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

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*In the matter of an application in terms of Article 121 read with Article 120, Article 78 and Article 83 of the Constitution to determine whether the Bill titled "The Twentieth Amendment to the Constitution" or any part thereof is inconsistent with the Constitution.*

1. Centre for Policy Alternatives (Guarantee) Limited,  
No. 6/5, Layards Road,  
Colombo 00500
2. Dr. Paikiasothy Saravanamuttu  
No. 03, Ascot Avenue,  
Colombo 00500

**PETITIONERS**

Supreme Court Special Determination

No. **03** / 2020

Vs

The Attorney General,  
Attorney General's Department,  
Colombo 01200

**RESPONDENT**

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On this 22<sup>nd</sup> day of September 2020

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

The Petition of the Petitioners abovenamed appearing by RAJ MOAHAN BALENDRA practicing in the name style and firm of

SINNADURAI SUNDARALINGAM & BALENDRA

and his Assistants their Registered Attorneys state as follows:

1. The 1<sup>st</sup> Petitioner above named is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No.7 of 2007) and is made up of members, more than three-fourth (3/4<sup>th</sup>) of whom are citizens of Sri Lanka and is entitled to make this application in terms of Article 121(1) of the Constitution.
2. The primary objects of the 1<sup>st</sup> Petitioner are *inter alia* to make inputs into public policy-making and implementation process in constitutional, legislative and administrative spheres to ensure responsible and good governance, and to propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the rule of law, human rights and social justice.

True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the Petitioner are annexed hereto marked '**P1**' and '**P2**' respectively and pleaded part and parcel hereof.

3. The 2<sup>nd</sup> Petitioner is a citizen of Sri Lanka and the Executive-Director of the 1<sup>st</sup> Petitioner above-named.
4. The Hon. Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.
5. The Bill titled "*The Twentieth Amendment to the Constitution*" (hereinafter referred to as "the Bill") was published as a Supplement to Part II of the Gazette of 28<sup>th</sup> August 2020. The said Gazette was only issued on 2<sup>nd</sup> September 2020 and placed on the Order Paper of Parliament on 22<sup>nd</sup> September 2020.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto marked '**P3a**', '**P3b**' and '**P3c**' respectively and are pleaded part and parcel hereof.

6. The long title of the said Bill describes it as "*An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*".

**CLAUSE 5 of the BILL "IMMUNITY OF PRESIDENT FROM SUIT" INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

7. The Petitioners state that Clause 5 of the Bill, derogates from and infringes the provisions of Article 3 of the Constitution.
8. Article 3 of the Constitution provides that:  
"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**".(emphasis added)
9. As such Article 3 recognises *inter alia* that:
  - (a) The Sovereignty is in the People of the Republic (and not in the Republic itself or any instrument of the Republic); and
  - (b) Fundamental Rights and Franchise are part of the sovereignty of the People.
10. Clause 5 of the impugned Bill both on its own and read in the context of the entire Bill negatively impacts the Sovereignty of the people:
  - (a) It removes the direct control the People have over the individual they have elected to hold the office of President by conferring on that individual immunity from suit for any Application in terms of Article 17 and 126 of the Constitution in relation to powers exercised qua President.

- (b) It removes the only effective check and balance on the holder of the office of President during his tenure of office.

**CLAUSE 27 & 28 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

11. Clause 27 and 28 of the Bill, in relation to Bills which are “in the view of the Cabinet of Ministers, urgent in the national interest, and bears an endorsement to that effect under the hand of the Secretary to the Cabinet”, would;
- (a) Prevent the publication of such Bills in the gazette prior to being tabled in Parliament;
- (b) Preclude the citizens from being able to Petition the Supreme Court in terms of Article 121 of the Constitution and negates it;
- (c) Allow the President to directly refer the Bill to the Supreme Court for a “special determination of the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution”.
- (d) Mandatorily require that Your Lordships of the Supreme Court make a determination within 24 hours of assembling the Court or such further time, not exceeding three days, as may be granted by the President.
12. In terms of Article 80(3) of the Constitution once a Bill becomes law upon the certification of the Speaker or the President as the case may be “no Court or tribunal shall inquire into, pronounce upon or in any manner call into question, the validity of such Act on any ground whatsoever”.
13. As such the Petitioners state that the limited pre-enactment review contained in Article 121 of the Constitution, is the only opportunity citizens will have to canvass the constitutional validity of a Bill / Act enacted by Parliament.
14. Clause 27 and 28 of the Bill thus derogates from and infringes the provisions of Article 3 of the Constitution.

**CLAUSE 6 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

15. Clause 6 of the Bill repeals the entire Chapter VIIA of the Constitution and replaces it with a new Chapter VIIA.
16. The Petitioners state that the main impact of the proposed Clause 6 would be to *inter alia* abolish the “Constitutional Council” and replace it with a “Parliamentary Council”. The Parliamentary Council;
- (a) Will only be made up of Members of Parliament, most likely only representing the Political party / coalition in government and main opposition party / coalition in Parliament.

