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

For the period from June 2024 to December 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 the duties and functions entrusted by the Constitution and other Laws. The activities performed and discharged by the Council during the period from June 2024 to December 2024 are submitted by this Report in compliance with the provisions of the Article 41G (1) of the Constitution.

2. Appointment of Members to the Constitutional Council

Following the Presidential Election of 2024 and in keeping with the provisions laid down in the Constitution, the Hon President appointed the Hon. Vijitha Herath, M.P, as per the provisions of the Article 41A(1)(d) of the Constitution.

Accordingly, the composition of the Council at the time of the dissolution of the Ninth Parliament was as follows:-

- Hon. Mahinda Yapa Abeywardana, Chair of the Constitutional Council
- Hon. (Dr) Harini Amarasuriya, Prime Minister
- Hon. Sajith Premadasa
- Hon. Vijitha Herath
- Hon. Sagara Kariyawasam, Attorney at Law
- Hon. Kabir Hashim
- Dr. Prathap Ramanujam
- Dr. Dilkushi Anula Wijesundere
- Dr. Dinesha Samararatne

Following the General Election of 2024, and in keeping with the provisions laid down in the Constitution, the current members of the Constitutional Council were appointed as follows:-

- ✓ The Hon President appointed the Hon. Bimal Rathnayake, M.P, Leader of the House of Parliament as per the Article 41A(1)(d) of the Constitution;
- ✓ As per the Article 41A(1)(e)(i) of the Constitution, the Hon. Aboobucker Athambawa, M.P. nominated by the agreement of the majority of the Members of Parliament representing the Government was appointed by the Hon. President as a member of the Council;
- ✓ As per the Article 41A(1)(e)(ii) of the Constitution, the Hon. Ajith P. Perera, M.P. nominated with the agreement of the majority of the Members of the Parliament of the political party or independent group to which the Leader of the Opposition belongs was appointed by the Hon. President as a member of the Council; and

- ✓ As per the Article 41A(1)(f) of the Constitution, the Hon. Sivagnanam Shritharan, M.P., nominated by the agreement among the Members of Parliament other than those representing the Government and those belonging to the political party or independent group to which the Leader of the Opposition belongs was appointed by the Hon. President as a member of the Council.

Accordingly, the present composition of the Council is as follows:-

- Hon. (Dr) Jagath Wickramaratne, M.P., Speaker & Chairman of the Constitutional Council
- Hon. (Dr) Harini Amarasuriya, M.P., Prime Minister
- Hon. Sajith Premadasa, M.P., Leader of the Opposition in Parliament
- Hon. Bimal Rathnayake, M.P.
- Hon. Aboobucker Athambawa, M.P.
- Hon. Ajith P. Perera, M.P.
- Hon. Sivagnanam Shritharan, M.P.
- Dr Prathap Ramanujam
- Dr Dilkushi Anula Wijesundere
- Dr Dinesha Samararatne

3. Meetings of the Council

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

04.06.2024, 10.06.2024, 18.06.2024, 26.06.2024, 09.07.2024, 11.07.2024, 26.07.2024, 06.08.2024, 21.08.2024, 03.09.2024, 08.10.2024, 22.10.2024, 08.11.2024, 15.11.2024, 20.12.2024 and 31.12.2024

4. Recommendation of the Council for the appointment of members of the Commissions referred to in the Article 41B of the Constitution

4.1 Recommendation of the Council for the appointment of a member to the National Police Commission

The Council considered a communication of the Chairman of the National Police Commission (NPC) informing the vacancy that had occurred in the NPC due to the demise of Mr Sarath Gamini de Silva, member of NPC.

Accordingly, the Council published a newspaper advertisement calling for applications from interested individuals to be considered for the appointment as a member of NPC. Sequel to the advertisement, a total number of eighty four (84) applications including duplicates, incomplete and not in format applications had been received.

Having considered, the Council at its meeting held on 21st August 2024, unanimously decided to recommend Mr. Jayantha Ananda Jayasinghe to be appointed as a member of the National Police Commission subject to the receipt of a non-adverse response from the applicant with regard to any pending cases or convictions relating to violations of Fundamental Rights. The Council, having received a non-adverse report from the applicant, the recommendation of the Council for the appointment of Mr. Jayantha Ananda Jayasinghe as a member of the National Police Commission was forwarded to the Hon. President.

4.2 Recommendation of the Council for the appointment of a member to the Public Service Commission

The Council considered the communication received from the Secretary to the President informing the Council that the Hon. President had accepted the resignation of Mr Chandraratna Pallegama, member of the Public Service Commission (PSC) as per the provisions of the Article 54(4) of the Constitution.

