responded to in writing within one month of the date of such appeal.

The Commission shall also each year formulate plans regarding a training programme for Judges of the High Court and Magistrates and prepare reports on the outcomes of such training each year.

The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV. As application in this regard may be proceeded with only after leave to proceed has been obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by no less than two Judges.

The Supreme Court shall, subject to the Constitution, be the final Court of all appellate jurisdiction for the correction of all errors in fact or law which shall be committed by the Court of Appeal or any Court of First Instance. Appeals may be made against findings of the Supreme Court, which shall be heard by a bench of the Supreme Court consisting of no fewer than seven judges. Such appeals shall be disposed of within a month of being made.

The Human Rights Commission of Sri Lanka may take up complaints with regard to Court decisions as well as other administrative or executive action in the public or private sphere. The Commission may request the Supreme Court for assistance in investigating such complaints, and shall seek to provide redress if required through consultation of the Court. The findings of the Commission shall be published in the event of agreement not being reached as to any remedial action recommended by the Commission. Tribunal or other institution and the judgements and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.

6. Local Government Councils

To promote the principal of subsidiarity in government by ensuring that decisions are made by units that can monitor and ensure implementation of programmes effectively

To provide for active local government with accountability to the people on key issues affecting their day to day lives

To ensure consultation of local communities with regard to relevant issues

To provide for technical expertise and competence in local administration

All Divisions shall have a Divisional Council, save for those areas which have a Municipal or Urban Council. All such Councils shall be elected on the same mixed system as is used for Parliament. Councillors elected on the party list shall be required to have prescribed educational or professional qualifications. The Councilors shall elect from amongst their members elected on the Ward List a Chairman or a Mayor who shall be the Executive Head of the area covered by the Council.

The Council shall be responsible for following areas

Utilities

Transport Services

Primary Health Care, Maternity Services and Sanitation

Schools

Cooperatives

Market Fairs

Cultural and Sports Activities, including Museums, Libraries and Cultural Centres

Waste Management

Burials and burial grounds, cremations and cremation grounds, other than those declared by or under law made by Parliament to be national memorial cemeteries

and for the approval and monitoring of funds deployed in the Council Area, and for regulations to raise funds as laid out in the Constitution. Statutory provision should be made for consultation with community groups in the preparation of the budget, and for accountability mechanisms to ensure transparency.

The Chairman may be assisted by Coordinating Officers appointed by him, subject to approval by the Council, for the following areas

Health and Education

Commerce

Utilities and Public Works

Who will liaise with public officials and ensure fulfillment of the policies approved by the Council. Grama Niladharis shall be responsible for convening regular consultative meetings with community groups in areas specified by the Council, and shall report on issues raised.

7. Provincial Assemblies

To establish provincial responsibility and accountability on the basis of subsidiarity for relevant issues

To streamline the provincial administration and promote effective executive powers whilst limiting duplication of political functions

To provide for technical and professional competence in areas of provincial concern

Every Province shall have a Provincial Assembly which shall be empowered to pass regulations and laws as delegated by Parliament. The Provincial Assembly shall consist of one representative of all Local Government bodies within the Province, elected by that Province on the Alternative Vote system. The Chairman or Mayor of such bodies shall not be eligible to serve in the Provincial Assembly, though they shall be ex officio members of the Finance Committee of the Provincial Assembly and may be invited to meetings of other Committees of the Assembly.

The Assembly shall meet twice a month for sessions of at least two days, and shall also formulate a Development Policy for the Province, in addition to being responsible for legislation as prescribed, and for the approval and monitoring of funds deployed in the Province, and for regulations to raise funds as laid out in the Constitution.

The Executive Head of the Province shall be a Governor elected direct by the people on the Alternative Vote system. The Governor shall head the Finance and Law Departments of the Province and shall appoint Secretaries, subject to approval from the Provincial Council, to head the following Departments

Infrastructure Development

Public Services (including Transport, Health and Education)

Productivity and Trade

Skills Development

They will liaise with public officials appointed by them to Provincial Departments from the Provincial public service, and with the administrative heads of Districts and Divisions who shall be responsible to them for the areas within their purview.

Source: <http://rajivawijesinha.wordpress.com/2013/01/19/ideas-for-constitutional-reform/#more-5808>