



Brief Guide II

Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force

April 2020

EXECUTIVE SUMMARY

In response to the COVID-19 health emergency, Sri Lanka has witnessed the activation of existing structures and the establishment of new ones. One such new entity is the Presidential Task Force established to direct, coordinate and monitor the delivery of continuous services and for the sustenance of overall community life ('the Task Force'). At the time of its creation, the President had already established the National Operation Centre for Prevention of COVID-19 Outbreak. However, the mandate and powers assigned to the Task Force are much wider in scope and range from ensuring the supply of essential goods and services to providing relief measures to vulnerable groups of society.

This guide prepared by the Centre for Policy Alternatives (CPA) briefly examines the framework of the Task Force. While efficient and effective action to minimise the impact of the pandemic is urgently needed, the guide points to a number of existing legal and institutional frameworks under which such action could have been taken. The Sri Lanka Disaster Management Act No.13 of 2005, in particular, provides for instances such as this and allows extensive action to be taken efficiently employing existing institutions and actors. There are additional, alternative laws under which the individual tasks assigned to the Task Force could have been carried out.

The guide also points out the vagueness of the definition of the tasks of the Task Force and whether its expansive mandate is *ultra vires* Article 33 of the Constitution and a number of

individual written laws. This is compounded by the lack of transparency and accountability generated by these ad hoc measures. Thus, attention must be paid to querying the true intentions of establishing the Task Force.

CPA notes that in the face of the unprecedented scale and magnitude of the emergency, the response must also be one that is efficient, coordinated and in adherence to principles of conflict sensitivity, equity, transparency and accountability. As the guide highlights, Sri Lanka has a wealth of expertise and skills within the civil administration that can and must inform the present response. Most fundamentally, responses must be in conformity with Sri Lanka's constitutional and legal framework.

Introduction

As a response to the public health emergency to deal with COVID-19, the Government announced the creation of a Presidential Task Force (Task Force) established by the President on the 26th of March 2020 by way of [Gazette Extraordinary No. 2168/8](#). The Task Force is established to *'direct, coordinate and monitor the delivery of continuous services for the sustenance of overall community life, including the supply of food provisions produced in rural areas and producers direct to consumers giving priority to the Districts of Colombo, Kalutara, Gampaha, Puttlam, Jaffna, Mannar, Kilinochchi, Vavuniya and Mullaitivu which have greater vulnerability in the eradication of coronavirus in Sri Lanka'*.

The Task Force is the most recent entity appointed to deal with COVID-19 in Sri Lanka. The 'National Operation Centre for Prevention of COVID-19 Outbreak' was established previously by President Gotabaya Rajapaksa to *'coordinate preventive and management measures to ensure that healthcare and other services are well geared to serve the general public'*.¹ On the face of it, it is unclear why there is a continued need for a National Operation Centre after the appointment of the Task Force as this will likely lead to duplication of efforts. However, the Task Force has a much broader mandate with concerns raised about the vagueness of some of the terms used to describe the mandate and questions of ultra vires, considering the expansive nature and reach of the Task Force.

Sri Lanka has faced numerous disasters and numerous frameworks and mechanisms have been created in response. For example, a Commissioner General for Essential Services was appointed to deal with several emergency situations where essential services were required.² Following the 2004 Tsunami, several other structures were established including

¹ President's Media Division, 'Army Commander Shavendra Silva heads National Operation Center for Prevention of COVID- 19 Outbreak' <http://www.pmdnews.lk/army-commander-shavendra-silva-heads-national-operation-center-for-prevention-of-covid-19-outbreak/>

² Regulation 9, Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005 (as amended), <https://www.refworld.org/pdfid/471712342.pdf>

three Task Forces,³ the Reconstruction and Development Agency (RADA) and the Disaster Management Centre.⁴ A number of mechanisms were also created in the post-war context, including the Presidential Task Force for Resettlement, Development and Security in the Northern Province which was appointed in 2009.⁵

In addition, several existing structures, both at the centre and periphery, have played key roles during emergencies. In the past, structures such as the Sumurdhi programme, District Secretariats, Divisional Secretariats and Grama Niladhari have coordinated with newly established relief mechanisms to address the needs of vulnerable and affected communities in their specific areas. In recognition of Sri Lanka's history in tackling disasters and emergencies, there is indeed a wealth of expertise and skill within the civil administration that can and must play a role in the present situation. The initial days of COVID-19 demonstrated the ability of those in the frontline to respond to and deal with the emergency. Thus, any new mechanisms introduced to tackle the health emergency must ensure these existing structures are given a role in the response and any new structures are not initiated for political gain.⁶ It is also paramount that lessons are learnt from earlier experiences and that the response to the present emergency is informed by principles of conflict sensitivity, equity, transparency and accountability.

