The Third Report of the Constitutional Council submitted in terms of Article 41G (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

For the period from December 2023 to May 2024

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1. Introduction

Under the provisions of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter also referred to as "the Constitution"), the Constitutional Council (hereinafter also referred to as "the Council") is mandated to perform and discharge duties and functions entrusted by the Constitution and other Laws. Work performed by the Constitutional Council during the period from December 2023 to May 2024 are submitted by this Report in compliance with the provisions of the Article 41G (1) of the Constitution.

2. Meetings of the Council

The Constitutional Council met on sixteen (16) occasions on the following days during the period under review:-

01.12.2023, 05.12.2023, 10.12.2023, 12.12.2023, 30.12.2023, 02.01.2024, 12.01.2024, 19.01.2024, 30.01.2024, 19.02.2024, 26.02.2024, 21.03.2024, 02.04.2024, 25.04.2024, 08.05.2024 and 14.05.2024

3. Recommendation of persons for the appointment as members of the Commissions referred to in the Article 41B of the Constitution

3.1. Recommendation for the appointment of members to the Election Commission

The Council had previously recommended four (04) persons for the appointment as members of the Election Commission in terms of the provisions of the Articles 41B (3) and 103 of the Constitution.

Hence, the Council considered the applicants/ nominees to recommend for the remaining one (01) post of the member of the Election Commission.

Having considered the fitness and propriety of the applicants/ nominees, the Council unanimously recommended Prof Lakshman Dissanayake to be appointed as a member of the Election Commission under the provisions of the Articles 41B (3) and 103 of the Constitution. The Council ascertained from the nominee whether there are any pending litigations against him, including the nature of such litigations prior to forwarding the recommendation to the Hon President.

3.2. Recommendation for the appointment of members to the Commission to Investigate Allegations of Bribery or Corruption

The provisions of the Article 41B of the Constitution and the provisions of the Anti-Corruption Act No 9 of 2023 as amended by Act No. 28 of 2023, mandates the Council with recommending suitable and proper persons for the appointment as members of the

Commission to Investigate Allegations of Bribery or Corruption. Accordingly, the Council published a newspaper advertisement calling for applications from interested and qualified individuals to be considered for the appointment as members of the Commission to Investigate Allegations of Bribery or Corruption.

The particulars of such individuals were obtained in an application format agreed by the Council and a total number of sixty (60) applications including duplicates and applications that were not in the prescribed format were received.

Having considered the suitability and propriety in keeping with the provisions of Sections 4(1), 4(2) and 5 of the aforesaid Act, the Council unanimously recommended the following three applicants to be appointed as members of the Commission to Investigate Allegations of Bribery or Corruption:-

I. Hon. Justice Wijesundara Mudiyanselage Neil Parakrama Iddawala
II. Mr Chethiya Goonesekera
III. Mr Kapugamage Bernard Rajapakse

Further, the Council unanimously decided to recommend the Hon. Justice Wijesundara Mudiyanselage Neil Parakrama Iddawala to be appointed as the Chairperson of the said Commission in terms of the Section 4(3) of the aforesaid Act.

3.3. Appointment to act in the post of the Chairperson of the National Police Commission

The Council considered a communication from the Secretary to the President dated 22.03.2024 informing the approval of leave for Mr E. W. M. L. Ekanayake, Chairman of the National Police Commission to travel overseas, and informing the requirement to appoint a member to act in the post of the Chairperson of the National Police Commission.

Accordingly, the Council unanimously decided to recommend Mrs Daya Kamani Renuka Ekanayake, member of the Commission to act in the post of the Chairperson of the National Police Commission for the period from 20.04.2024 to 06.05.2024 during which Mr E. W. M. L. Ekanayake would be travelling overseas, in keeping with provisions of Articles 41B (2) of the Constitution.

4. Approval/ disapproval of recommendations of the Hon. President under the provisions of the Article 41C of the Constitution

4.1. Appointment of a Judge of the Supreme Court

As recorded in the Second Report of the Council, the Council had communicated to the Hon President of the stance of the Council regarding the recommendation of the Hon President under Article 41C (1) of the Constitution to appoint Hon N. B. P. D. S.

Karunarathne, the incumbent President of the Court of Appeal as a Judge of the Supreme Court.

In response, the Hon President had requested the Council to re-consider the recommendation.

Accordingly, the Council discussed and agreed to cast an open vote to decide on the recommendation of the Hon President as per Article 41E (4) of the Constitution, thus the recommendation of the Hon President to appoint Hon N. B. P. D. S. Karunarathne, the incumbent President of the Court of Appeal, as a Judge of the Supreme Court was not approved by the Council.

