

**IN THE SUPREME COURT**  
**OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of a reference under and in  
terms of article 129 (1) of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka.*

**1. Centre for Policy Alternatives (Guarantee)  
Limited,  
No. 6/5, Layards Road, Colombo 5**

**2. Dr. Paikiasothy Saravanamuttu  
No. 03, Ascot Avenue,  
Colombo 5.**

*Intervenant-Petitioners*

***SC Reference No: 01/2019***

**v.**

**Hon. Attorney General  
Attorney General's Department  
Hulftsdorp, Colombo 12.**

*Respondent (in terms of Article 134 of the  
Constitution)*

**TO: HIS LORDSHIP THE CHIEF JUSTICE, AND OTHER HONOURABLE JUDGES OF  
THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI  
LANKA**

**WRITTEN SUBMISSIONS  
on behalf of Intervenient-Petitioners  
(Centre for Policy Alternatives (Guarantee) Ltd. &  
Dr. Paikiasothy Saravanamuttu)**

1. These submissions are filed prior and in addition to submissions to be made to Your Lordships' Court by Learned Counsel for the said Intervenient-Petitioners, when this matter is taken up for hearing in Open Court.
2. As per the letter dated 9<sup>th</sup> August 2019 by the Registrar of Your Lordships' Court to the President of the Bar Association of Sri Lanka, President Maithripala Sirisena (the incumbent President) had sought an opinion from the Supreme Court under Article 129(1) of the Constitution, on 3 questions which may be summarised as follows:
  - A. In view of the Review Committee failing to submit its report to the President in accordance with S. 3A (13) & (14), of the Provincial Councils Elections Act No 2 of 1988 (as amended), can the President by proclamation publish the new number of electorates, the boundaries and names assigned to such electorates so created in terms of the Report to the Delimitation Commission submitted to the Minister Assigned the subject of Provincial Councils.
  - B. Can elections, for the relevant Provincial Councils be held in terms of the Provincial Councils Elections Act No 2 of 1988 (as amended), after such a proclamation is issued.
  - C. If elections cannot be held in terms of the law as it exists, can such provincial council elections be held under the law that was in force prior to the enactment of Provincial Councils Election (Amendment) Act No 17 of 2017 in view of S. 6(2) of the Interpretation Ordinance.
3. The basic positions articulated on behalf of the Intervenient-Petitioners are that:
  - A. Delay in elections, is a violation of the Sovereignty of the People;

- B. In light of the Review Committee failing to submit its report to the President in accordance with S. 3A (13) & (14), of the Provincial Councils Elections Act No 2 of 1988 (as amended), the President is empowered to issue a proclamation publishing the Report to the Delimitation Committee submitted to the Minister Assigned the subject of Provincial Councils;

AND

- C. If such a proclamation is issued, Provincial Council Elections, for the relevant Provincial Councils should be held immediately and without delay.
- D. Section 6(2) of the Interpretation Ordinance is irrelevant / does not apply to the present circumstances.

### **Background**

4. A brief chronology of material events observed by the said Intervenant- Petitioners pertaining to the Provincial Councils Elections (Amendment) Act No 17 of 2017, is as follows:

26<sup>th</sup> July 2017      A Bill titled “*Provincial Councils Elections (Amendment) Bill*” to provide for a quota of 30% for female candidates on the nomination papers submitted at Provincial Council elections was placed on the Order Paper of Parliament.

22<sup>nd</sup> August 2017      The Speaker informed Parliament that the Supreme Court determined *inter alia* that the aforesaid Bill “is not inconsistent with the provisions of the Constitution and support the equality provisions referred to in Article 12 (4) of the Constitution.”