COVID-19 has raised unprecedented challenges in Sri Lanka and requires a response that is effective, coordinated and in adherence to the above principles and Sri Lanka's constitutional and legal framework. The establishment of the Task Force and its broad mandate must be examined in the context of the present health emergency and the existing expertise, skills and structures within Sri Lanka's governance framework.

This present guide is prepared by the Centre for Policy Alternatives (CPA) to examine the role and mandate of the Task Force and raises key issues. The guide questions the necessity to establish a Task Force with such an expansive mandate in a context where multiple institutions and laws are in place. This concern is reinforced in a context where there is no functioning Parliament that can ensure oversight and accountability.

The Appointment of the Task Force

The Task Force is set up under Article 33 of the Constitution which contains the duties and powers of the President. It is not specified which power under Article 33(2) has been invoked to set up the task force, but the powers therein are all very specific, except 33(2)(h)

³ Task Force for Rescue and Relief (TAFRER), Task Force for Logistics, Law and Order (TAFLOL) and Task Force for Rebuilding the Nation (TAFREN)

⁴ Set up under the Sri Lanka Disaster Management Act No. 13 of 2005

⁵ Reliefweb.int, 'Sri Lanka: President appoints new Task Force to rebuild north', <https://reliefweb.int/report/sri-lanka/sri-lanka-president-appoints-new-task-force-rebuild-north>

⁶ CMEV letter, 6th April 2020

which states that:

(2) In addition to the powers, duties and functions expressly conferred or imposed on, or assigned to the President by the Constitution or other written law, the President shall have the power ...

(h) to do all such acts and things, not inconsistent with the provisions of the Constitution or written law, as by international law, custom or usage the President is authorised or required to do.

It can thus be logically concluded that the President used this provision to set up the present Task Force.⁷ While the powers granted to the President under this sub-article appear wide, it expressly states that it does not permit the President to do anything which is inconsistent with the Constitution or any written law. Thus, the Article does not give the President the power to override any written law. The power must be exercised to something which the President is authorised or required to do by international law, custom or usage. This naturally implies that this power must be exercised in a reasonable manner.

CPA notes that in consideration of the points made below in terms of the mandate of the Task Force, questions must be raised as to the reliance on Article 33(2) in establishing the Task Force, and thus raising questions about its legality.

Article 33 of the Constitution not only specifies the powers of the President, but also the corresponding duties of the President. This includes Article 33(1)(a) which makes it the duty of the President to ensure that the Constitution is upheld. Further to this, Article 33A sets out that '*the President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.*' Thus, it is important that Parliamentary oversight is accorded over the manner in which the President exercises his powers in order to prevent abuse, and to ensure that they are exercised in a reasonable and proportionate manner.

Parliament is at present dissolved with the Parliamentary Election now postponed due to the prevailing dangers in carrying them out amidst the COVID-19 crisis. The Election Commission has decided to delay setting a new date for the election, and this it may be several months before a new Parliament is elected. CPA has previously raised the importance of Parliament being reconvened during this emergency, and set out the powers of the

⁷ Additionally, the 2009 Presidential Task Force for Resettlement, Development and Security in the Northern Province was set up under Article 33(f) of the Constitution (prior to the Eighteenth Amendment) and the Article is almost identical to the present Article 33(2)(h).

President to do so.⁸ If the President uses these powers to reconvene Parliament, it would make available a range of laws as tools to more effectively combat and deal with COVID-19.⁹

More broadly, all three arms of Government – the Executive, the Legislature and the Judiciary – are necessary in a functioning democracy and any framework introduced must be met with the necessary scrutiny. Whilst the Executive arm is able to take certain steps in times of an emergency, these too must go through a process provided by law. For example, even when declaring a State of Emergency, the law requires the proclamation declaring such a State to be approved by Parliament within 14 days. Thus, it is paramount to reconvene Parliament to ensure all steps are taken to address COVID-19 legally and constitutionally.

