



CENTRE FOR POLICY ALTERNATIVES
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CPA Statement on the Government's Twenty-Second Amendment to the Constitution Bill

30th June 2022: The Centre for Policy Alternatives (CPA) notes the publication of the Twenty-Second Amendment to the Constitution Bill (the Bill) [Part II of the Gazette of 24th June 2022, supplement issued on 29.06.2022]. The Bill, gazetted as the Twenty-Second Amendment if enacted will become the Twenty-First Amendment to the Constitution. The Bill is the government's institutional reform response to the unprecedented mass protests and the loss of confidence both by the citizens of Sri Lanka and international partners in our system of governance.

CPA notes that the Bill does not curtail the powers of the President nor introduce checks and balances in any meaningful manner, contrary to the demands of the people of Sri Lanka. In the absence of any genuine attempt to address the inherent problems of governance, this attempt at reform will only worsen the existing political and economic crisis and destroy whatever little remaining faith citizens might have in constitutional governance.

CPA has carefully considered the contents of the Bill and notes that the Bill does not revert the Constitution to the structure of government that prevailed under the Nineteenth Amendment (2015-19). The Minister of Justice had proposed two previous versions of this Bill (one as a Private Member's Bill). The present gazetted Bill represents a significant weakening of the previous limited proposals by the Minister of Justice and leaves intact the unchecked powers of the Executive President.

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For example, the composition of the proposed Constitutional Council (the Council) has been significantly diluted from what prevailed under the Nineteenth Amendment. The proposed composition of the Council favours the government and enables the government to control or influence 7 of the 10 members. Thus, it is CPA's view that the Council is merely an expanded version of the Parliamentary Council that exists under the Twentieth Amendment. The original intent behind the creation of the Constitutional Council under the Seventeenth Amendment, which was to de-politicise governance, involved two methods: one was to ensure a majority representation in the Council for non-politicians, and the other was to remove government dominance over the political members. The composition of the Council proposed in the Bill achieves none of those objectives and in turn, undermines the independence of the institutions to which appointments are made through the Council.

Whilst some effort has been made to curtail the President's powers in relation to the appointment and removal of the Cabinet of Ministers, these have all been rendered ineffective by the transitional provisions that make them applicable only from the next Parliament. Furthermore, the President will be able to appoint all Secretaries to Ministries at his own discretion. This again protects the executive power concentrated in the office of the President.

The present economic crisis is the historic result of unwise acts and omissions of successive governments. These were exacerbated by the actions of the present holder of the office of the President, who arrogated more power to himself through the Twentieth Amendment and fatally undermined even the weak checks and balances and the separation of powers implemented by the Nineteenth Amendment to the Constitution. The governance record of incompetence, negligence, and corruption since the incumbent's election in 2019 has a direct and causal relationship to the unprecedented economic catastrophe that has been visited upon our country. It is a record that has been institutionally enabled not merely by the Twentieth Amendment, but by the presidential system as a whole, which by symbolising the absence of the value of accountability at the heart of our constitutional order, persistently undercuts democracy.

The only appropriate institutional reform response to this unprecedented disaster through constitutional reform is the complete abolition of the executive presidential system and the return to a full parliamentary constitutional democracy. Since its inception, CPA has been of the strong view that the executive presidency has to be abolished, and CPA has consistently opposed attempts to enhance the power of the office. Unless and until the unbridled and unchecked powers of the executive presidency are abolished and replaced with a Cabinet executive; representative of and responsive to Parliament, it would be impossible to make the necessary decisions to resolve the present economic crisis.

CPA especially notes that with the difficult choices that need to be made in the short-term to prevent the further collapse of the economy, decision-making by the government needs to be transparent, accountable, and accommodate diverse opinions. The diversity of perspectives is critical to ensuring both the technical competence of the economic response, but also its responsiveness to the needs and the plight of the most vulnerable sections of Sri Lankan society that have been disproportionately affected by the economic collapse. Arbitrary and hasty decision-making, as evident in recent times, would lack adequate policy reflection and legitimacy, and could result in aggravating social discontent and be subject to repeated reversals like many of the present government's main policy decisions. It must also be noted that the rhetoric used to usher in the Twentieth Amendment in 2020 that called for unilateralist and centralised executive decision-making for economic development is directly linked to the present crisis and such a model must be unequivocally rejected. Considering the multiple challenges confronting Sri Lanka, Sri Lanka's economic recovery cannot and must not be yet again based on a heavy executive decision-making governance model.

For these reasons, it is clear from the perspective of both constitutional principle and constitutional design that the Bill is not in any sense a meaningful contribution to the necessary institutional reform that must be part of Sri Lanka's economic recovery.

It is at best a futile effort in window-dressing to show the government's intent for change, however, these 'token' reforms have no capacity to create a significant positive impact on Sri Lanka or its people. The need of the hour is for comprehensive reforms that can address the present crisis and ensure that it does not and cannot be repeated in the future. To that end, this Bill must be rejected.