Accordingly, the Council published a newspaper advertisement calling for applications from interested individuals to be considered for the appointment as a member of PSC. The Council also took into consideration the provisions of the Article 54(1) of the Constitution, which pertains to the composition of the PSC. Sequel to the advertisement, a total number of one hundred and four (104) applications including late, duplicates, incomplete and applications that were not in prescribed format had been received.

The Council deliberated and agreed upon a selection process for this appointment.

After concluding shortlisting, the Council decided to call the shortlisted applicants for an interview on 07.01.2025.

4.3 Recommendation of the Hon. President to remove a member of the Public Service Commission

The Council considered the communication together with the documents related to a preliminary investigation conducted by the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government received from the Secretary to the then President, seeking the approval of the Council for the recommendation of the Hon. President to remove Mr. N. H. M. Chithrananda, member of the Public Service Commission (PSC) from the post of member of the PSC, in terms of the provisions of the Article 54(4) of the Constitution.

The Council also obtained the opinion of the Hon. Attorney-General in this regard.

Following receipt of the opinion of the Hon. Attorney-General, the Council, at its meeting held on 08th October 2024, unanimously decided to ascertain the stance of the Hon. Anura Kumara Dissanayaka, the incumbent President in respect of the

recommendation of the then President to remove Mr. N. H. M. Chithrananda from the post of member of the PSC, in terms of the provisions of the Article 54(4) of the Constitution and further decided to forward a copy of the opinion of the Hon. Attorney-General for the perusal of the Hon. President.

4.4 Recommendation of the Council for the appointment of Director-General to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC)

The Council, at its meeting held on 08th October 2024 decided and published a newspaper advertisement to call for applications from suitable individuals to recommend for the appointment to the post of Director-General to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), pursuant to the vacancy that had created with the resignation of Mr W. K. D. Wijeratne from the post of Director-General to the CIABOC, in accordance with the provisions of the Anti-Corruption Act, No. 9 of 2023, as amended by Act, No. 28 of 2023.

The Council decided to obtain advice from legal experts in respect of the procedure of selection of a suitable recommendation for the appointment of the Director-General to the CIABOC, at the meeting of the Council held on 22nd October 2024. Accordingly, the Council obtained legal advice from Justice Buwaneka Aluvihare, P.C. (retired) and Mr Viraj Dayaratne, P.C, Senior Additional Solicitor General regarding the process of selecting a suitable recommendation and the important legal aspects required to be considered in the selection process.

Having considered the relevant legal provisions and the views of legal experts on the process to be followed in selecting a suitable recommendation for appointment of the Director-General to the CIABOC, the Council agreed on the criteria and procedure for the selection. Accordingly, sixteen applicants were shortlisted based on the criteria laid down in the selection procedure, and only ten of them appeared before the panel of interviewers. After discussion, the Council, at its meeting held on 31st December 2024, decided to consider a comprehensive evaluation report of the interview.

5. Approval/ disapproval of the Council for the recommendations of the Hon. President under the provisions of the Article 41C of the Constitution

5.1 Appointment of the Chief Justice

The Council, at its meeting held on 15th November 2024, considered a recommendation of the Hon. President made under the Articles 41C (1) and 107 of the Constitution, to appoint Hon. M. N. B. Fernando, P.C. the most senior Judge of the Supreme Court, to the post of the Chief Justice which has scheduled to fall vacant upon the retirement of Hon Jayantha Chandrasiri Jayasooriya, P.C. the incumbent Chief Justice w. e. f. 02.12.2024.

The Council noted that Hon. M. N. B. Fernando, P.C. is the most senior Judge of the Supreme Court at present, and unanimously decided to approve the recommendation of the Hon. President to appoint Hon M. N. B. Fernando, P.C. the most senior Judge of the Supreme Court, to the post of the Chief Justice which has scheduled to fall vacant with the retirement of Hon Jayantha Chandrasiri Jayasooriya, P.C. the incumbent Chief Justice w. e. f. 02.12.2024.

5.2 Appointment to act in the post of the President of the Court of Appeal

The Council considered a recommendation of the Hon President made under the Articles 41C (2) and 109(1) of the Constitution, to appoint Hon R. M. Sobhitha Rajakaruna, Judge of the Court of Appeal for the appointment to act in post of the President of the Court of Appeal for the period from 09.08.2024 to 03.09.2024 during which Hon. N. B. P. D. S. Karunarathna, President of the Court of Appeal has been scheduled to travel overseas.