S.C.(SD) No. 19/2017 “Provincial Councils Elections (Amendment) Bill”

23<sup>rd</sup> August 2017      The Bill titled “*The Twentieth Amendment to the Constitution*” was placed on the Order Paper of Parliament. This proposed Constitutional amendment, sought *inter alia* to:

(a) Give Parliament the power to determine the date (the specified date) on which all the Provincial Councils shall stand dissolved (Provided that, such date shall not be later than the expiration of the term of the last constituted Provincial Council); [Clause 2]

(b) Extend up to the specified date, the term of office of any

Provincial Council ending prior to such specified date;  
[Clause 3]

(c) End on the said specified date, the term of office of any  
Provincial Council which continues beyond such  
specified date; [Clause 3]

19<sup>th</sup> September 2017      The Speaker informed Parliament that, the Supreme Court determined that, Clauses 2, 3 and 4 of the Bill titled “The Twentieth Amendment to the Constitution”, can only become law if approved by 2/3<sup>rd</sup> of the Members of Parliament AND by the People at a referendum.

[S.C. (SD) No. 20/2017 to S.C. (SD) No. 32/2017 “Twentieth Amendment To The Constitution Bill”]

20<sup>th</sup> September 2017      Parliament debated the Bill (titled “*Provincial Councils Elections (Amendment) Bill*”) to provide for a quota of 30% for female candidates and passes it with the support of more than 2/3<sup>rd</sup> of its Members. HOWEVER, the Bill underwent substantial changes during Committee Stage, involving substantial and sweeping provisions that were not in the Bill published, gazette and placed on the Order Paper of Parliament. Thus, substantive provisions that were never considered by Your Lordships’ Court when the Bill was impugned as inconsistent with the Constitution, were introduced.

Thus, the Act that was passed by Parliament in this manner [*i.e.* Provincial Councils Election (Amendment) Act No. 17 of 2017] changed the electoral system for Provincial Council elections from Proportional Representation to a Mixed Member Proportional system and provides for a quota of 25% for women in all Provincial Councils.

22<sup>nd</sup> September 2017      The Speaker certified the Provincial Councils Election (Amendment) Act No 17 of 2017.

On or about 26<sup>th</sup> September 2017      The term of office of the *Sabaragamuwa* Provincial Council came to an end.

04<sup>th</sup> October 2017      The Delimitation Commission was tasked with delimiting new electorates in terms of Section 3A(1) of the Provincial Councils Elections Act (as amended).<sup>1</sup>

---

<sup>1</sup> See pg 2, <https://www.parliament.lk/files/dc/reports/performance-report-delimitation-commission-jan-mar-2018.pdf>

- 18<sup>th</sup> February 2018 The Delimitation Commission submitted its report to the Minister in terms of Section 3A(7) of the Provincial Councils Elections Act (as amended).<sup>2</sup>
- 06<sup>th</sup> March 2018 The Minister tabled the Delimitation Commission Report in Parliament.<sup>3</sup>
- 24<sup>th</sup> August 2018 The Delimitation Commission Report was not approved by Parliament.<sup>4</sup>
- 28<sup>th</sup> August 2018 The Speaker appointed a “Review Committee” headed by the Prime Minister. Media reported that R.M.L.Rathnayake, Periyasami Muththulingam, Professor Balasundaram Pille and Dr. A. S.M. Naufel are the members of the committee.<sup>5</sup>

5. As a result of the far-reaching changes circumventing the possibility of pre-enactment review by Your Lordships’ Court effected at Committee Stage and passed by Parliament on 20<sup>th</sup> September 2017, the Elections Commission has been unable to conduct Provincial Council elections for the respective Provincial Councils as and when they became due. Accordingly, the terms of office of eight of the nine Provincial Councils have lapsed.

6. The approximate amount of time elections have been overdue for each Provincial Council is depicted in the table below;

Provincial Council	Date of Dissolution	Period Election overdue as of 21 <sup>st</sup> August 2019 (approx.)
Sabaragamuwa	2017-09-26	1 year, 11 months
North Central	2017-10-01	1 year, 11 months
Eastern	2017-09-30	1 year, 11 months
Central	2018-10-08	10 months
North Western	2018-10-10	10 months
Northern	2018-10-24	10 months

<sup>2</sup> See [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=180713](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=180713)

<sup>3</sup> <https://www.parliament.lk/en/news-en/view/1579?category=6>

<sup>4</sup> Id.