Mandate and Powers of the Task Force

The Mandate of the Task Force is *'to direct, coordinate and monitor the delivery of continuous services for the sustenance of overall community life, including the supply of food provisions produced in rural areas and producers direct to consumers giving priority to the districts of Colombo, Kalutara, Gampaha, Puttalam, Jaffna, Mannar, Kilinochchi, Vavuniya and Mullaitivu which have greater vulnerability in the eradication of coronavirus in Sri Lanka'*, **and** to execute the twelve tasks mentioned thereunder.

The Task Force has been empowered to make such inquiries and issue such instructions as required for the purpose of carrying out those tasks. Further, by way of the same gazette, the President requires and directs all public officers and other persons to whom the said Task Force may issue instructions or from whom assistance for provision of services may be requested, to comply with all such instructions, render all such assistance and furnish all such information as may be properly complied with, rendered and furnished on that behalf. The Task Force is also required to report to the President all cases of delay or default on the part of any Public Officer or Officer of any Ministry, Government Department, State Corporation or other similar institution in the discharge of duties and responsibilities assigned to such public officer or such institution.

These are extensive powers which involve a degree of control over the functioning of and dealings with both government and private sector organisations. A response that effectively counters and deals with COVID-19 is essential, but structures and frameworks introduced must do so in compliance with Sri Lanka's Constitution and written laws. Whilst the mandate of the Task Force is broad, there does not appear to be any internal or external mechanisms to ensure it will be held accountable. In the absence of a functioning Parliament in particular,

⁸ Centre for Policy Alternatives, 'Evolving Legal Issues in the Context of COVID-19 - Briefing Guide I', <https://www.cpalanka.org/wp-content/uploads/2020/03/Brief-Guide-I-Evolving-Legal-Issues-in-the-Context-of-COVID-19.pdf>

⁹ Ibid.

the space for abuses of power by the Task Force is very real. The inability to have effective check and oversights over the Task Force can lead to serious consequences and may over time contribute to further consolidating power in the executive and moving towards autocratic control.

Existing Framework and Areas for Concern

While acknowledging that a situation of this nature is unprecedented and that the laws in place at present may not be sufficient to deal with all aspects of the situation, efforts should nonetheless first be made to utilise existing laws in order to deal with the crisis. The use of existing laws enacted by Parliament ensures that there is a certain level of oversight in the manner in which authorities exercise power.

Sri Lanka Disaster Management Act No.13 of 2005

The [Sri Lanka Disaster Management Act No. 13 of 2005](#) defines a disaster as '*the actual or imminent occurrence of a natural or man-made event, which endangers or threatens to endanger the safety or health of any person or group of persons in Sri Lanka ... and includes ... (k) an epidemic*'. The COVID-19 crisis would certainly fall within the ambit of this Act.

Section 3 of the Act provides for the constitution of the National Council for Disaster Management which consists of:¹⁰

- the President (who shall be the Chairman of the Council),
- the Prime Minister,
- the Leader of the Opposition,
- Ministers in charge of various subjects,
- the Chief Ministers of the Provinces (or the Governors in Provinces where the Provincial Council has not been elected), and
- Five members of the Opposition in Parliament (section 3(3)).

Ministers in charge of the various Ministries having input into disaster management would ensure coordination between the different Ministries and Departments coming under their control.

The Council is charged with several functions, including:¹¹

- facilitating emergency response, recovery, relief, rehabilitation and reconstruction in the event of any disaster,
- facilitating and support local and community self reliance in the event of any potential

¹⁰ See also National Council for Disaster Management, Ministry of Disaster Management, http://www.disastermin.gov.lk/web/index.php?option=com_content&view=article&id=51&Itemid=64&lang=en

¹¹ Sri Lanka Disaster Management Act No.13 of 2005, section 4(d), (i) and (o)

or actual disaster, and

- recommending the allocation of funds for disaster management from the relevant authorities and bodies and the Reconstruction and Rehabilitation Fund, established by the Reconstruction and Rehabilitation Fund Act, No. 58 of 1993.

