

Centre for Policy Alternatives

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STATEMENT ON THE INTRODUCTION OF THE EMERGENCY (PREVENTION AND PROHIBITION OF TERRORISM) REGULATIONS 2006

The Centre for Policy Alternatives expresses its concern with respect to both the process by which the Emergency (Prevention of Terrorism and Specified Terrorist Activities) Regulations of December 2006 were introduced and with respect to their substance.

CPA believes that a proper response to the introduction of these new regulations cannot be made in isolation from the current political and constitutional context. As such, CPA calls upon the Government and all political parties represented in Parliament to revise the amendments to make them compatible with international human rights norms and the Rule of Law.

Our key concerns, in brief are:

- The wide, overbroad language of several of the regulations, which could curtail legitimate democratic activity, dissent and the autonomy of civil society groups.
- The sweeping discretionary power of the Competent Authority over the activities, *inter alia* of civil society organizations including those committed to human rights, national reconciliation and also over the media.
- The composition and legal standing of the Appeals Tribunal, which is a blatant violation of the principle of separation of powers and is an unconstitutional encroachment into the judicial sphere of government.
- Given the past record and the current context of a culture of impunity, the wide immunity clause (Regulation 15) that could be used to protect members of the police, armed forces and other persons who take action in good faith in terms of the proposed regulations in the discharge of their duties.

The Centre for Policy Alternatives opposes any moves to reactivate parts of the Prevention of Terrorism Act which were suspended under the terms of the Cessation of Hostilities Agreement between the Government of Sri Lanka and the LTTE in February 2002.

Our concerns are enumerated in detail below.

There remains widespread confusion as to what the decision of the Cabinet of Ministers on Wednesday 7 December actually was. While both the President and the Prime

Minister made public pronouncements that the Prevention of Terrorism (Temporary Provisions) Act of 1979 was to be **reintroduced**, what the Government released to the public was a new set of Emergency Regulations promulgated under the Public Security Ordinance titled Emergency (Prevention of Terrorism and Specified Terrorist Activities) Regulations. Furthermore several Ministers in their public statements declared that the introduction of these new regulations was the sole decision of the Government and media reports suggest that this was also communicated to the LTTE.

While expressing grave concern at such confusion and mixed messages made by a Government with respect to subject matter that has serious consequences for human rights, the power of the State vis-a vis its citizens and good governance, and calling for urgent clarification by the Government on these matters, we wish to make the following observations.

The Emergency Regulations (Prevention of Terrorism and Specified Terrorist Activities 2006)

CPA is concerned at the wide, overbroad language of several of the regulations which could in addition to dealing with activities that the State could legitimately restrain or prohibit in the interests of national security and the suppression of terrorism, **also** curtail legitimate democratic activity, dissent and the autonomy of civil society groups.

We refer in particular to wide scope of the range of activities prohibited by Regulation 2, 3 and 4, the definition of terrorism in Regulation 16 (i) and the immunity clause, Regulation 15. These provisions are overbroad, drafted in very wide language allowing for the possible criminalisation of a range of legitimate activities of civil society, and would violate constitutionally protected fundamental rights.

The regulations however provide for exemptions to engage in approved transactions in certain circumstances such as the furtherance of peace and the termination of terrorism with the written permission of a Competent Authority appointed by the President. This will give the Competent Authority, sweeping discretionary power over the activities, inter alia of civil society organizations including those committed to human rights, national reconciliation and also the media. Such powers will give the Government excessive control over civil society organizations which is incompatible with the freedom of expression and association and other freedoms which are necessary for the independence and autonomy of such organizations.

The dangers of these regulations are made worse by the fact that an appeal from the decision of such Presidential appointee is to be made to an Appeals Tribunal consisting entirely of Presidential appointees who hold office at the pleasure of the President, the Secretaries to the Ministries of Defence, Finance, Nation Building and Justice. Conferring what amounts to at least quasi-judicial powers to persons in the executive branch of government is a blatant violation of the principle of separation of powers and is an unconstitutional encroachment into the judicial sphere of government. Furthermore it is fanciful to believe that a tribunal consisting of secretaries to Ministries can function as an independent appellate institution.

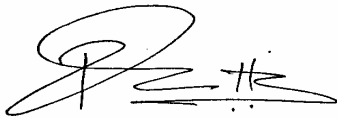
CPA is particularly concerned about the wide immunity clause (Regulation 15) that could be used to protect members of the police, armed forces and other persons who take action in good faith in terms of these regulations in the discharge of their duties. Given the wide ranging powers provided to the State and its officers under these regulations, the absence of independent review, the history of abuse of similar draconian legislation, including the Prevention of Terrorism Act, to stifle legitimate democratic activity and political dissent, and the culture of impunity that has developed in Sri Lanka in recent months in particular, such a clause could easily become one that promotes impunity rather than providing for immunity for bona fide actions.

The Prevention of Terrorism Act

The Centre for Policy Alternatives opposes any moves to reactivate parts of the Prevention of Terrorism Act which were suspended under the terms of the Cessation of Hostilities Agreement between the Government of Sri Lanka and the LTTE in February 2002. The PTA remains a draconian piece of legislation which is incompatible with basic international human rights norms and was introduced by the J.R. Jayewardene government in 1979 amidst widespread opposition from opposition parties and civil rights groups. It failed to curtail or suppress terrorism, was used to intimidate and harass political opponents and fostered a culture of impunity.

Conclusion

CPA believes that a proper response to the introduction of these new regulations cannot be made in isolation from the current political and constitutional context. The Government's continuing flagrant violation of the Seventeenth Amendment to the Constitution, thereby resulting in the absence of any independent Commissions to provide for depoliticisation, independence, integrity and good governance, the serious concerns about the current state of the rule of law and the independence of the judiciary and the effectiveness of the parliamentary opposition, create a context in which many of the established constitutional and legal safeguards which act as a countervailing force when governments bestow on themselves extraordinary powers in times of national emergency, regrettably do not exist in Sri Lanka today. As such, CPA calls upon the Government and all political parties represented in Parliament to revise the amendments to address the deficiencies referred to above, to make the regulations compatible with international human rights norms and the Rule of Law.



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