



CPA STATEMENT ON THE WILFUL DISREGARD FOR THE CONSTITUTION BY THE PRESIDENT

29th July 2024 (Colombo): The Centre for Policy Alternatives (CPA) notes with grave concern the actions of the President and the Government in response to the Supreme Court's [interim order](#) last week restraining Mr Deshabandu Thennakoon from exercising the powers, functions, and responsibilities of the office of the Inspector General of Police (IGP). This interim order has been met with statements by the Government, including a formal statement in Parliament by the Prime Minister on 27th July explicitly rejecting it, that raises alarm as to whether Sri Lanka is heading towards a constitutional crisis. CPA urges the President to desist from any or all action that raises that prospect. This is against the backdrop of the Election Commission issuing a [gazette](#) setting the date of the Presidential Election to be held on 21st September 2024, and it is incumbent on the Government and all stakeholders to adhere to the Constitution and respect the integrity of the election. Any attempt to subvert elections and the rule of law will have significant implications on governance and democracy and setback Sri Lanka's path towards economic recovery and stability.

The following briefly sets out some of the recent events and their implications.

The Supreme Court's Interim Order on the IGP

The Supreme Court's interim order this week was in response to several cases filed challenging the appointment of Mr Thennakoon as IGP. [One of the petitions was filed by CPA's Executive Director](#). After hearing lengthy submissions, the Court found that the Petitioners' case could proceed to the next stage and in light of the strong case made out, the Court also granted an interim order.

CPA welcomes the interim order which upholds the clear and unambiguous provisions of the Constitution. CPA's position is that, on the documents produced by the Respondents in court, including the [minutes of the Constitutional Council meeting](#), it is clear that the President could not have appointed Mr Thennakoon as IGP on 26th February 2024, as the required support of at least five members of the Constitutional Council was not met.

CPA notes that the President is duty bound to uphold the Constitution. Nothing in the order would prevent the President from making an acting appointment after following the appropriate procedure set out in the Constitution. If the President does not make an acting appointment, that is a choice he makes and he would be fully responsible for the consequences of that choice. Wilful violation of the Constitution, including by refusing to do what the Constitution requires him to do, is a ground on which a President can be impeached. As seen in several recent cases, a person holding the office of President can also be held liable in his individual capacity even after the conclusion of his term of office for such violations. In such a context, any action to subvert and/or undermine the Constitution by the individual holding the office must be monitored and necessary legal action pursued.

Misinformation on the Supreme Court's Interim Order

CPA also notes that there has been significant misinformation on the validity and the impact of the Supreme Court's order, including in the Prime Minister's statement to the House on 27th July. The Supreme Court's interim order was not against Parliament, nor was it against the Constitutional Council. The Constitutional Council, moreover, is not a committee of Parliament and thus is not protected by the parliamentary privilege of exclusive cognisance. A judicial decision that the President disagrees with is not sufficient basis to claim a judicial attack on the powers and privileges Parliament. The order of the Supreme Court restrains Mr Thennakoon personally from functioning in the office of IGP. Any suggestion that the order is an order against the functions of Parliament is without merit and lacks any basis in terms of the Constitution and the law. Having misinformed itself on these matters, the Government has in its irresponsible response to the Supreme Court acted in breach of several constitutional conventions that are central to the rule of law, the separation of powers, and the independence of the judiciary. These include the conventions that the Government: obeys the orders of a court even and especially when it does not agree with the reasoning of a judicial pronouncement; does not attack the judiciary in Parliament or elsewhere; and observes the sub judice principle.

CPA also notes the misinformation campaign to indicate that the President cannot make an acting appointment to cover the functions of the office of IGP. This claim is patently false. The Constitution makes specific provision for acting appointments (Article 41C(2)). The only requirement is that when such an appointment is for a period of more than two weeks, the President needs to get the approval of the Constitutional Council. Furthermore, recent examples dispel these false claims. Firstly, in the aftermath of the 2019 Easter Sunday attacks, the then President appointed Mr. C.D. Wickramaratne as acting IGP whilst Mr. Pujith Jayasundara (who was the IGP) was suspended pending investigations in to his conduct. More recently, an acting appointment to the office of IGP was made when Mr Thennakoon was first appointed as acting IGP in November 2023.

As such, there is no impediment for the President to make an acting appointment to the office of IGP. In fact, the Constitution requires the President to respect the order of Court and his own responsibilities in terms of the Constitution to make a suitable acting appointment. It is unfortunate that the President seems to be acting in a manner intended to frustrate the order of Court and subvert the Constitution.

The Supreme Court's Interim Order and the Presidential Election

CPA notes the attempts to imply that the interim order may have a bearing on the holding of the presidential election. The interim order has no impact on the conduct of elections. The order leaves it open to the President to make a suitable acting appointment in terms of the Constitution. Even if the President does not make such an appointment, the Election Commission has provision in the Constitution to give necessary orders to the hierarchy of the Sri Lanka Police to perform functions relating to the election (Article 104G and 104GG).