Further, the Council is required to appoint a Disaster Management Centre, which is assigned several functions including '*issuing instructions and guidelines to appropriate organisations, non-governmental organisations, district secretaries and divisional secretaries on activities relating to disaster management and initiating and implementing work programmes in co-ordination with such organisations and secretaries*'.¹²

These provisions would enable the state to carry out all the functions which the Task Force has been tasked with carrying out, under existing law.

An argument put forward by proponents of the ad hoc manner in which extensive powers are being exercised via a Task Force is that expeditious action is necessary in a situation of a disaster or emergency of this nature. It is noteworthy that this Act provides for just such expeditious action to be taken, as section 11 of the Act allows the President to declare a State of Disaster, either on his own motion, or on the advice of the Council. The Proclamation may be in effect for up to two months before it needs to be extended (section 11(2)) whereby it needs to be placed before Parliament at its first sitting after the proclamation, and approved (section 11(3)).

Under section 12, once a State of Disaster has been declared, the President can direct an appropriate organisation (designated under section 21) to;

(a) direct, co-ordinate and use all available resources as may be necessary within the area or areas in respect of which a Proclamation has been made under subsection (1) of section 11, to counter the effect of the disaster or the impending disaster or to mitigate the effect of such disaster or impending disaster;

(b) direct, co-ordinate and use additional resources, if and when they become available, in accordance with such arrangements as may be made in respect of its allocation; and

(c) take all necessary measures provided for in the National Disaster Management Plan or the National Emergency Operation Plan as the case may be, and in accordance with such directions that may be issued to such appropriate organisation by the President.

These are considerable powers which allow the President to take wide ranging measures fast. There was also ample time to act via this law rather than via an ad hoc Task Force. By

¹² Ibid., section 8(2)(e).

the 28th of January 2020, 12 hospitals had already been identified as treatment centres,¹³ the second confirmed patient (and first local patient) was detected on the 11th of March 2020,¹⁴ and by the 20th of March 2020, several holidays¹⁵ and island wide ‘curfews’ had already been declared.¹⁶ The Task Force was appointed only on the 26th of March 2020, after numerous steps to control the situation had already been taken. The reliance on the Disaster Management Act – including convening the National Council for Disaster Management and activating the Disaster Management Centre – would not have created any delay in response.

Other Relevant Laws

Several of the individual tasks assigned to the Task Force are those which could have been carried out under existing laws where certain authorities have been mandated with specific powers. These are described in the table below with comments noting any concerns of *ultra vires*. If the role of the Task Force is limited to directing, coordinating & monitoring these authorities to ensure that any action taken in dealing with the crisis is cohesive and avoids duplication, then it would not be acting *ultra vires* these laws. However, if the Task Force attempts to exercise these powers on its own, bypassing the authorities that have been put in place to carry out these acts, then the legality of those acts carried out would be questionable. If the intention of the Task Force is to ‘direct, coordinate & monitor’ as provided in the Gazette, it is indeed unusual to provide it with powers supposedly under Article 33. This would need to be carefully studied in the coming weeks and months.

No.	Tasks	Alternative laws enabling the tasks
1	Provide facilities required by farmers for farming activities for the production of paddy, cereals, vegetables, fruit, fish, meat, milk and eggs, as well as plantation products such as tea, cinnamon and pepper.	<p>Agrarian Services Act No. 58 of 1979 – an Act to ensure that the production of agricultural crops and livestock is done in the most efficient and productive manner possible.</p> <ul style="list-style-type: none"> • ‘Agriculture’ includes a wide variety of activities which would encompass all the ‘farming activities’ that the Task Force has been given control over by way of task No.1 (Section 68) • Agrarian Services Committees have the power to

¹³ Ministry of Health, Epidemiology Unit, “Situation Report 28.01.2020” http://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-eu-28-01.pdf [All situation reports available at http://www.epid.gov.lk/web/index.php?option=com_content&view=article&id=225&Itemid=480&lang=en]

¹⁴ Ministry of Health, Epidemiology Unit, “Situation Report 12.03.2020” http://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-12-03_10.pdf