4.2. Appointment to act in the post of the President of the Court of Appeal

The Council considered a recommendation from the Hon President under Articles 41C(2) and 109(1) of the Constitution, to appoint Hon R. M. Sobhitha Rajakaruna, Judge of the Court of Appeal to be considered for the appointment to act in post of the President of the Court of Appeal during the period from 05.04.2024 to 05.05.2024 which the Hon. N. B. P. D. S. Karunarathna, incumbent President of the Court of Appeal would be travelling overseas.

The Council observed that the nominee is the next most senior Judge of the Court of Appeal and has an unblemished record in his career. The Council also considered the views of the Hon. Chief Justice which were obtained in compliance with the provisions of the Article 41C (4) of the Constitution, and unanimously decided to approve the recommendation of the Hon President to appoint Hon. R. M. Sobhitha Rajakaruna, Judge of the Court of Appeal to act in the post of the President of the Court of Appeal for the period from 05.04.2024 to 05.05.2024 during which the Hon. N. B. P. D. S. Karunarathna, incumbent President of the Court of Appeal would be travelling overseas.

4.3. Appointment of a member of the Judicial Service Commission

The Council considered the recommendation of the Hon President to appoint Hon Vijith K Malalgoda, P.C, Judge of the Supreme Court as a member of the Judicial Service Commission to the post which fell vacant with the retirement of the Hon D. P. S. Jayawardena, P. C, Judge of the Supreme Court on 01 March 2024.

The Council observed that the Hon Vijith K Malalgoda, P.C is the most senior Judge of the Supreme Court. Accordingly, having considered the curriculum vitae of the nominee along with the provisions of Articles 41C and 111D of the Constitution, the Council unanimously decided to approve the recommendation of the Hon President to appoint the Hon Vijith K Malalgoda, P.C Judge of the Supreme Court as a member of the Judicial Service Commission.

4.4. Appointment to the post of the Inspector-General of Police

4.4.1. Appointment to act in the post of the Inspector-General of Police

The Council considered the recommendation of the Hon President in terms of Article 41C(2) of the Constitution to appoint Mr T. M. W. D. Thennakoon, Senior Deputy Inspector-General of Police to act in the post of the Inspector-General of Police for a period of three (03) months w. e. f. 29.11.2023, until a suitable officer is appointed to the said post which fell vacant with the retirement of Mr C. D Wickremerathne.

Having considered the requirement to fill the vacant post of the Inspector-General of Police to maintain law and order in the country, and the fact that the appointment is only for duration of three (03) months, the majority members of the Council decided to approve the recommendation of the Hon. President to appoint Mr T. M. W. D. Thennakoon, Senior Deputy Inspector-General of Police to act in the post of the Inspector-General of Police for a period of three (03) months w. e. f. 29.11.2023.

4.4.2. Recommendation of the Hon President to appoint Mr T. M. W. D. Tennakoon to the post of the Inspector-General of Police

The Council considered the recommendation of the Hon President to appoint Mr. T. M. W. D. Tennakoon, Senior Deputy Inspector-General of Police to the post of the Inspector-General of Police w. e. f. 29 February 2024.

Having discussed at length, four (04) members of the Council approved the recommendation of the Hon President to appoint Mr. T. M. W. D. Tennakoon, Senior Deputy Inspector-General of Police and the recommendation was disapproved by two (02) members while two (02) members abstained from making any decision. The Council noted that the approval or the disapproval of the recommendation of the Hon President has not been supported by at least five (05) members of the Council as required in the Article 41E(4) of the Constitution.

5. Discharging Duties and functions imposed or assigned to the Constitutional Council by written laws other than the Constitution

5.1. Appointment to the post of a member of the Welfare Benefits Board

The Council unanimously decided to concur with the recommendation of the Hon Minister of Finance, Economic Stabilization and National Policies dated 29.11.2023 to appoint Mrs. R. N. Anees as a member of the Welfare Benefits Board as per the Welfare Benefits Act No 24 of 2002.

5.2. Appointment of members for the Governing Board and the Monetary Policy Board of the Central Bank of Sri Lanka

The Council considered the recommendation of the Hon. President to appoint Mr. Hector Manil Anthony Jayesinghe and Mr. Rajeev Amarasuriya as members of the Governing Board of the Central Bank of Sri Lanka in terms of the provisions of the Central Bank of Sri Lanka Act No. 16 of 2023 to the posts which fell vacant with the resignation of Mr. Sanjeeva Jayawardena, P.C. and Dr. Sumitha Anura Bandara Ekanayake as members of the Governing Board.