- (b) Can only make “observations” and cannot make binding recommendations or approve the nominations made by the President. The President can disregard or completely ignore the “observations” of the Parliamentary Council.
  - (c) Will any way be under the full control of the President as the President has the power, to at any time remove three (the Prime Minister, the nominee of the Prime Minister and the nominee of the Leader of Opposition) out of the five Members of the Parliamentary Council for any reason [*proposed Article 47(a) of Clause 6 of the Bill and proposed Article 41(A)(7) of Clause 6 of the Bill*]
17. As observed by Your Lordships’ Court, the purpose of the Constitutional Council was to enhance the sovereignty of the People. The Constitutional Council, which was constitutionally mandated to endeavour to make its decisions “unanimously” provided a pluralistic and consultative approach to appoint individuals to key institutions which are required to function independent of the Executive.
18. The structure and powers of the Parliamentary Council allows the individual holding the office of President unfettered discretion to make appointments as she/he wishes, to these positions.
19. As recognized in a continuous line of judicial authorities of Your Lordships’ Court “our Law does not recognise that any public authority, whether they be the President or an officer of the State or an organ of the State, has unfettered or absolute discretion or power”.
20. Thus, the Petitioners state that the provisions in Clause 6 of the Bill derogates from and infringes the provisions of Article 3 of the Constitution.

**CLAUSE 19, 20, 21 AND 22 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

21. Clause 19, 20, 21 and 22 all pertain to a reduction of the powers of the Independent Election Commission.
22. Clause 6 of Bill grants the President absolute authority to appoint at his discretion the Members of the Elections Commission;
23. The cumulative effect of these provisions would *inter alia* include;
- (a) Removal of the power of the Election Commission to issue guidelines pertaining to any matter relating to the Public Service during the period of election to ensure a free and fair election.

- (b) Repeal of **Article 104GG** of the Constitution which makes it **an offence** for any public officer or any employee of a public corporation, business or undertaking vested in the Government to not fail to comply with the Election Commission to secure the enforcement of any law relating to the holding of an election or the conduct of a Referendum, or a failure to comply with any directions or guidelines issued by the Commission.
  - (c) The amendment as a whole denudes the ability of the Elections Commission to conduct a “free and fair election”
24. As Your Lordships’ Court has continuously held, the franchise of the People as recognized in Article 3, includes the right to a “free and fair election”.
25. Thus, the provisions in Clause 6, 19, 20, 21 and 22 of the Bill as they pertain to the ability of the Elections Commission to function effectively and independently, derogates from and infringes the provisions of Article 3 of the Constitution.

**CLAUSE 7 AND 14 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

26. Clause 7 of the Bill repeals the entire Chapter VIII of the Constitution and replaces it with a new Chapter VIII.
27. The proposed Clause 7 would *inter alia*;
- (a) Remove the security of tenure of the Prime Minister, as long as she/he holds the confidence of Parliament and makes the position of Prime Minister one of that which serves at the pleasure of the President.
  - (b) Remove the constitutional requirement that the President has to act on the advice of the Prime Minister when appointing from among Members of Parliament, Ministers, to be in charge of the Ministries determined by him.
  - (c) Remove the constitutional requirement that the President has to act on the advice of the Prime Minister when appointing from among Members of Parliament, Ministers who shall not be members of the Cabinet of Ministers.
  - (d) Remove the constitutional requirement that the President has to act on the advice of the Prime Minister when appointing from among Members of Parliament, Deputy Ministers to assist Ministers of the Cabinet of Ministers in the performance of their duties.
  - (e) Remove the constitutional requirement that the President has to act on the advice of the Prime Minister when removing a Minister of the Cabinet of Ministers, a Minister who is not a member of the Cabinet of Ministers or a Deputy Minister.
  - (f) Remove the constitutional limitations on the total number of Ministers of the Cabinet of Ministers, the number of Ministers who are not members of the Cabinet of Ministers and Deputy Ministers.

28. Clause 14 of the Bill would enable the President to decide when to dissolve Parliament at any time after the lapse of one year from the date of the last General Election, except in certain limited situations.
29. The cumulative impact of Clause 14 and Clause 7 of the Bill is that the President will have full control over Parliament, given the full power to co-opt any of its Members to the executive and to determine when Parliament should be dissolved.
30. If these provisions are enacted, Parliament would not be in a position to act as an effective check and balance over the President. Thus, the proposed amendments **violate the separation of powers**, which underpins the Constitution, and which is essential to protecting the sovereignty of the People in between two elections.
31. The Petitioners state that thus and otherwise the provisions in Clause 7 & 14 of the Bill derogate from and infringe the provisions of Article 3 of the Constitution.