¹⁵ Newsfirst.lk, ‘Government Declares Three day Holiday’, <https://www.newsfirst.lk/2020/03/17/government-declares-three-day-holiday/>

¹⁶ Newsfirst.lk, ‘Island-wide curfew will be in effect from 06:00 PM today’ <https://www.newsfirst.lk/2020/03/20/island-wide-curfew-will-be-in-effect-from-0600-pm-today/>

<p>Comment: The Agrarian Services Act provides a comprehensive framework for carrying out the task of providing facilities for farming at regional level. Similarly, the Promotion of Export Agriculture Act provides a framework for the production of plantation crops. The reasons for not using these existing institutions is unclear and this may lead to duplication of actors causing lack of accountability and transparency.</p>	<p>coordinate agricultural activities and implement government policies within their areas of authority (Section 46)</p> <ul style="list-style-type: none"> • Cultivation Officers appointed under the Act have the power to attend to all matters connected with agriculture and minor irrigation works within their area of authority (Section 55(2)) • The Act establishes an Agrarian Services Fund. Two ways in which money could be paid into it are by Parliament voting on such amounts and by paying out of the Consolidated Fund (section 60(2)(c) and (d)). Both these methods ensure that there is some form of Parliamentary oversight in the manner in which public funds are utilised. Further, the accounts of the said fund are to be audited by the Auditor-General for each financial year (section 60(5)), providing some further scrutiny over the manner in which the funds are utilised. <p><u>Promotion of Export Agriculture Act</u> No. 46 of 1992</p> <ul style="list-style-type: none"> • Allows the Minister to declare what crops are Export Agricultural Crops to which the Act will apply, provided that they are any perennial crop other than tea, rubber, coconut and cashew, of which at least 50% of the annual production is exported (section 2) • The Director of Export Agriculture has the power to require any person registered under this Act as a processor, buyer, possessor or feller of a notified agricultural crop to maintain and furnish records in respect of that crop (section 6) • The Minister has power to make regulations in respect of matters set out in the Act, including providing schemes for the grant of subsidies and other assistance, financial or otherwise, to persons who cultivate and process notified agricultural crops. These regulations must be published in the Gazette and brought before Parliament for approval ensuring a degree of oversight (section 15(1)-(3)).
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<p>2</p>	<p>Organise and operate Lanka Sathosa, cooperative network, Cargills, Keells, Arpico and Laugfs retail network to supply agricultural products direct to customers.</p> <p>Comment: It is unclear what the terms 'organise' and 'operate' entail in this situation, and if it is limited to providing facilities for the distribution of these goods during curfew hours.</p>	<p>Consumer Affairs Authority Act No.9 of 2003 – regulates internal trade and empowers the Consumer Affairs Authority.</p> <ul style="list-style-type: none"> • Objects of the Authority include ensuring that consumers have adequate access to goods and services at competitive prices wherever possible (section 7(c)), and seeking redress against unfair trade practices, restrictive trade practices or any other forms of exploitation of consumers (section 7(d)). • The Authority is empowered to take action to promote, assist and encourage the State or other organisations in respect of the sale or supply of any class of goods and services as would ensure their availability to the consumer with satisfactory quality at reasonable prices and in adequate quantities (section 9). • The Authority is empowered to issue certain directions to manufacturers, including special directions to any class of manufacturers or traders specifying the times during which and the places at which, such goods may be sold, and any other conditions as to the manufacturing, importing, marketing, storing, selling and stocking, of any goods (Section 10). These directions may provide an alternative to some of the acts that the Task Force may carry out under this task. • The hoarding of goods by any trader or person is an offence (section 17)
<p>4</p>	<p>Coordinate with Sri Lanka Ports Authority, Sri Lanka Customs, corporate Banking Sector and other Government regulatory agencies and take necessary action to facilitate the import of essential foods and drugs as well as the export of tea, sanitary clothing etc.</p>	<ul style="list-style-type: none"> • Under section 6 of the Sri Lanka Ports Authority Act no. 51 of 1979, it is the duty of the Ports Authority to provide efficient and regular services to any specified port, and the Minister has the power to give directions to the authority • The Minister may give the Authority general or special directions in writing as to performing its duties and exercising its powers on matters which appear to him to affect the national interest and the Authority shall give effect to such directions (section 8(1)) • Under section 103 of the Sri Lanka Customs Ordinance

