

3rd December 2024

Centre for Policy Alternatives (Guarantee) Limited
6/5, Layards Road,
Colombo 5
Sri Lanka

Hon. Harshana Nanayakkara
Minister of Justice and National Integration
No. 19
Sri Sangaraja Mawatha
Colombo 10.

Dear Sir,

Following the Presidential and Parliamentary elections, the National People's Power (NPP) has been entrusted with a significant mandate by the people of Sri Lanka, presenting you with the opportunity to drive key reforms to restore public trust, transparent governance, justice, and accountability. On behalf of the Centre for Policy Alternatives (CPA), I am writing to you to **urge immediate attention to the law and policy reforms within the areas of justice and national integration.**

The *Aragalaya* highlighted the critical need for comprehensive governance reforms, drawing attention to long-standing public demands for decisive measures against corruption and the pervasive lack of accountability that have severely undermined trust in state institutions. In this context, CPA and other stakeholders have repeatedly underscored the urgent need to address issues such as greater transparency and accountability, executive overreach, the politicisation of institutions, and the entrenched culture of impunity.

Moreover, the inability and unwillingness of successive governments to address the underlying causes of conflict has further entrenched societal divisions, intensified surveillance, and increased the risk of both reigniting existing conflicts and sparking new tensions. Of particular concern is the use of the Prevention of Terrorism Act (PTA) on several occasions, between October and December 2024, which raises questions about the NPP's campaign pledge to repeal oppressive legislation, including the PTA.

Considering the promises made during the campaign period and the massive mandate for reforms, CPA believes it is critical to initiate progressive reforms. CPA emphasises the importance of engaging with diverse stakeholders in a transparent manner in shaping reform processes. Collaborative approaches that take into account diverse perspectives can significantly enhance the effectiveness and sustainability of reform initiatives.

In this regard, annexed to this letter are several areas where CPA believes intervention is required. These areas have been categorised under a four-fold framework of **(1) Governance and Accountability, (2) Law-Making, (3) Reconciliation, and (4) Legal reforms and addressing Structural Inequalities.**

CPA urges your ministry to prioritise these areas for intervention in the upcoming legislative and policy agenda and hope that immediate steps will be taken to build a system of justice that reflects the aspirations of all citizens. CPA also welcomes an opportunity to discuss these matters further and offers our continued support in implementing the necessary reforms.

Looking forward to your response and to seeing positive steps toward transformative action in the justice sector.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Dr. Paikiasothy Saravanamuttu', written in a cursive style.

Dr. Paikiasothy Saravanamuttu
Executive Director

Interventions Required in the Legal and Policy Agenda

Governance and Accountability	
Strengthening the Independence of the Judiciary	<ul style="list-style-type: none"> ● Specifying criteria to be followed by the President and the Constitutional Council when making appointments to apex courts. ● Ensure that transparent criteria are adopted by the President when nominating individuals to be appointed as judges. ● Encourage the Constitutional Council to develop rules which set out the criteria and process adopted by the Council when deciding whether or not to approve the nominations made by the President. ● Need for legislation establishing a clear, fair process for the removal of Judges of the Supreme Court and Court of Appeal.
Office of the Independent Public Prosecutor	<ul style="list-style-type: none"> ● Establish an Office of the Independent Public Prosecutor to ensure accountability.¹
Emblematic Cases	<ul style="list-style-type: none"> ● Ensuring transparent investigations and accountability in high-profile cases remains critical to restoring public trust. This includes expediting investigations into cases such as the Easter Sunday Attacks and several other emblematic cases.²
Strengthening Anti-Corruption Measures	<ul style="list-style-type: none"> ● Establishing a strong Mutual Legal Assistance (MLA) framework, including addressing the pending MLA requests from 2019-2022. ● Implementation of newly available legal concepts such as civil forfeiture and plea arrangement mechanisms in Sri Lanka, especially with these concepts now being legally recognised through the Anti-Corruption Act No. 9 of 2023.³

