



CENTRE FOR POLICY ALTERNATIVES  
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## Action required for promoting openness in the 100-day reform process and the consolidation of constitutional democracy

**10 February 2015, Colombo, Sri Lanka:** The Centre for Policy Alternatives (CPA) welcomes the general direction of the government's 100-day reforms programme that is currently underway. After decades of intolerable battering, Sri Lanka's democratic procedures and institutions are badly in need of reform and rejuvenation. In terms of broad principles, we unhesitatingly support the abolition of the executive presidential system, the re-establishment of the Constitutional Council and the independent commissions, freedom of information legislation, and the reform of the parliamentary committee system. We are also of the view that further reforms must follow in the next Parliament to consolidate democracy and pluralism, including major changes to our framework of devolution and power-sharing, and the protection of fundamental human rights.

However, as the new government reaches the completion of its first full month in office, we are increasingly concerned that there is virtually no detailed information available in the public domain with regard to how the reform process is being conducted within the government, or about how substantive proposals are evolving within Cabinet, Parliament, and the National Executive Council. Constitutional reform is not a matter exclusively for government and political parties especially in a long-standing democracy like Sri Lanka, and it is crucial that the public are kept fully informed about how the form and substance of the reforms are negotiated among parliamentary parties.

While conscious of the pressures of time and resources in rapidly enacting the programme for which President Sirisena obtained a clear mandate, we feel that more can be done to share and disseminate information, to encourage public participation and consultation, and to ensure the transparency of decision-making in regard to the reform process. We note that the full potential of information and communication technologies in particular, very removed from how they were creatively leveraged to stimulate public debate during the election campaign, are not being exploited as well as they could towards these ends, and more broadly, the nature and form of the current process does not meet even basic standards in respect of transparency and participation established by international constitution-making best practice.

Following best practice ensures the necessary balance between the orderliness of the process and the critical need for democratic participation. At the absolute minimum, we insist the government must publish the final Nineteenth Amendment Bill and provide at least two weeks for public debate before presentation to Parliament.

The reform proposals would undoubtedly be qualitatively improved by being subjected to open discussion, critique, and review. We also strongly believe that the durability and legitimacy of the reforms would be enhanced if the public are not only consulted on the way their governing arrangements are being changed, but if their views are seen to be actively taken into account. This

will moreover lessen the scope for self-interested political opposition to the reforms, and it is in the interests of the people of Sri Lanka that the reform process is not derailed in any way.

In this regard, it is important to stress that it is government's primary responsibility to reach out to the substantial part of the electorate that voted for the losing candidate in the presidential election. Without compromising the integrity of President Sirisena's mandate, or diluting the need and desire of the majority of Sri Lankans for good governance reforms, all sections of public opinion must be engaged and included in building the new Sri Lankan political culture and its structures of constitutional democracy. In addition to the mandate for constitutional reform, the last presidential election engendered a rich public discourse about democracy and good governance. This must not only continue, but in the true spirit of the mandate, the government must ensure respect for the views of the public by taking immediate measures to improve the transparency of the process and public participation in it.

Beyond the 100-day process, there have also been a number of other developments that are potentially of cause for concern from the perspective of the fundamental democratic and constitutional principles that the new government was elected to re-establish. While there was no doubt whatsoever about the illegality and the illegitimacy of Mohan Peiris occupying the office of Chief Justice, we are concerned that the manner of his removal has given rise to apprehensions about its consequences for the appropriate relationship between the executive and the judiciary. This precedent may be used for less justifiable ends in the future. But more immediately, there is an air of technical artifice adhering to the course of action adopted by the government and the Bar Association. While no doubt strictly legal, it must be remembered that public perceptions about the legitimacy of decisions and procedures are equally important in a democracy. These doubts could have been avoided had the government at least secured a parliamentary resolution in favour prior to removing Peiris from office, even if a more rigorous procedure was considered impracticable. Securing such consensus within Parliament would have paid rich dividends by conferring an unassailable legitimacy upon the removal beyond technical legal rectitude, and eliminating any ground for doubt to arise about the role of the executive and the Bar Association in the process.

Likewise, the investigation of corruption and other malpractices as well as the removal of officials appointed by the previous regime – such as the head of the Commission to Investigate Allegations of Bribery and Corruption – must be done in accordance with the law, and not through street agitation and politicians arrogating to themselves functions reserved for the law enforcement and judicial authorities. Strict procedural and substantive legality must be followed in the investigation and prosecution of all these alleged wrongs. We reiterate the general principle that in the constitutional democracy that the people of Sri Lanka voted to establish in the January election, injustices and grievances must invariably be addressed through appropriate institutional channels and not through methods that can be regarded as little better than mob justice.

While welcoming the several symbolic gestures towards reconciliation that the government has made, including in the Independence Day celebrations, CPA is nevertheless concerned that other measures and practices that have become entrenched during the period of conflict are still being continued. In particular, we believe that there is no justification whatsoever to gazette the mobilisation of the armed forces for law and order functions that should be performed exclusively by the police in peacetime. As domestic constitutional and statutory provisions and Sri Lanka's international obligations under the International Covenant on Civil and Political Rights (ICCPR) envisage it, the calling out of the armed forces in aid of the civil power is only legal, necessary, and proportionate when there is a clear and present danger to the life of the community. CPA cannot see any such necessity in Sri Lanka today.

In this connection, we reiterate our long-standing and consistent call for the repeal of the Prevention of Terrorism Act (PTA), for its replacement where necessary with legislation consistent with applicable international standards, and call upon the government to take the most expeditious steps possible to release the scores of Sri Lankan citizens who have suffered deprivations of liberty for long periods of time, and in most cases torture and ill-treatment, under its unconscionable provisions. CPA also notes that the regulations promulgated under the PTA in lieu of Emergency Regulations continue in force. These are unconstitutional and *ultra vires* and in violation of our ICCPR commitments. They have to be withdrawn forthwith.

CPA hopes that the government will consider these constructive critiques in the spirit in which they are made, and will take steps to address them. Responding meaningfully to these concerns will contribute immensely to the prospects and quality of the reform process, and ensure the irreversibility of substantive reforms in the interests of a peaceful, democratic, plural and united Sri Lanka.

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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.