The Council considered the views of the Hon. Chief Justice which were obtained in compliance with the provisions of the Article 41C (4) of the Constitution. Accordingly, the Council, at its meeting held on 18th June 2024 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 09.08.2024 to 03.09.2024 during which the Hon. N. B. P. D. S. Karunarathna, President of the Court of Appeal has been scheduled to travel overseas.

5.3 Appointment of Judges to the Court of Appeal

5.3.1. Appointment of Mr. K. M. G. H. Kulatunga, Mr. D Thotawatte, Mr. R. A. Ranaraja, Judges of High Court and Mr. Mahen C. L. B. Gopallawa, Senior Deputy Solicitor General

The Council considered recommendations received from the Hon President under the Article 41C (1) of the Constitution, to appoint Mr. K. M. G. H. Kulatunga, High Court Judge, Mr. D Thotawatte, High Court Judge, Mr. R. A. Ranaraja, High Court Judge and Mr. Mahen C. L. B. Gopallawa, Senior Deputy Solicitor General for the appointment to the vacant posts of the Judge of the Court of Appeal.

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.

The Council observed that the three Judges who have been recommended are the most senior Judges of the High Court and also observed that the Hon. Chief Justice has expressed his concurrence for the appointment of all four nominees recommended by the Hon. President.

Accordingly, the Council at its meeting held on 03rd September 2024, unanimously approved the recommendations of the Hon. President to appoint Mr. K. M. G. H. Kulatunga, High Court Judge, Mr. D Thotawatte, High Court Judge, Mr. R. A. Ranaraja, High Court Judge and Mr. Mahen C. L. B. Gopallawa, Senior Deputy Solicitor General to the vacant posts of the Judge of the Court of Appeal in terms of the provisions of the Article 41C of the Constitution.

5.3.2. Appointment of Mr K. M. S. Dissanayake, the senior most Judge of the High Court and Mr R. P. Hettiarachchi, senior Judge of the High Court

The Council, at its meeting held on 31st December 2024, considered the recommendation of the Hon. President made under the provisions of the Article 41C (1) of the Constitution, to appoint Mr K. M. S. Dissanayake, the senior most Judge of the High Court and Mr R. P. Hettiarachchi, senior Judge of the High Court for the posts of Judge of the Court of Appeal which fell vacant.

The Council decided to obtain the views of the Hon. Chief Justice in compliance with the provisions of Article 41C (4) of the Constitution, and further decided to obtain a duly updated curriculum vitae of the nominees from the Secretary to the President for consideration of the Council.

5.4 Appointment of a member to the Judicial Service Commission

5.4.1. Appointment of a member to the Judicial Service Commission for the vacancy that would create with the retirement of the Hon Vijith K. Malalgoda, P.C, Judge of the Supreme Court

The Council at the meeting held on 21st August 2024 considered the recommendation of the Hon President to appoint Hon M. N. B. Fernando, P.C, Judge of the Supreme Court as a member of the Judicial Service Commission to the post which would fall vacant with the retirement of the Hon Vijith K. Malalgoda, P.C, Judge of the Supreme Court on 26.08.2024.

The Council observed that the Hon M. N. B. Fernando, 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 the Articles 41C and 111D of the Constitution, the Council unanimously decided to approve the recommendation of the Hon President to appoint the Hon M. N. B. Fernando, P.C Judge of the Supreme Court as a member of the Judicial Service Commission to the post which would fall vacant with the retirement of the Hon Vijith K. Malalgoda, P.C, Judge of the Supreme Court.

5.4.2. Appointment of a member to the Judicial Service Commission for the vacancy that would create with the retirement of the Hon Chief Justice Jayantha Jayasuriya, P.C

The Council considered the recommendation of the Hon President, to appoint Hon Justice P. P. Surasena, the most senior 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 Chief Justice Jayantha Jayasuriya, P.C. and with the appointment of Hon Justice M. N. B. Fernando, P.C. as the Chief Justice on 02.12.2024.

The Council observed that the Hon Justice P. P. Surasena is the most senior Judge of the Supreme Court at present. Accordingly, having considered the curriculum vitae of the nominee along with the provisions of Articles 41C and 111D of the Constitution, the Council, at its meeting held on 20th December 2024, unanimously approved the recommendation of the Hon President to appoint the Hon Justice P. P. Surasena, Judge of the Supreme Court as a member of the Judicial Service Commission.