<sup>5</sup> <https://www.newsfirst.lk/2018/08/28/speaker-appoints-5-member-committee-to-review-delimitation-report/>

Southern	2019-04-10	4 months
Western	2019-04-21	4 months
Uva	2019-10-08	-

7. The present reference by the President takes place in the above backdrop and also in the shadow of impending Presidential elections in December 2019. The Interventient-Petitioners are cognizant of the danger that holding Provincial Council elections at this time could be used as an excuse to delay Presidential elections. Such fears are no excuse to further delay elections to these Provincial Councils.
8. However, the Interventient-Petitioners implore Your Lordships' Court to be mindful of this danger when answering the questions posed by the President and to make it clear that ALL ELECTIONS MUST TAKE PLACE in the time prescribed by law and that DELAY in ANY ELECTION is a violation of the Sovereignty of the People and the provisions of the Constitution itself.

**(A) DELAY IN ELECTIONS, IS A VIOLATION OF THE SOVEREIGNTY OF THE PEOPLE**

9. Article 3 of the Constitution states as follows:

"In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, **fundamental rights and the franchise.**"

10. Article 4(e) of the Constitution provides that:

"The franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors."

11. Your Lordships' Court has in several cases, upheld the position that merely because Provincial Councils and Local Authorities are not specifically mentioned in Article 4(e) of the Constitution, that does NOT mean that voting in those elections are NOT part of the franchise recognised by Article 3.
12. In fact, Your Lordships' Court has specifically and expressly found that since both Local Authorities and Provincial Councils have Constitutional status and exercise

power through the Constitution, voting to elect members to these bodies are part of the Franchise recognised by Article 3 and Article 4(e).

**SC(SD) 20/2017 to SC(SD) 32/2017 - "TWENTIETH AMENDMENT TO THE CONSTITUTION BILL"**

"... Therefore, it is abundantly clear that the Provincial Council within the Province exercise legislative as well as executive powers under the 13th Amendment. Therefore, the exercise of franchise at the election of Members of the Provincial Council comes under Article 4(e). We agree that the Provincial Council has a constitutional status exercising legislative and executive powers pertaining to the subjects devolved on the Provincial Councils."

**Wijesekera v. Attorney General (2007) 1 SLR 38, at pg. 58**

"The right to have a Provincial Council constituted by an election of the members of such Council pertains to the franchise being part of the sovereignty of the People and its denial is a continuing infringement of the right to the equal protection of law guaranteed by law Article 12(1) of the Constitution."

**SC(SD) 12/2003 & SC(SD) 13/2003 - "LOCAL AUTHORITIES (SPECIAL PROVISIONS) BILL"**

"The mere fact that in Article 4(e) there is no reference to elections to Local Authorities does not mean that franchise as contemplated in Article 3 would not extend to elections to Local Authorities. Local Authorities have acquired constitutions status, in particular after the enactment of the 13<sup>th</sup> Amendment, which specifically deals with Local Government as Item 4 in List 1 of the 9<sup>th</sup> Schedule ... in light of these provisions we cannot agree with the submissions of the learned Additional Solicitor General ... The Constitution has to be looked as an organic whole and its terms cannot be fixed to meaning they may have had at the time of enactment."

**Mediwaka v. Dayananda Dissanayake (2001) 1 SLR 177 at pg 209-210**

"It is not disputed that the Petitioners, being registered voters of the Kandy District, had a legal right to vote at that election, and that voting, in the exercise of that legal right, was a form of "expression" guaranteed by Article 14(1)(a), as I held in Karunatileke v. Dissanayake. Provincial Council elections are not expressly mentioned in Articles 4(e) and 93, and it was open to argument that the requirement that elections be "free, equal and by secret ballot" did not apply to such elections. Even though that requirement has not been expressly set out, in my view that requirement is fundamental to any election in any nation which

respects the sovereignty of the People, representative democracy and the Rule of Law. I therefore hold that the right to a free, equal and secret ballot is an integral part of the citizen's freedom of expression, when he exercises that freedom through his right - whether constitutional or statutory makes no difference - to vote."