**CLAUSE 16 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND/ OR ARTICLE 83 OF THE CONSTITUTION**

32. Clause 16 of the Bill, gives the President the power to submit to the People by way of a referendum any Bill (which is not a constitutional amendment), which has been rejected by Parliament.
33. Clause 16 provides that;  
  
“Article 85 of the Constitution is hereby amended by the insertion, immediately after paragraph (1) of that Article, of the following paragraph:-  
  
“(2) The President may in his discretion submit to the People by Referendum any Bill (not being a Bill for the repeal or amendment of any provision of the Constitution, or for the addition of any provision to the Constitution, or for the repeal and replacement of the Constitution, or which is inconsistent with any provision of the Constitution), which has been rejected by Parliament.”
34. The said Clause;
  - (a) Amends the provisions of Article 83 of the Constitution;
  - (b) Is contrary to, and inconsistent with, Article 3 of the Constitution as it removes a facet of the legislative power of the people from the Members of Parliament elected by the People and places it with the President.
35. The Petitioners state that thus and otherwise the provision in Clause 16 of the Bill derogates from and infringes the provisions of Article 3 and/or 83 of the Constitution.

**CLAUSE 17 OF THE BILL INFRINGES/DEROGATES FROM ARTICLES 3 AND 4 OF THE CONSTITUTION**

36. Clause 17 repeals Article 91(1)(d)(xiii) of the Constitution which provides that “a citizen of Sri Lanka who is also a citizen of any other country” is disqualified from being elected as Members of Parliament. By virtue of Article 92(b) this provision also disqualifies such a person from being elected as President of the Republic.
37. The proposed clause will remove the constitutional restriction of dual citizens from contesting elections for the post of President and to be elected a Member of Parliament. Thus, it will allow for citizens of another country who may have assets in and loyalties to another country holding elected office in Sri Lanka.
38. Such a clause will allow individuals with divided loyalties and interests being elected to key offices in Sri Lanka, result in situations where conflict may arise and questions as to whether priority will be given to the interest of Sri Lanka and Sri Lankans or to the other country of citizenship.
39. The Petitioners state that Clause 17 of Bill derogates from and infringes the provisions of Article 3 of the Constitution.
40. The provisions of the impugned Clauses 5,6,7,14,16, 17, 19, 20, 21, 22, 27 and 28 of the Bill are thus and otherwise contrary to, and inconsistent with, Article 3 of the Constitution and /or the provisions of the impugned Clause 16 of the Bill are thus and otherwise contrary to, and inconsistent with, Article 83 of the Constitution.
41. It has thus become necessary for the Petitioners to invoke the jurisdiction of Your Lordships’ Court, and to respectfully seek a Determination that;
  - (a) The provisions of the impugned Clause 5, Clause 6, Clause 7, Clause 14, Clause 16, Clause 17, Clause 19, Clause 20, Clause 21, Clause 22, Clause 27 and Clause 28 of the Bill titled “*The Twentieth Amendment to the Constitution*” and/or the said Bill as a whole are contrary to, inconsistent with and derogate from Article 3 of the Constitution.
  - (b) The provisions of the impugned Clause 16 of the Bill titled “*The Twentieth Amendment to the Constitution*” and/or the said Bill as a whole is contrary to, inconsistent with and derogate from Article 83 of the Constitution.
  - (c) The provisions of the impugned Clause 5, Clause 6, Clause 7, Clause 14, Clause 16, Clause 17, Clause 19, Clause 20, Clause 21, Clause 22, Clause 27 and Clause 28 of the Bill titled “*The Twentieth Amendment to the Constitution*” and/or the said Bill as a whole are required to be enacted in terms of Article 83 of the Constitution.
42. The Petitioners respectfully reserve the right to furnish such further facts and documents in support of the matters set out herein at the hearing should the Petitioners become possessed of any such material.

43. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
44. An affidavit of the 2<sup>nd</sup> Petitioner is appended hereto in support of the averments contained herein.

**WHEREFORE** the Petitioners respectfully pray that Your Lordships' Court be pleased to:

- (a) Determine that Clause 5 and/or Clause 6 and/or Clause 7 and/or Clause 14 and/or Clause 16 and/or Clause 17 and/or Clause 19 and/or Clause 20 and/or Clause 21 and/or Clause 22 and/or Clause 27 and/or Clause 28 of the Bill titled "*The Twentieth Amendment to the Constitution*" and/or the said Bill as a whole are thus and otherwise contrary to and/or inconsistent with the provisions of Article 3 of the Constitution;
- (b) Determine that the provisions of the impugned Clause 16 of the Bill titled "*The Twentieth Amendment to the Constitution*" and/or the said Bill as a whole is contrary to, inconsistent with and derogates from Article 83 of the Constitution.
- (c) Determine that Clause 5 and/or Clause 6 and/or Clause 7 and/or Clause 14 and/or Clause 16 and/or Clause 17 and/or Clause 19 and/or Clause 20 and/or Clause 21 and/or Clause 22 and/or Clause 27 and/or Clause 28 of the Bill titled "*The Twentieth Amendment to the Constitution*" and/or the said Bill as a whole are thus required to be enacted in terms of Article 83 of the Constitution.
- (d) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

*Sgd. Sinnadurai Sundaralingam & Balendra*

**REGISTERED ATTORNEYS FOR THE PETITIONERS**

**DOCUMENTS ANNEXED TO THE PETITION**

Documents marked "P1" to "P3(c)"

*Sgd. Sinnadurai Sundaralingam & Balendra*

**REGISTERED ATTORNEYS FOR THE PETITIONERS**