		<p>No. 17 of 1869, the Minister has the power to make special regulations from time to time relating to the entry inwards and outwards of ships, and the landing, shipping, and transshipping of goods by them.</p> <ul style="list-style-type: none"> • Under the National Medicines Regulatory Authority Act (NMRA) No. 5 of 2015, the NMRA functions as the central regulator for all things involving the importation of medicines, medical devices and borderline products (section 3(b)). The NMRA is empowered to regulate and issue licences for the importation of medicine. This procedure must be followed, both because it is written law, and also because the NMRA are the experts in the subject matter having knowledge of what drugs and in what quantities are needed (sections 14 (e) and (d)). • The Imports and Exports (Control) Act No. 1 of 1969 requires that the importation or exportation of any goods to or from the country should be done under the authority or in accordance with the conditions of a licence issued by the Controller of Imports and Exports under the Act (section 4(1)). Further, regulations may be made exempting certain goods from these requirements (section 4(3)). • A licence granted to any person shall, subject to the conditions set out in the licence and to the provisions of this Act or any regulation made thereunder, authorise such person to import into, or export from, Sri Lanka, goods of such value and in such quantity or quantities as may be specified in the licence (section 8) • Under section 2(1) of the Essential Public Services Act, the President has the power to declare services provided by certain Government departments, public corporations, local authorities or co-operative societies to be essential public services. • Under section 2(2), any person who impedes or obstructs the carrying on of such a service or compels or encourages any other person from attending to such work commits an offence which shall be punished by rigorous imprisonment, or fine or both on conviction
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		after summary trial before a Magistrate.
6	<p>Provide health and sanitation facilities to drivers and assistants of vehicles such as lorries, three-wheelers, buses and motor cycles transporting essential services and goods to customers, and keep selected fuel stations of Ceylon Petroleum Corporation open during curfew hours to supply them with fuel.</p>	<p>The Ceylon Petroleum Corporation Act No. 28 of 1961 allows the Minister, in concurrence with the Minister of Finance, to make certain orders known as ‘Petroleum Price Orders’ (section 66(1)). As per section 66(2), these Orders can also prescribe the conditions of sale, supply or delivery of any petroleum.</p> <p>It thus appears that the power to make orders to keep selected fuel stations open would lie with the said Ministers.</p>
7	<p>Direct and provide facilities to Agriculture Department, Agrarian Services Department, Samurdhi Authority, Cooperative Farmer Societies, Farmer Organisations, and private seed production organisations to supply seed, seedlings, fertiliser and machinery for farming activities.</p> <p>Comment: It is not specified under this task to whom these facilities can be supplied for farming activities; if it is only to farmers or if it may be provided to other bodies such as the Armed Forces to carry out farming activities.</p>	<p>The Seed Act No. 22 of 2003 aims to regulate the quality of seeds and planting materials, and deals with several connected matters:</p> <ul style="list-style-type: none"> • The Act establishes the National Seed Council whose functions include establishing guidelines to ensure production and distribution of high quality seed and planting materials and advising the Minister and other relevant authorities on all matters regarding the production and supply of seeds to farmers (sections 6 (a) and (c)). • The Council’s powers include identifying the need for seeds and planting materials and facilitating the provision of technical assistance to produce quality seeds and planting material; coordinating with public sector agencies in working towards the development of the private sector seed industry; and securing funding and manpower resources required to develop the seed industry and appoint special committees to carry out the decisions of the Council (sections 7((b)-d)). • Further, the Minister has the power to make regulations under the Act including the promotion of the production of seed and planting materials (section 18(2)(c)). Section 19 allows the Council to make rules in respect of matters set out in the Act. <p>It appears that through this task, the President has given the Task Force the power to carry out functions which by law</p>

