

CPA statement on passage of Provincial Councils Elections Amendment Act

25th September 2017, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) is extremely concerned by the rushed and non-transparent process followed by the government to amend the Provincial Councils Elections Act. This amendment Act was passed by Parliament on 20th September 2017 with the support of more than two-thirds of the Members of Parliament. Due to a substantial number of committee-stage amendments that were adopted, the Act that was passed was materially different to the Bill that was [gazetted](#) (on 10th July 2017), [tabled in Parliament](#) (on 26th July 2017), and [examined by the Supreme Court](#). The original Bill was only to provide for a quota of 30% for female candidates on the nomination papers submitted at Provincial Council elections. However, from the information available in the public domain (CPA has not seen the final Act) the Act that was passed changes the electoral system for elections of Provincial Councils and provides for a quota of 25% for women in all Provincial Councils.

At the outset, CPA notes that changing the electoral system to a Mixed Member Proportional system and the introduction of a quota for women in Provincial Councils are both welcome changes. However, the rushed manner in which these changes were made is contrary to the principle of representative democracy. The amendments, which completely changed the policy behind the Bills, were not made public to allow for any public debate or scrutiny, and were not subject to discussion even at the relevant Sectoral Oversight Committee. This procedure is particularly problematic when engaging in complex issues such as electoral reform, which requires complicated political compromises and mathematical formulae to be translated into legislative language. Special care needs to be taken to ensure that the legislation drafted is not unworkable. Although what the government did was technically legal, the procedure adopted sets a bad precedent and brings into question the government's commitment to transparency in governance, and to enabling the new sectoral committee system to perform its scrutiny and accountability role in any meaningful way.

The Sri Lankan constitution allows only for a limited "pre-enactment review of Bills of Parliament" seven days after a Bill has been placed on the order paper of Parliament. By adopting the process it did, the government has taken away the right of citizens of Sri Lanka to have the proposed amendments examined by the Supreme Court. The government has thus reinforced the concerns expressed by CPA and many others about executive dominance and the lack of transparency in the law-making process. CPA reiterates that legislation should not be passed in a rushed manner and that the constitutional role of Parliament and the constitutional rights of citizens in the law-making process should be respected.

The effect of the Act would be to postpone Provincial Council elections for at least six months. This is because the new electoral system requires demarcation of constituencies, which is a complicated and often contested process. The powers of the Provincial Councils whose term of five years will expire in the meantime will be exercised by the President and/or Parliament under [Article 154L and 154M](#) of the Constitution. This seriously impacts, as well as reflects adversely upon the government's commitment to, the principle and practice of devolution. It is also entirely possible that this gap in democratically elected institutions at the Provincial

Council level could continue beyond six months and impact all Provincial Councils. This precedent could easily be used by any government that intends to cripple the Provincial Council system in the future. In this context, it is disappointing that the Tamil National Alliance (TNA) supported this Act with little regard to the considerable attack on devolution that the Twentieth Amendment Bill (now aborted) and this Act cumulatively represent.

CPA notes that this drastic procedure was adopted after the Supreme Court determined that the Twentieth Amendment to the Constitution Bill would require a referendum to be enacted. This creates the perception that the government has passed this Act to postpone elections. Provincial Councils are constitutionally established, and democratically elected institutions, and it is not legitimate for the government to interfere with such devolved institutions for whimsical reasons or to overcome its own strategic blunders. The postponement of elections is a serious violation of the sovereignty of the people and should only happen in exceptional circumstances if at all. The government has articulated no such exceptional circumstances. In light of several unfulfilled promises by leaders of the government regarding the date for elections for local authorities, there is no guarantee that elections for Provincial Councils will actually happen in six months as the government promises. CPA further calls on the TNA as the main opposition party in Parliament to put pressure on the government to ensure elections take place as promised.

CPA calls on the government to abide by its promise and ensure that all necessary steps are taken to conduct local authority elections before the end of January 2018 and Provincial Council elections before end of March 2018. CPA further insists that the government engages in law-making in a transparent manner that respects citizens' rights as well as the role of Parliament, particularly in relation to constitutional issues.