5.5 Appointment of the Attorney-General

5.5.1. Re-Appointment of the Attorney-General

The Council, at its meeting held on 4th June 2024, considered the recommendation of the Hon President to re-appoint Mr S. Rajaratnam, PC, the Attorney-General who was due to retire w. e. f. 27.06.2024 for the period from 27.06.2024 to 31.12.2024. Having considered, the Council sought a comprehensive report from the Attorney-General's Department on the legal provisions governing the reappointment of the Attorney-General after attaining the compulsory age of retirement and also including past precedence on appointing persons to the post of the Attorney-General after attaining the compulsory age of retirement and applicable legal grounds.

Having discussed at length, the members of the Council cast their vote to decide on the recommendation of the Hon President in keeping with the provisions of the Article 41E of the Constitution, and accordingly, the recommendation of the Hon President to re-appoint Mr S. Rajaratnam, PC, the Attorney-General who was due to retire w.e.f. 27.06.2024, for the period from 27.06.2024 to 31.12.2024 was not approved by the Council at the meeting of the Council held on 18th June 2024.

5.5.2. Appointment of the Attorney-General

The Council considered the recommendation of the Hon. President in terms of the Article 41C of the Constitution to appoint Mr. K. A. P. Ranasinghe, PC, Senior Additional Solicitor General to the vacant post of the Attorney-General w. e. f. 12.07.2024.

Having considered, the Council unanimously approved the recommendation of the Hon. President to appoint Mr. K. A. P. Ranasinghe, PC, Senior Additional Solicitor General, to the post of Attorney-General in terms of the Article 41C of the Constitution, at the meeting of the Council held on 11th July 2024.

5.6 Appointment to act in the post of the Auditor General

The Council considered the recommendation of the Hon President in terms of the Article 41C of the Constitution to appoint Mr. G. H. D. Dharmapala, Senior Deputy Auditor General to act in the post of the Auditor General from 08.12.2024 to 22.12.2024 during the period Mr. W. P. C. Wickramarathne, Auditor General has been scheduled to travel overseas.

The Council observed that the nominee is the most senior officer in the National Audit Office. Accordingly, having considered the curriculum vitae of the nominee, the Council, at its meeting held on 08th November 2024, unanimously decided to approve the recommendation of the Hon President to appoint Mr. G. H. D. Dharmapala, Senior Deputy Auditor General to act in the post of the Auditor General from 08.12.2024 to 22.12.2024 during the period Mr. W. P. C. Wickramarathne, Auditor General has been scheduled to travel overseas.

5.7 Appointment to the post of the Inspector-General of Police

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

The Council, at its meeting held on 08th October 2024, considered the recommendation of the Hon President seeking the approval of the Council in terms of the provisions of the Article 41C (2) of the Constitution, to appoint Mr. W. L. A. S. Priyantha, Senior Deputy Inspector-General of Police to act in the post of the Inspector-General of Police w. e. f. 10.10.2024, until the final determination of the Supreme Court applications 67/24, 68/24,71/24, 72/24, 75/24, 80/24, 82/24, and 84/24 given the interim order of the Supreme Court dated 24.07.2024 on the said applications.

After discussion, the Council unanimously approved the recommendation of the Hon President to appoint Mr W. L. A. S. Priyantha, Senior Deputy Inspector-General of Police to act in the post of the Inspector-General of Police w. e. f.

10.10.2024 until the final determination of the Supreme Court applications 67/24, 68/24, 71/24, 72/24, 75/24, 79/24, 80/24, 82/24 and 84/24.

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

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

6.1.1. Appointment of members to the OMP for the four vacant positions of the post of member of the OMP

The Council published a newspaper advertisement to call for applications from suitable individuals to be recommended for the appointment of members to the Office on Missing Persons (OMP) for the four vacant positions of the post of member of the OMP. Sequel to the advertisement, a total of One hundred and seven (107) applications including duplicates, incomplete and late applications had been received.

The Council also obtained a report from the OMP, regarding the overall performance, and the annual reports of the OMP published in terms of Section 23 of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, from the year the OMP was established up to the present date.

Having considered at length the majority of the Council, at its meeting held on 18th June 2024, decided to recommend the re-appointment of Mr. Mahesh Katulanda, Mr. Thambiaiah Yogarajah and Mrs. Sithy Dane Arfa Thassim as per Sections 4 and 7(1) of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No 14 of 2016 and the Council also unanimously decided to recommend Dr. Upul Ajith Kumara Tennakoon to be appointed as a member of the OMP.

Furthermore, the Council decided to recommend Mr. Mahesh Katulanda to be appointed as the Chair of the OMP, as per Section 4(1)(b) of the aforesaid Act.

