



CPA STATEMENT ON CONSTITUTIONALITY OF THE SLPP NATIONAL LIST APPOINTMENT

7th July 2021, The Centre for Policy Alternatives (CPA) is concerned by several media reports that the Sri Lanka Podujana Peramuna (SLPP) has appointed Mr. Basil Rajapaksa to fill the National List seat which fell vacant by the resignation of Mr. Jayantha Ketagoda. CPA notes that Mr. Basil Rajapaksa's name was not included in the list of persons qualified to be elected as Members of Parliament, in terms of Article 99A of the Constitution (the "National List") or any of the district lists submitted by the SLPP for the Parliamentary Election held in August 2020.

Mr. Basil Rajapaksa's appointment, is especially egregious because at the time of the last Parliamentary election, Mr. Basil Rajapaksa was disqualified from being elected as a Member of Parliament by virtue of his dual citizenship (Mr. Basil Rajapaksa is a citizen of the United States of America and also of Sri Lanka). As such the appointment of Mr. Basil Rajapaksa to fill this vacancy undermines the sovereignty of the people and violates the Constitution of Sri Lanka.

CPA's position is that in terms of the Constitution only a person whose name was included in one of the district nomination papers or national list submitted by the relevant political party, is entitled to be nominated to fill such a vacancy. CPA has maintained this position consistently and has raised concern when such appointments were made previously, including by challenging several such appointments in Court. More recently CPA filed a case [challenging](#) the National List appointment of Mr. Sarath Fonseka by the United National Party (UNP) in 2016. In that case the Supreme Court refused to grant leave to proceed, but no substantive order was issued. In January 2020, CPA [criticised](#) the appointment of Mr. Saman Rathnapriya in a similar manner.

CPA notes that the UNP, United People's Freedom Alliance / People's Alliance have on previous occasions made similar appointments to Parliament. These political parties hide behind Section 64 (5) of the Parliament Elections Act No 1 of 1981, which authorizes them to appoint "any member" of the political party to fill such a vacancy. CPA states that the said provision of the Parliament Elections Act violates the clear and unambiguous provisions of the Constitution, particularly Article 99A and Article 101(H). Section 64 (5), although clearly unconstitutional, remains valid only because the Sri Lankan Constitution does not allow the Supreme Court to review the constitutionality of legislation once it is passed by Parliament.

Section 64 (5), was enacted in 1988 as part of an urgent Bill. The Supreme Court heard the case on the 18th April 1988 and by the 21st April 1988, the determination of the Supreme Court had been read out in Parliament. This constitutionally mandated limited time frame is grossly insufficient to consider the future implications of such an important Bill.

It has to be remembered that the 20th amendment to the Constitution reintroduced this urgent bill provision (with some minor changes) which had been abolished by the 19th amendment.

The practice of appointing “any member” of a political party, who was not nominated at the relevant election, violates the franchise of the people which is part of the sovereignty of the people (Article 3 of the Constitution). If as the Constitution suggests the people are indeed the sovereign of the Republic, then the people should know before an election who the political party intends to appoint to Parliament.

Allowing political parties to appoint whomever they wish to fill vacancies which are engineered for that purpose, undermines the value of the franchise of the people and unnecessarily and arbitrarily inflates the power of the leadership of political parties. CPA thus calls on the SLPP and all other political parties to respect the provisions of the Constitution and the franchise of the people. CPA also calls upon all political parties representing Parliament to take steps to amend Section 64 (5) of the Parliament Elections Act, in order to bring it in line with Article 99A and Article 101(H) of the Constitution.