The Council ascertained the suitability of the nominees in accordance with the qualifications and disqualifications stipulated in the aforesaid Act, to be appointed as members of the Governing Board, and approved the recommendation of the Hon. President to appoint Mr. Rajeev Amarasuriya and Mr. Hector Manil Anthony Jayesinghe as members of the Governing Board of the Central Bank. The Council further informed the Hon President that the Council approved the nominations subject to the condition that the said nominees submit their resignation from their involvement in any financial institutions if any, regulated by the Central Bank of Sri Lanka, and the nominees at no time should be dealing with the financial market of the Sri Lanka in their individual capacity.

5.3. Appointment of a member of the Surcharge Appeal Committee

The Council had decided to appoint four (04) members of the Surcharge Appeal Committee and revisited the remaining list of applicants to select a suitable person for the remaining post of the member of the Surcharge Appeal Committee.

Having considered the applicants, the Council unanimously agreed to appoint Mr. Ekanayaka Arachchilage Weerasena as a member of the Surcharge Appeal Committee in terms of the provisions of the National Audit Act No 19 of 2018.

The National Audit Act No 19 of 2018 which provides provisions for the establishment of the Surcharge Appeal Committee does not stipulate the term in office of the members of the said Committee. Hence, the Council as the appointing authority, having considered the mandate of the Committee, decided to appoint all the members for a period of two (02) years.

However, thereafter the Council was informed by the Auditor-General that they have proposed amendments to the composition of the Surcharge Appeal Committee which had been submitted to the Cabinet of Ministers to amend the National Audit Act No 19 of 2018. Accordingly, the Council agreed to hold the appointments until the amendment of the existing Act.

5.4. Appointment of the Director-General to the Commission to Investigate Allegations of Bribery or Corruption

The Council published a newspaper advertisement to call for applications from suitable individuals to recommend for the appointment as the Director-General to the Commission to Investigate Allegations of Bribery or Corruption. Sequel to the advertisement, a total of twelve (12) applications including duplicates and applications that were not in the prescribed format, had been received.

Having considered the experience and qualifications possessed by the applicants, the Council unanimously decided to recommend Mr. Wakkuburage Kanishka Damith Wijeratne to be appointed as the Director-General to the Commission to Investigate Allegations of Bribery or Corruption in keeping with the provisions of the Anti-Corruption Act No 9 of 2023 as amended by Act No. 28 of 2023.

5.5. Appointment of members to the Office on Missing Persons (OMP)

The term of four (04) members of the Office on Missing Persons (OMP) expired on 29.04.2024. The provisions of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No 14 of 2016 entrust the Council with recommending suitable persons to the Hon. President for appointment as members of the OMP.

Accordingly, the Council decided to publish a newspaper advertisement calling for applications from qualified individuals. Publicity was also given through the Parliament website and social media platforms of Parliament as well as the Government Gazette.

6. Formulation of Rules relating to the performance and discharge of duties and functions of the Council

The Legal Draftsman had sent a revised set of Rules for the consideration of the Council. Having considered revised rules, the Council proposed some amendments. However, the Legal Draftsman had sent a further revised draft for the consideration of the Council.

The Council discussed with the Hon. Attorney-General and the Legal Draftsman about the revised draft Rules received from the Legal Draftsman and amendments proposed by the Council. The Council decided to include provisions enabling the Council to amend the Rules as and when necessary.

The Rules of the Council were published in the Gazette dated 31st December, 2023 and the Gazetted Rules were placed before Parliament on 10.01.2024. These Rules and the procedure followed are currently under review by the Council.

7. Responding to requests for information under Right to Information Act No 12 of 2016

During the period under review, the following number of requests for information under Right to Information Act No 12 of 2016 has been received and responses were sent as indicated: –

No of requests received	7
No of requests info provided fully/ partially	5
No of requests refused or denied	2
No of appeals	1
No of appeals replied	1
No of appeals rejected	0

8. Fundamental Rights applications filed in the Supreme Court citing the members of the Council as Respondents

i. SC FR 317/2023
ii. SC FR 318/2023
iii. SC FR 319/2023
iv. SC FR 04/2024
v. SC FR 06/2024
vi. SC FR 12/2024
vii. SC FR 14/2024
viii. SC FR 67/2024
ix. SC FR 75/2024
x. SC FR 80/2024
xi. SC FR 71/2024
xii. SC FR 72/2024
xiii. SC FR 79/2024
xiv. SC FR 82/2024
xv. SC FR 68/2024
xvi. SC FR 84/2024
xvii. SC FR 35/2024
xviii. SC FR 105/2024
xix. SC FR 110/2024
xx. SC FR 113/2024