13. Your Lordships' Court has gone further, to hold that voting at an election is also part of the Fundamental Rights of each citizen and that **an unjustified delay in the right to vote is a violation of Article 14(1)(a) of the Constitution;**

**Karunatilleke v. Dissanayake (1999) 1 SLR 157 at pg. 173-174**

"... A Provincial Council election involves a contest between two or more sets of candidates contesting for office. A voter had the right to choose between such candidates, because in a democracy it is he who must select those who are to govern - or rather, to serve - him. A voter can therefore express his opinion about candidates, their past performance in office, and their suitability for office in the future. The verbal expression of such opinions, as, for instance, that the performance in office of one set of candidates was so bad that they ought not to be re-elected, or that another set deserved re-election - whether expressed directly to the candidates themselves, or to other voters - would clearly be within the scope of "speech and expression"; and there is also no doubt that "speech and expression" can take many forms besides the verbal. But although it is important for the average voter to be able to speak out in that way, that will not directly bring candidates into office or throw them out of office; and he may not be persuasive enough even to convince other voters. **In contrast, the most effective manner in which a voter may give expression to his views, with minimum risk to himself and his family, is by silently marking his ballot paper in the secrecy of the polling booth. The silent and secret expression of a citizen's preference as between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression, than the most eloquent speech from a political platform. To hold otherwise is to undermine the very foundations of the Constitution. The petitioners are citizens and registered voters, and the 1<sup>st</sup> respondent's conduct has resulted in a grossly unjustified delay in the exercise of their right to vote, in violation of Article 14(1)(a).** (emphasis added)

14. In another judgment (delivered in December 2017), Your Lordships' Court chastised the legislature and the executive for delaying elections to Local Authorities. In that situation too, the legislature and the executive sought refuge in the inability to hold elections due to amendments made to the Act in 2012. In **Mohamed Hussain Hajiar Muhammad and others v. The Election Commission of Sri Lanka and others SC FR 35/2016**, Your Lordships' Court stated that:

“... Franchise would mean right to vote and citizens should not be denied of such right or privilege ....

Franchise is a fundamental right enjoyed by people. According to Article 3 of the Constitution..... Franchise is a fundamental right recognized under Article 10 and 14(1) of the Constitution. The failure to hold elections on the due date or postponing is a violation of a fundamental rights of the people. Under Article 4(d) of the Constitution the fundamental rights which are by Constitution declared and recognized shall be respected, secured and advanced by all organs of the Government and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided. In the present case the legislature as well as the executive had violated this Article.” (emphasis added)

15. Such finding of Your Lordships’ Court was made, in the context of the duty cast upon Your Lordships’ Court to make pronouncement where any action(s)/omission(s) of any other organ of government that breaches fundamental rights of People is observed, enabling such organ(s) to take due cognizance thereof, having due regard to the exclusive jurisdiction granted to Your Lordships’ Court pertaining to fundamental rights and the duty to uphold the Constitution, which entails due cognizance of the need to protect and preserve fundamental rights. It is respectfully urged that such continuing role is indispensable for the due preservation and protection of fundamental rights and constitutional compliance.
16. It is clear from the above authorities, that the right to vote at periodic elections is an integral part of the franchise as well was part of fundamental rights of citizens. Continued delay in elections, be they Presidential, Parliamentary, Provincial Council or Local Authorities, thus adversely impacts the Sovereignty of the People and should not be condoned or tolerated in any manner.

**(B) PRESIDENT HAS THE POWER TO ISSUE A PROCLAMATION PUBLISHING THE REPORT OF THE DELIMITATION COMMITTEE SUBMITTED TO THE MINISTER ASSIGNED THE SUBJECT OF PROVINCIAL COUNCILS**

17. As enumerated in the ‘Background’ section of these written submissions, at present the report submitted by the Delimitation Commission, has not been approved by Parliament and a Review Committee has been appointed in terms of Section 3A(12) of the Provincial Councils Elections Act (as amended).
18. In relation to the Review Committee, Section 3A of the Provincial Councils Elections Act further provides that:

- “(13) The Review Committee shall cause any alteration to be made to the names, numbers, and boundaries of any electorate.
- (14) The Review Committee **shall fulfil** its responsibilities and duties in terms of subsection (13), **within two (2) months of the Minister having referred the report for its consideration and thereafter submit its report to the President.**
- (15) Upon the receipt of the report of the Review Committee, the President shall by Proclamation forthwith publish the new number of electorates, the boundaries, names assigned to each electorate so created on the report submitted by the Review Committee.”
19. It should be remembered that it has been almost **one year** since the Review Committee was appointed and there appears to be no sign of a process to make any changes to the report of the Delimitation Commission, let alone submitting a final report.
20. It is respectfully submitted that, the Act envisages the Review Committee to fulfill its responsibilities and submit the report to the President within **two months**. The two month time period is cast in mandatory language (i.e. “shall fulfill”) and it is NOT merely directory.
21. The legislative intention is to **limit the mandate** of the Review Committee for a period of “two months” and not to give an open ended time period for it to function. Since this two month time period has long since lapsed, it is respectfully submitted that the time given for the Review Committee to be able to exercise its mandate has come to an end by the effluxion of time and the failure of the Committee to act in terms of the legal mandate to carry out any functions cannot negate the ability to exercise franchise vis-à-vis Provincial Council elections.
22. In the Indian case of **Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu**, cited in Bindra’s Interpretation of Statutes (Eighth Edition – p. 860), it is stated that:
- “Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment....”** (emphasis added)

23. In **Somawathi De Zoysa alias Kumarasinghe v. Jayasena Fernando** 2005 1 SLR 10, the Supreme Court gave effect to the above principle albeit in a slightly modified manner. The Court opined that;

*"The provisions of a statute must be construed with reference to the context and with due regard to the object to be achieved and the mischief to be prevented. Where two views are possible an interpretation which would advance the remedy and suppress the mischief it contemplates is to be preferred."*

24. There is nothing in the objects of the Act, which suggests that the legislature, having deliberately used the word "shall", only meant the two months to be directory. To read the time period expressed in mandatory language as merely directory would be wholly unreasonable, cause violence to the language of the Act and seriously impair the franchise of citizens. This is because the Review Committee could fail to submit a report and thereby prevent the holding of any Provincial Council elections.
25. It has to be kept in mind that the Provincial Councils Elections (Amendment) Act No. 17 of 2017, was passed in a context where the Supreme Court had already expressly held that delaying elections were a violation of the Sovereignty of the People and any Act of Parliament which would result in such a delay required to be passed by 2/3<sup>rd</sup> majority and a referendum.
26. In this context, several sections of the Provincial Councils Elections (Amendment) Act No. 17 of 2017, specify strict timelines for the delimitation process [See - Section 3A(7), 3A(11), 3A(12) and 3A(14)], thus it would seem that the legislature intended that the delimitation process would be completed as expeditiously as possible in order to prevent a delay in holding elections.
27. As such it is respectfully submitted, that as the Review Committee has failed to submit its report within two months, the committee report is no longer a prerequisite to operate in terms of the Act.
28. In the absence of a functioning Review Committee, the only option is to deem that the President has received the report of the Delimitation Commission and the President can publish the same without alterations in terms of Section 3A (15) of the Provincial Councils Election Act.
29. The President in this situation exercises NO AUTHORITY to make any changes or alterations to the Delimitation Commission Report, the President should immediately and without any delay publish the report as it is.