6.1.2. Appointment of members to the OMP for the two vacancies that were created due to the resignation of Mr. H. M. M. B. Jayawardena and Mr. P. M. W. Sampath Perera

The Council considered a communication received from the Secretary to the President, informing the Council of two vacancies that had arisen in the Office on Missing Persons (OMP) due to the resignation of Mr. H. M. M. B. Jayawardena and Mr. P. M. W. Sampath Perera from the post of member of the OMP.

Accordingly, the Council, at its meeting held on 08th November 2024, decided to publish a newspaper advertisement to call for applications from suitable individuals to be recommended for the appointment of members to the OMP. Sequel to the advertisement published, a total of One hundred and twenty (120) applications including duplicates, incomplete and late applications had been received.

6.2 Appointment of a member to the Office for Reparations

The Council noted that a vacancy had arisen in the composition of the Office for Reparations due to the expiration of the term of office by Major General W. P. P. Fernando, who served as a member of the Office for Reparations. The Council was also informed that the Chair of the Office for Reparations recommended reappointment of Major General W. P. P. Fernando, taking into account his significant contributions to the work of the Office during his tenure. After discussion, the Council obtained Reports of the Office for Reparations which had been tabled in Parliament and subsequently obtained a detail description of the contribution and the role performed by Major General W. P. P. Fernando while being a member of the Office for Reparations.

Having considered, the Council, at its meeting held on 26th July 2024, by a majority decision, recommended the reappointment of Major General W. P. P. Fernando as a member of the Office for Reparations, in terms of Sections 4 and 6 of the Office for Reparations Act, No. 34 of 2018.

6.3 Appointment of the Chair and Members of the Public Utilities Commission of Sri Lanka (PUCSL)

The Council, at its meeting held on 26th July 2024, considered the communication from the Hon. Minister of Finance, Economic Stabilization and National Policies dated 15.07.2024 seeking the concurrence of the Council to appoint the Chairperson and the members of the PUCSL. At the time the nominations were under consideration, the Presidential Election had been conducted, and the Minister holding the relevant portfolio had changed.

The Council decided to verify with the incumbent Hon. Minister of Finance, Economic Development, Policy Formulation, Planning and Tourism whether he endorsed the same recommendation of the then Minister of Finance, Economic Stabilization and National Policies.

Accordingly, the Council received a communication dated 08.11.2024 from the Hon. Minister of Finance, Economic Development, Policy Formulation, Planning and Tourism, seeking the concurrence of the Council for the appointment of Prof K P L Chandralal, Prof. W D A S Rodrigo, Dr M C S Fernando, Mr P Hennayake and Justice W A Kaluarachchi, as members of the Public Utilities Commission of Sri Lanka

(PUCSL). The Council invited aforesaid nominees for a discussion with the Council for its consideration.

Having considered, the Council, at its meeting held on 15th November 2024, unanimously agreed to concur with the nomination of the Hon. Minister of Finance, Economic Development, Policy Formulation, Planning and Tourism to appoint Prof K P L Chandralal, Prof W D A S Rodrigo, Dr M C S Fernando, Mr P Hennayake and Justice W A Kaluarachchi, as members of the Public Utilities Commission of Sri Lanka (PUCSL) in terms of Sections 3(1) and 6(5) of the Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 subject to the receipt of affidavits that comply with the requirements of the aforesaid Act.

The Council considered a communication dated 22.12.2024 received from the Hon. Minister of Finance, Planning and Economic Development, seeking the concurrence of the Council to appoint Mr W. R. de Mel and Mr T. B. Abeysekara for the post of the Member of the Public Utilities Commission of Sri Lanka (PUCSL) which fell vacant due to non-acceptance of the appointments by Justice W. A. Kaluarachchi and Prof W. D. A. S. Rodrigo. After deliberation, the Council, at its meeting held on 31st December 2024, decided to invite the nominees for a discussion and further resolved to obtain affidavits from the nominees, as required in terms of Section 5 of the Public Utilities Commission of Sri Lanka Act, No. 35 of 2002.

6.4 Appointment of members to the National Commission on Women (NCW)

The Council considered a communication received from the Secretary to the President, regarding the establishment of the National Commission on Women in terms of the Women Empowerment Act, No. 37 of 2024.

Accordingly, the Council, at its meeting held on 20th December 2024, decided to publish a newspaper advertisement to call for applications/ nominations for the appointment of five (05) members of the National Commission on Women, in keeping with provisions of the aforesaid Act.

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 have been received and responses were sent as indicated:

No of requests received	2
No of requests info provided fully/ partially	2
No of requests refused or denied	0
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
xxi. SC FR 137/2024