



CENTRE FOR POLICY ALTERNATIVES

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CPA Statement On The Termination Of The State Of Emergency

27th August 2011, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) welcomes the announcement made by the President to Parliament on 25th August 2011 that the government will not be seeking an extension to the state of emergency when it lapses by operation of law in September. Since the end of the war in 2009, the need for an expeditious termination of the state of emergency has been a key concern of civil society. For a generation of Sri Lankans, the state of emergency has been the norm rather than the exception, and this has had a debilitating impact on democracy, governance and the enjoyment of freedom.

It is pertinent to recall here the deeper political problems that resulted in extra-institutional and armed challenges to the authority of the state since the 1970s, which in turn necessitated the use of these powers for protracted periods. Terrorism and other violent methods, while wholly deplorable, need to be understood in the context of their causes, and in post-war Sri Lanka we are yet to overcome the political challenges of securing peace, unity and diversity through a more equitable sharing of power and through a consolidation of democracy under the rule of law. We are firmly of the view that without addressing these underlying issues relating directly to the democratic legitimacy of the state, conflicts necessitating the reintroduction of states of emergency are likely to arise again. The positive aspects of the termination of the state of emergency therefore need to be viewed against a broader historical, political and constitutional context, and of particular importance in this regard is the urgent need for a new post-war constitutional settlement that can ensure that the causes of past conflict are not reproduced in the future. We call upon the government to approach this fundamental challenge with sincerity, magnanimity and seriousness of purpose, and with a more tolerant appreciation of Sri Lanka's plural society than has characterised its efforts in this regard so far.

The relaxation of the state of emergency is also an opportunity to revisit the serious deficiencies of the constitutional and legal framework in relation emergency and anti-terrorism powers that we have experienced in the last four decades. The present procedural and substantive framework of emergency

powers is set out in Chapter XVIII of the Constitution and in the Public Security Ordinance. This framework fails to meet contemporary international standards and fundamental principles of democracy and the rule of law in a number of respects. These include: the undefined nature of a state of emergency; the lack of legally established preconditions for a declaration of an emergency; the preclusion of judicial review over several aspects of emergency decision-making and executive action; the absence of statutory substantive controls such as proportionality on the exercise of emergency powers (including Emergency Regulations which override all law except the constitution); the weaknesses of the procedure for extension of a state of emergency and the general failure of parliamentary and judicial oversight; and the weaknesses of the constitutional bill of rights which allow restrictions on fundamental rights without adequate safeguards consistent with democratic standards. All these specific deficiencies in relation to the legal regime of emergency powers need also to be understood in the broader context of the present constitution and culture of governance, in which the executive presidency is given a constitutional pre-eminence at the cost of the separation of powers and checks and balances. Successive parliamentary oppositions have also failed to exercise their role of scrutiny and accountability, and this has contributed to the erosion of the regulatory framework.

In addition, the Prevention of Terrorism Act (PTA), which has been an instrument of repression ever since it was enacted, continues to be in force. It not only fails to meet even basic standards of procedural protection for the individual in relation to criminal responsibility through its provisions on extended detention and admissibility of evidence, but also empowers restrictions on a wide number of other democratic liberties including the freedom of expression. It has been empirically established that the PTA directly facilitates torture and other abusive practices in Sri Lanka. The PTA has no place in a democratic society, and CPA reiterates the call for its repeal and replacement with legislation that balances anti-terrorism powers with democratic freedoms more consistently with established standards, including our own constitutional values.

The continuation in force of the state of emergency for extended periods of time during the past four decades, as well as conflict conditions necessitating extensive recourse to the PTA and Emergency Regulations, have had a pervasive influence on the practices and culture of governance in Sri Lanka. It is not only the executive, but also Parliament, the courts, and indeed society as a whole, that have become accustomed to being governed under extraordinary powers, and without legal restraints that are central to constitutional democracy. Notwithstanding the welcome relaxation of the state of emergency, therefore, the reversion of our culture of government to a more democratic mode will require continued commitment. Unfortunately, however, recent actions of the government such as the Eighteenth Amendment to the Constitution and the post-war expansion of the role of the military and defence establishment into civilian life and civil administration, especially in the North and East, give rise to serious concerns and belie the rhetoric of the President's statement to Parliament.

CPA also notes that the President's parliamentary statement did not include details about the alternative arrangements that are contemplated by the government in relation to the matters hitherto regulated by Emergency Regulations, which will lapse together with the state of emergency. These include the detention of alleged LTTE 'surrendees', the framework for their rehabilitation, aspects of high security zones still in existence, and other matters. In view of the implications for post-war reconciliation of many of these matters, it is imperative that the measures the government intends taking are made public. More generally, we would also call upon the government to adopt a transparent and consultative approach to any legislation it may bring in relation to national security and terrorism in the future.

While welcoming the long overdue termination of the state of emergency, therefore, CPA would strongly reiterate the critical need for continued commitment on the part of the government to legal and constitutional reforms that are imperative if, in addition to the government's priorities of economic development, democracy, peace, order and good government are to form the basis of Sri Lanka's post-war future.