



CPA Statement on the Eighteenth Amendment Bill

3rd September 2010, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) expresses its deep disquiet and consternation at the proposed Eighteenth Amendment to the Constitution Bill, which seeks to remove critical constitutional restraints on presidential power. We are convinced that the changes embodied in the Bill are entirely inconsistent with constitutionalism and liberal democratic values, and adversely affect the sovereignty of the people and the republican principle. We also condemn the manipulative and partisan manner in which the government has sought to introduce these changes to the supreme law of the land; made worse by the fact that these changes are contrary to what was promised in the *Mahinda Chintana* and *Mahinda Chintana Idiri Dekma*, and therefore contrary to the successive mandates given to the President by the people in the 2005 and 2010 presidential elections. CPA has petitioned the Supreme Court on these grounds this week, and hopes that the Court will declare that a constitutional amendment with such fundamental and far-reaching consequences would require the approval of the people at a referendum.

There are two substantive elements to the Eighteenth Amendment Bill. The first is the abolition of term limits on the executive presidency. The imposition of term limits is a characteristic feature of presidential systems, the self-evident rationale for which is the prevention of constitutional dictatorship by disallowing one person to hold office in perpetuity, even subject to periodic democratic election. In the context of the excessive powers conferred on the executive President, the relatively long six year term of office (cumulatively twelve years), the absence of fixed terms and comprehensive personal legal immunity, together with inadequate or ineffective checks and balances

represented in the system of government established by the Constitution of 1978, the limitation to two terms that any one person may hold that office assumes even greater importance. It is this basic and critical safeguard for democracy that the government is now seeking to eliminate.

The second element concerns the negation of restraints on presidential power established by the Seventeenth Amendment. The Seventeenth Amendment was enacted in 2001 with rare cross-party consensus in Parliament with a view to de-politicising key areas of governance. It was the result of a long and sustained campaign for reform undertaken by civil society and democratic forces in the country, which established crucial procedural restraints on the exercise of presidential power whilst leaving the basic structure of the Constitution, including the executive presidential system, intact. An objective review of the experience with regard to the implementation of the Seventeenth Amendment demonstrates that to the extent its full potential was never realised, it was due to the intransigence and contempt for constitutional provisions on the part of successive Presidents, rather than any fatal structural flaw that made it inherently unworkable. In this light, the justifications advanced for the nullification of the Seventeenth Amendment framework are wholly unpersuasive.

In this regard, we also note that in addition to the abolition of the Constitutional Council (and proposed replacement with a manifestly ineffectual Parliamentary Council), the Eighteenth Amendment Bill also envisages fundamental changes to the independent commissions, in particular the Elections Commission and the National Police Commission. Many of the most important powers conferred on the Elections Commission by the Seventeenth Amendment essential to the integrity of the electoral process would be removed. The entire nature and purpose of the National Police Commission as the central mechanism of the political independence and professionalism of the Police would be altered, with the new Commission performing the role of a mere administrative complaints body.

Given the depth and extent of the changes contemplated in the Eighteenth Amendment Bill, therefore, we find the process adopted for its enactment wholly inappropriate. Once again the procedure for urgent bills has been engaged, and the conclusion is inescapable that this is to foreclose, or at least attenuate, legitimate public discussion, critique and debate of the substance of the

proposed changes. It might be added that a similar singularity of purpose has nowhere been in evidence with regard to a new post-war constitutional settlement addressing the challenges of unity, diversity and ethnic reconciliation, which is essential to ensuring peace and the future stability of post-war Sri Lanka.

As CPA and other petitioners in the public interest have submitted to the Supreme Court, the proposed changes are fundamental ones that seriously affect the manner in which the sovereignty of people is exercised. There is no reason tenable in an open and democratic society that such momentous changes should be introduced without the broadest possible discussion and deliberation, or without the opportunity for the people directly to express their views in a referendum.

For these reasons, CPA is of the view that the cumulative effect of the proposed changes is the creation of an executive presidency that is even more entrenched and unrestrained than what was contemplated by Mr. J.R. Jayewardene in 1978. The Eighteenth Amendment to the Constitution Bill represents nothing less than an assault on constitutional democracy in the service of partisan advantage, and a consolidation of authoritarianism it would be too late to rue when its potential consequences begin to take effect.

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The Centre for Policy Alternatives (CPA) was formed in the firm belief that there is an urgent need to strengthen institution- and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process. The primary role envisaged for the Centre in the field of public policy is a pro-active and interventionary one, aimed at the dissemination and advocacy of policy alternatives for non-violent conflict resolution and democratic governance. Accordingly, the work of the Centre involves a major research component through which the policy alternatives advocated are identified and developed.

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