



**WRITTEN SUBMISSION TO THE
PUBLIC REPRESENTATIONS COMMITTEE
ON CONSTITUTIONAL MAKING
BY WOMEN POLITICAL LEADERS
OF SRI LANKA**

Facilitated by
Association for War Affected Women (AWAW) and
Transparency International Sri Lanka (TISL)

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Acknowledgement

The Submission outlined below was developed as a partnership between Transparency International Sri Lanka (TISL) and the Association for War Affected Women (AWAW) in collaboration with women political leaders of Sri Lanka. The Submission captures the unique perspectives and experiences of women that have engaged in governance and democratic processes and offers their vision and recommendations for the new Constitution of Sri Lanka.

TISL and AWAW would like to acknowledge the support extended by all the women political leaders that contributed to the compilation of this submission. We especially acknowledge the leadership and guidance provided by Hon. Chandrani Bandara, Minister of Women and Child Affairs.



We, the Women Political Leaders of Sri Lanka committed to peace, development, security and prosperity of our Country:

Collectively make this submission to ensure that our views, perspectives, experiences and priorities in the democracy and governance of this land are recognized and addressed;

Recognizing that ensuring women's inherent dignity and equal rights is the foundation for peace, security and development in Sri Lanka;

Noting that disregard for women's rights in the post-war context has resulted in lack of women's participation in the reconciliation, reintegration, and development processes and in political decision making bodies;

Considering that women in Sri Lanka reaffirmed their faith in Article 12 of the Constitution of the Democratic Socialist Republic of Sri Lanka guaranteeing the equal rights of both men and women;

Noting that it has been seven years since the conclusion of the war, but yet there exists serious security, equality and economic concerns for women in the areas of recovery, resettlement, reconstruction, and reintegration in Sri Lanka;

Reaffirming the equal rights and human dignity of both men and women enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Child Rights Convention;

Reaffirming the rights, standards and obligations guaranteed under the Refugee Convention of 1951 and the Protocol thereto of 1967, the CEDAW of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and **bearing** in mind the relevant provisions of international humanitarian law as set out in the four Geneva Conventions and Additional Protocols, the Rome Statute of the International Criminal Court, and CEDAW General Recommendation Number 19 with regard to women's right to bodily integrity and protection;

Noting the importance of the submissions made by women to the Lessons Learnt and Reconciliation Commission (LLRC) and the importance of implementing the recommendations related to women made by the LLRC;

Reaffirming the principles of equality and rights articulated in the Women's Charter of 1993 and promises made in the Development Policy Framework of Sri Lanka,

Considering the obligations of the government of Sri Lanka to implement the Concluding Observations of the Committee on the Elimination of Discrimination against Women, especially paragraphs 40-41 with regard to the impact of conflict on women;

Noting that Sri Lanka committed to ensuring the equal rights of women in the areas of economic, social, cultural, civil and political rights in the National Action Plan for the Protection and Promotion of Human Rights;

Emphasizing that the United Nations Security Council Resolution 1325 on Women, Peace and Security and its subsequent Resolutions 1820, 1888, 1889 and 1960 have put in place an international legal framework for women's equal participation and full involvement in the prevention and resolution of conflict and peace building;

Bearing in mind that any forms of undue exclusion of women amount to violation of the principles of equality;

Taking into account that involving women in decision making, governance, and post conflict reconstruction, and ensuring women's needs and rights are key to creating sustainable peace and development in Sri Lanka;

Underlining the uniqueness of this land;

Appreciating its natural beauty and the abundance of resources, and the need to protect the environment and its flora and fauna for our future generations;

Affirming that fulfilling the basic necessities of its people is an obligation of the state;

Reaffirming that safeguarding the rights of all its peoples is utmost important and an obligation of the state;

Reminding that it is a basic right of its people to be heard and to be able to voice their opinion in their own language,

Celebrating the rich diversity of its people and the value it brings to the country,

Respectfully present our submission to the Public Representations Committee appointed to compile recommendations for a new Constitution for the Democratic, Socialist Republic of Sri Lanka.

We make these recommendations keeping in line with the proposed headings of the Public Representations Committee.

Recommendation I: The basic structure of the constitution

We recommend the inclusion of a Preamble;

That first and foremost recognizes the post conflict context of Sri Lanka. It must recognize that all Sri Lankans have suffered and have been affected by the protracted civil war.

Recognizing that women were affected in multiple ways. As such special arrangements should be in place to ensure that war affected women contribute to decision making processes.

It must also recognize that women have been marginalized due to various reasons in the past and that this Constitution will uphold the dignity and equality of women.

Recommendation II: Citizenship, religion/belief, fundamental rights and obligations, (civic and political rights and economic, social and cultural rights), language rights, group rights and directive principles of state policy

We recommend that the new constitution;

- 1. Guarantee** human dignity, equality and equal protection by the law for all persons irrespective of race, nationality, language, religion, ethnicity, gender and sexual orientation.
- 2. Enshrine and Guarantee** the protection of human rights for all persons irrespective of race, nationality, language, religion, ethnicity, gender and sexual orientation.
- 3. Ensures the rights of women**
 - A temporary quota of 33 percent to guarantee women representation in the Parliament, Provincial councils and local government bodies is integrated to the Constitution for a period of 15 years.
 - The proposed 33 percent quota should be accommodated within the existing number of members without increasing the overall cadre.