¹ See the following document with clear action points: “Rethinking Attorney General’s Department in Sri Lanka: Ideas for Reform” (CPA, November 2020). <https://www.cpalanka.org/wp-content/uploads/2020/11/AGs-Dept-Final.pdf>

² “Elusive Justice and Emblematic Cases in Sri Lanka” (CPA, March 2023). <https://www.cpalanka.org/wp-content/uploads/2023/04/Elusive-Justice-and-Emblematic-Cases-in-Sri-Lanka-Book-Online-Version-1.pdf>

³ “Advocacy Report on Understanding Interconnections between Human Rights and Economic Crimes in Sri Lanka: Exploring Issues and Potential Ways Forward” (CPA, March 2024). <https://www.cpalanka.org/wp-content/uploads/2024/03/Economic-Crimes-Advocacy-Report.pdf>

Law-making	
Law-Making Process	<ul style="list-style-type: none"> ● Address deficiencies in Sri Lanka's law-making process, which includes: <ul style="list-style-type: none"> ○ Enhancing transparency in the legislative process, particularly to ensure public consultations before a Bill is gazetted. ○ Extend the deliberation period between the 1st and 2nd readings of a Bill in Parliament for thorough review. ○ Amend Standing Orders of Parliament to clarify that the time period the Supreme Court has to review the constitutional consistency of a Bill is 3 weeks from the filing of the last Petition challenging the Bill. ○ Constitutional amendment that ensures post-enactment judicial review of legislation.
Reconciliation	
Returning land to the rightful owners	<ul style="list-style-type: none"> ● Full implementation of the 13th Amendment to the 1978 Constitution, with land-related policies being instituted by a National Land Commission and greater independence delegated to Provincial Councils. ● Return all private land occupied in the Northern and Eastern Provinces where acquisition has not been completed ● Restitution of lands unjustly acquired and a comprehensive reparations package for those negatively affected by State land acquisitions in the preceding decades. ● Adherence to the National Involuntary Resettlement Policy (NIRP) which Sri Lanka adopted in 2001, in all instances of land acquisitions ● Review land acquisitions for a 'public purpose' and ensure transparency and accountability. Relevant line ministries to ensure adequate scrutiny over development projects harmful to people and the environment.⁴
Release of Political Prisoners	<ul style="list-style-type: none"> ● Persons who have been detained for a prolonged period without any charges should be released.

⁴ The Intersectional Trends of Land Conflicts in Sri Lanka (CPA, August 2024), <https://www.cpalanka.org/the-intersectional-trends-of-land-conflicts-in-sri-lanka/#:~:text=CPA%20recognises%20a%20series%20of,making%20objectives%20of%20private%20entities.>

	<ul style="list-style-type: none"> • Cases where persons against whom the only evidence to be used in criminal cases are their own confessions, should be reviewed, and such individuals should be released. • Review and issue pardons for cases where the individual has been convicted only on the basis of his confessions obtained in terms of the Prevention of Terrorism Act.
Office of the Missing Persons (OMP) and Mass graves	<ul style="list-style-type: none"> • Ensure the OMP can function independently, including in terms of adequate funding, and protected from political interference. • Appoint commissioners and recruit staff who are able to act independently in the furtherance of the full mandate of the OMP. • Ensure that the OMP has the necessary resources to develop a specialised forensic team that is able to contribute towards the excavation and exhumation of mass graves, and takes primary responsibility for identification of remains, with the Magistrate Court having territorial jurisdiction. • Strengthen the overall forensic investigation capacity and expertise of the state, including the JMO, Government Analyst and others.
Truth and Reconciliation	<ul style="list-style-type: none"> • Review the need for the Office of National Unity and Reconciliation as it fails to address the concerns of victims and raises concerns about whether it is a genuine effort implemented to achieve reconciliation. • Review existing literature including the report of the Consultation Task Force that has provided clear areas requiring action.
Law Reforms and addressing Structural Inequalities	
Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA) and the Anti-Terrorism Bill	<ul style="list-style-type: none"> • Repeal of the PTA in its present form, and its replacement, if necessary, with legislation that is consistent with international anti-terrorism standards reflected in relevant United Nations instruments and comparative constitutional practice. • An immediate moratorium on the use of the PTA is required until the necessary legal reforms take place.
Online Safety Act No.9 of 2024 and Proposed Amendments	<ul style="list-style-type: none"> • Repeal the Online Safety Act No. 9 of 2024 and initiate an inclusive and transparent reform