30. Delimitation is not a legislative function, and accordingly has to be carried out by an independent delimitation committee appointed in terms of the Constitution. That has already been completed.
31. The Delimitation Commission is independent from any political actors (i.e. individuals who are directly involved with political parties and/or who are individuals holding office to which they have to be directly elected by the people) [See Article 41B and Article 95 of the Constitution], this because political actors have a vested interest in the delimitation process. Allowing political actors and politicians control over this process would undermine the possibility of conducting free and fair elections.
32. Though less independent, even the 1946 Soulbury Constitution and the First Republican Constitution of 1972 recognised the importance of not politicizing the delimitation process.
33. In terms of the **Soulbury Constitution** : National delimitation was to be carried out by Delimitation Commissions appointed by the Governor General after each census (Article 40). The delimitation of boundaries of the electoral districts and their naming was to be completed by the Commission and confirmed by the Governor General by Proclamation (Article 43). *The House of Representatives had no involvement in the process.*
34. In terms of the **1972 Constitution** : Delimitation was to be carried out by Delimitation Commissions appointed by the President after each census (Article 77(1)). The delimitation of boundaries of the electoral districts and their naming was to be completed by the Commission and confirmed by the President by Proclamation (Article 80). *The National State Assembly had no involvement in the process.*
35. *Even the Provincial Councils Election (Amendment) Act No 17 of 2017, recognized the danger of partisan politics in the delimitation process, this is why it did not allow for the Delimitation Commission report to be changed by Members of Parliament.*
36. As such it is respectfully submitted that there is no prejudice caused by adopting the report of the independent Delimitation Commission and conducting elections on that basis.
37. To demand that the delimitation process cannot go forward until the Review Committee has submitted a report to the President, violates the sovereignty of the people and would support the proposition that elections could be perpetually suspended. It is respectfully submitted that such an interpretation is not only

contrary to the consistent line of case law of Your Lordships' Court, but would also be absurd and unreasonable.

**(C) PROVINCIAL COUNCIL ELECTIONS FOR RELEVANT PROVINCIAL COUNCILS SHOULD BE HELD IMMEDIATELY AND WITHOUT FURTHER DELAY**

38. All but one of the Provincial Council has been dissolved in terms of Article 154E of the Constitution. Section 10 of the Provincial Councils Elections Act (As amended) requires an election to be called within 04 weeks from the date of such dissolution, a time period which has long since lapsed.
39. As your Lordships' Court held in S.C. (SD) No. 20/2017 to S.C. (SD) No. 32/2017 'delay in exercising the franchise will affect the fundamental rights of voters'. Furthermore, as has been previously submitted to your Lordships' Court [in S.C. (SD) No 9/ 1998 to S.C. (SD) No 14/ 21998 "An Act to Make Provision Enabling The Commissioner of Elections To Fix A New Date Of Poll For Western, Uva, Sabaragamuwa, Central and North Central Provincial Councils Elections"]

"While Article 154E provides for the automatic dissolution of a Provincial Council upon expiry of its five year term of office, no provision is made for a "caretaker" administration. The necessary implication of that, it is urged, is that the Constitution requires prompt elections; to hold otherwise would be to devalue devolution of power"

40. As such, Your Lordships' should point out in Your Lordships' opinion, the duty cast upon the President to immediately and without any further delay issue a proclamation in terms of Section 3A(15) of the Provincial Councils Elections Act and that the Elections Commission must be required to forthwith call for nominations for all respective Provincial Councils.
41. To leave it open to the Executive to decide on the day on which to issue such proclamation, would inevitably cause further delay to elections. Additionally, there could be the possibility of the instrumentalization of Provincial Council Elections to delay other future elections (i.e. Presidential Election).
42. In the given premises, it is respectfully submitted that the only way to protect the franchise and fundamental rights of citizens and thus protect the Sovereignty of the People is to ensure Provincial Council Elections take place as expeditiously as possible in a manner that does not prejudice the ability to duly hold any other future election in a timely manner.

**(D) SECTION 6(2) OF THE INTERPRETATION ORDINANCE DOES NOT APPLY IN THE ATTENDANT CIRCUMSTANCES**

43. In light of the above, it is respectfully submitted that elections for the relevant Provincial Councils can take place under the existing law. Thus, the third question posed by the President becomes irrelevant.
44. However, should Your Lordships' Court deem it pertinent to express an opinion on the said question, the Intervenant-Petitioners respectfully state that Your Lordships' Court should determine that Section 6(2) of the Interpretation Ordinance is irrelevant to the present circumstances.
45. The third question posed by the President relates to Section 6(2) of the Interpretation Ordinance, which provides that:

“Whenever any written law repeals in whole or part a former written law and substitutes therefor some new provision, **such repeal shall not take effect until such substituted provision comes into operation.**”

46. The only situation in which the question of Section 6(2) of the Interpretation Ordinance bearing application becomes relevant, is if the provisions of the Provincial Councils Election (Amendment) Act No 17 of 2017 had *NOT* come into operation.
47. As enumerated in the ‘Background’ section of these written submissions, the Provincial Councils Election (Amendment) Act No 17 of 2017 was certified by the Speaker on **22<sup>nd</sup> September 2017**.
48. According to Article 80(1) of the Constitution, upon certification by the Speaker of Parliament a Bill immediately becomes law.
49. There are several Acts of Parliament which provide that the provisions of the said Act shall come into operation on such post-enactment date as the Minister may appoint. [See Section 1 of Local Authorities Filling of Vacancies (Special Provisions) (Amendment) Act of 2014; Section 2 of Pradeshiya Sabha (Amendment) Act, No. 36 of 2014; Section 1 of Local Authorities (Special Provisions) Act of 1988]
50. There is no stipulation in the Provincial Councils Election (Amendment) Act No 17 of 2017 that the provisions would come into operation on a day other than the day the Speaker of Parliament certifies it.

51. Upon the bill becoming law, in the absence of an express provision which provides otherwise, the provisions of the enacted law come into operation immediately. As such the provisions of Provincial Councils Election (Amendment) Act No 17 of 2017 are in operation.
52. In fact, if the provisions of this law had not come into operation, then the Delimitation Commission could not have engaged in the delimitation process, nor could the speaker have appointed the Review Committee.
53. As such it is respectfully submitted that Section 6(2) of the Interpretation Ordinance is not applicable and/or relevant to the present situation.

### **Conclusion**

54. In the light of the aforementioned considerations and submissions, it is respectfully submitted that Your Lordships' Court in answering the reference of the President be please to opine that:

- A. In light of the Review Committee failing to submit its report to the President in accordance with Section 3A (13) & (14), of the Provincial Councils Elections Act No 2 of 1988 (as amended), the President is empowered to issue a proclamation publishing the Report to the Delimitation Committee submitted to the Minister Assigned the subject of Provincial Councils.

AND

- B. If such a proclamation is issued, Provincial Council Elections, for the relevant Provincial Councils should be held immediately and without delay.

- C. Section 6(2) of the Interpretation Ordinance does not bear application to the present circumstances.

55. The Interventient-Petitioners reiterate the need for Your Lordships' Court to be mindful of/alive to the possibility that Provincial Council Elections could be used as a tool to delay Presidential Elections. The Interventient-Petitioners thus respectfully urge that in answering the questions referred for opinion, Your Lordships' Court should **make it clear that ALL ELECTIONS MUST TAKE PLACE at the time prescribed by law and that DELAY in ANY ELECTION is a violation of the Sovereignty of the People and the Constitution itself.**

56. Furthermore, considering the public importance of the scope of this reference and the fact that it deals with an issue which is inextricably linked to the Sovereignty of the People, it is **humbly urged on behalf of the Intervenient-Petitioners, that Your Lordships take appropriate measures to ensure that Your Lordships' opinion is made available to the public, immediately upon being communicated to the President. Your Lordships' attention is respectfully drawn to the fact that there is nothing in Article 129 which prevents such an opinion from being made public, or which requires such opinion as has been sought by the reference currently before Court to remain a secret.**

57. This is especially so, as any citizen concerned with the right of franchise ought to have the benefit of such opinion in order to better and more effectively pursue, assert and canvass the citizens' rights of franchise, including through the fundamental rights jurisdiction of Your Lordships' Court under Article 126 of the Constitution.

***On this 21<sup>st</sup> day of August 2019***

**Registered Attorney-at-Law for the  
Intervenient-Petitioners**

*Settled by:*

**Ms. Inshira Faliq**

**Mr. Luwie Ganeshathasan**

**Ms. Bhavani Fonseka**

**Mr. Viran Corea**

**Attorneys-at-Law**