- That the principle of equitable representation for women be enshrined in the Constitution and be promoted in all sectors and spheres including but not limited to elected bodies, government institutions, private sector, judiciary, law enforcement and independent commissions.
- Equal employment opportunities should be equally guaranteed to both men and women.
- There should not be any salary discrepancies between men and women in both the public and private sector.
- The Constitution must stand against all forms of violence against women and children.

4. Language

- The right to speak/write and be understood by the national languages of the country and that Sinhala, Tamil and English be declared as national languages.

5. Bill of Rights

- The Bill of Rights should include the 'Right to Life'.
- The inclusion of the right to practice a religion of one's own choice, even after marriage.
- Reiterate the freedom from torture, and cruel, inhuman and degrading treatment.
- We propose the right to file, hear and argue cases in one's mother tongue in the Supreme Court.
- All citizens have an equal right to education and the right to attend an educational institution of one's choice.
- All citizens have the right to health care.
- Citizens have the right to seek justice from the judicial system for all forms of human rights violations.

6. Protections of watchdogs

- The protection of watchdogs, change makers, activists and whistleblowers must be recognized as a priority for safeguarding democracy.

7. Upholding good governance

- Principles of good governance, accountability and transparency are upheld as inherent values of the Constitution with a firm and inalienable commitment to anti-corruption.

Recommendation III: The nature of the Legislature

1. The following suggestions are proposed **to enhance the quality of the National List Members of Parliament:**
 - One third of the National List candidates should comprise of women.
 - A strict set of criteria should be developed for the selection of National List candidates, including women.
2. **All, important bills** must be brought before the Parliament for vote after a process of wide consultations within and outside the legislature. The accepted democratic procedure for drafting and passing bills has to be adhered to, at all times.
3. **In the event of Crossovers**, there must be no crossover of MPs that is detrimental to the mandate of the people. In other words the interest and expectations of the voters, who have elected the parliament must be protected at all times.

Recommendation IV: Independence of judiciary and the Court Structure

Supremacy of the Judiciary

- The supremacy and independence of the Judiciary is paramount for a democracy, thus the appointment of the Chief Justice and the judges of the Supreme Court should be vested upon the constitutional council as per the 19th Amendment to the existing Constitution.
- Citizens have the right to legal redress and a fair trial through an efficient, timely and just judicial system.

Recommendation V: The appointment of a Constitutional Court

- We propose **the establishment of a Constitutional Court** to deal with violations of Constitutional provisions.

Recommendation VI: Power sharing, devolution and provincial government

We propose;

- 1. The full implementation of the 13th Amendment** with revisions where required. All revisions must be made after in-depth consultations with the parties most affected by the concept and practice of devolution.
- 2. On environment and natural resources**, key geopolitically and environmentally important areas such as the harbors, airports, and geological assets such as large scale mines, main rivers, and mountain rangers must come under the central administration.
- 3. On the issue of Land**, we understand that this is a very contentious issue, and therefore, we believe that there should be an arrangement where the center and the province has to jointly take decisions in key areas where the location is strategically important for the country's security.

Recommendation VII: Constitutional Council and Independent Commissions

The composition of the Constitutional Council

- 1.** Due to the important role played by the Constitutional Council in making appointments to the Supreme Court as well as the independent commissions, it is vital that the composition of the Council is representative and inclusive.
- 2.** We recommended that one third of the Constitutional Council are women.
- 3.** We also recommended that two thirds of the Constitutional Council must include representatives from the civil society sector.
- 4.** A strict set of criteria, which is made public, should be followed when appointing members to the Constitutional Council. These criteria should include educational qualifications, professional experience, acceptance of the public and engagement with the public.

Recommendation VIII: Electoral Reforms

- The Constitution must prescribe **an elections calendar** to which all must adhere too.
- An electoral system in the country must be **conducive for women's political participation** and should not be restrictive.

Recommendation IX: Powers of the president under a parliamentary form of government

1. No individual or institution should be above the law of the land.
2. The Executive must be answerable to the law. If the President and/or the Executive continues to have immunity, it should not be all encompassing.
3. Immunity should be disallowed in the case of allegations of corruption, criminal offences and financial misappropriation.
4. The Executive should be answerable to the Parliament.
5. There should be a check and balance system where the supremacy of the Constitution should be enshrined while also requiring a check and balances between the Executive, Legislature and the Judiciary.
6. There should be a clear limit of the number of terms of the Executive.
7. A strict set of criteria should be in place for the dissolving of Parliament in order to prevent the abuse of this clause.

Recommendation X: Other Matters

Environment Sustainability

- Environment and water conservation should be recognized as a priority concern.

- The sustainable use of natural resource must be incorporated in all sectors and steps must be taken to address issues pertaining to climate change and to ensure climate justice.
- The protection of reserves (environmental reserves), should strongly emphasise that all national protected conservation sites should not be exploited by any persons or institutions. If such lands and areas have been exploited then there should be swift and strong prosecution mechanisms in place for violators to be prosecuted immediately.
- We therefore, recommend enforceable laws and mechanisms in place to protect these reserves and national resources.
- An independent commission to be established for the protection of environment and natural resources.