	process, that is not rushed and factors in diverse viewpoints from multiple stakeholders. ⁵
Concerns regarding proposed regulations related to Non-governmental Organizations	<ul style="list-style-type: none"> ● Initiate a transparent and inclusive process when initiating law reforms and ensure that it is in adherence to international standards.
Human Rights Commission of Sri Lanka Act No.21 of 1996	<ul style="list-style-type: none"> ● Amend the powers vested in the Commission under Section 11 of the Act to make its decisions enforceable against public authorities.
International Covenant on Civil and Political Rights Act No.56 of 2007	<ul style="list-style-type: none"> ● Repeal Section 3 of the International Covenant on Civil and Political Rights Act No. 56 of 2007.
Reforms related to Election Laws	<ul style="list-style-type: none"> ● Address the gaps in existing laws. For example, offences under the Regulation of Election Expenditure Act No. 3 of 2023 apply only to individual candidates and not to political parties, which does not align with the language of the Supreme Court determination on the law. Furthermore, the Election Commission lacks the technical capacity to hold individuals accountable if false information is reported. Additionally, the public and civil society entities do not have legal standing in courts to challenge statements made in reporting returns, as such standing is limited to individual candidates in the case of election petitions. ● Introduce legal provisions to recognise the franchise of migrant workers. This includes introducing a system for migrant workers to register at the Sri Lankan embassy/consul where they reside and a system, which allows them to cast their vote at the time of elections. ● Amend laws governing Presidential, Parliamentary and Provincial Council elections to ensure the establishment of special polling stations for public officials of essential services.
Reforming the Muslim Marriage and Divorce Act No. 13 of 1951 (as Amended)	<ul style="list-style-type: none"> ● Prioritise reforms of the Muslim Marriage and Divorce Act (MMDA) and uphold the rights of women and children.

⁵ “Statement on the Online Safety Act No. 09 of 2024” (CPA, February 2024). <https://www.cpalanka.org/statement-on-the-online-safety-act-no-09-of-2024/>

Reform existing laws related to Sexual and Gender based violence (SGBV)

The need to examine and update the existing penal laws relating to Sexual and Gender-Based Violence (SGBV).⁶ This includes:

- Reform the offence of rape in the Penal Code to extend proper protections to victim.
- Decriminalise termination of pregnancy.
- Section 365 and 365A of the Penal Code be removed to conform with international standards and to ensure that the rights to privacy and liberty are respected, specifically to the extent of decriminalising sexual acts between consenting adults in private.
- Amend the Prevention of Domestic Violence Act No. 34 of 2005 to improve protections given to victims.
- Introduce news laws to adequately investigate and prosecute online forms of SGBV.
- Update procedural laws to allow for quick and private prosecution of SGBV which minimizes trauma and revictimization of victims.
- Reform and implementation of the Assistance to and Protection of Victims of Crimes and Witnesses Act No. 10 of 2023.
- Provide law enforcement officials and prosecutors training to properly deal with victims of SGBV.
- Make complaint mechanisms easily accessible for victims of SGBV.
- Investigating the root causes of high rates of SGBV in Sri Lanka and implementing policy to prevent these occurrences.
- Reform the Vagrants Ordinance that leads to the harassment and detention of individuals based on sexual orientation and gender identity.

⁶ “Legal Reform to Combat Sexual and Gender based Violence” (CPA, November 2020). <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-1-General-Centre-for-Policy-Alternatives.pdf>