		have been given to the National Seed Council, and the Minister of Agriculture.
8	<p>Direct officials engaged in rural projects to encourage seed farms, popularise organic fertiliser use an encourage production of home crops, and as far as possible, popularise home gardens as a supply for self-consumption.</p>	<ul style="list-style-type: none"> • Under section 2 of the Plant Protection Act No. 35 of 1999, the Director General of Agriculture shall be in charge of the general administration of the Act. Under section 3, the Director General may nominate such number of officers as may be necessary for implementing the provisions of the Act, known as authorised officers. • As per section 4, such authorised officers have the power of entry into premises for inspection if there is reasonable grounds. According to section 12 of the Act, the Minister may make regulations with respect to matters set out in the Act.
9	<p>Direct and take measures to provide required loan facilities to farmers via Bank of Ceylon, People’s Bank, Regional Development Banks and Samurdhi Bank branches.</p> <p>Comment: It is unclear what ‘direct’ and ‘take measures to’ mean here, as the Task Force is not empowered to override the discretion granted to the Boards of Directors of these Banks in determining who loans can be granted to, and the conditions on which they can be granted.</p>	<ul style="list-style-type: none"> • Under the Bank of Ceylon Ordinance 53 of 1938 every application for any loan, overdraft, advance or other accommodation shall be made to the general manager or an officer nominated by him for the purpose (section 13). • However, no loan, overdraft, advance or other accommodation shall be granted by the bank to any person unless the board is satisfied that he is worthy of credit up to the amount of such advance, loan or other accommodation or that such amount is secured by adequate security, or that the project or scheme to which such amount is to be applied is financially sound (section 3 in Part II of Schedule 1) • It is thus a decision that the Board is entitled to make as to the creditworthiness of a person to whom a loan is to be granted. • Similarly, the People’s Bank Act No. 29 of 1961 states that no loan, overdraft or other accommodation shall be granted by the Bank to any person unless the Board is satisfied that he is worthy of credit up to the amount of such loan, overdraft or other accommodation or that such amount is secured by adequate security, or that the

		<p>project or scheme to which such amount is to be applied is financially sound (section 26).</p> <ul style="list-style-type: none"> • Thus here too the Board is entitled to make a decision as to the creditworthiness of a person who applies for a loan. • The Regional Development Banks Act No. 6 of 1997 states that loans granted by these Banks shall be on security and other terms and conditions as may be determined by the Board (section 28(1)). However, the Board may, in its discretion, grant loans without security in any cases in which the Board, for reasons to be recorded by it in writing, decides that such security is not necessary (section 28(2)). This is a decision which the Board of Directors is authorised to make.
10	<p>Implement appropriate measures for waste disposal in rural and urban areas and maintain continuous electricity and water supply services.</p> <p>Comment: It is unclear what ‘implement’ means in this instance, and to what extent the Task Force will seek to change the status quo with regard to these services.</p>	<ul style="list-style-type: none"> • Under the Ceylon Electricity Board Act No. 17 of 1969, the Minister may, after consultation with the Board, give to the Board general or special directions as to the performance of its duties and exercise of its powers (section 8). The Act imposes upon the Board the duty to develop and maintain an efficient, coordinated and economical system of electricity supply for the whole country; and the Board is given the power to purchase electrical energy in bulk (sections 11 and 12). • Under National Water Supply and Drainage Board Law No. 2 of 1974, it shall be the duty of the Board in each area of its authority to provide and operate an efficient, co-ordinated water supply and to distribute water for public, domestic or industrial purposes, and to establish and operate an efficient, co-ordinated sewerage system (sections 16 (a) and (b))
12	<p>All bank branches to remain open for a minimum of 04 hours a day utilising minimum staff to provide essential banking services to customers.</p>	<ul style="list-style-type: none"> • Under Holidays Act No. 29 of 1971, Bank Holidays are Poya Days, Sundays and the days specified in the second schedule to the Act (section 3(b)). Further, the Minister has the power to amend or replace the schedules (section 4). It is thus only these designated days that will

		<p>be Bank Holidays, and provided they are exempt from any curfew, there is no reason for banks not to function on these days.</p> <ul style="list-style-type: none"> • Further, the Minister has wide powers to make regulations to give effect to the provisions of the Act (section 9(2)), including to modify and supplement the Act to meet special contingencies or circumstances (section 9(2)(b)(i) and for the determination or adjustment of any question or matter relating to public holidays and bank holidays or related matters for which ineffective or no provision is made by the Act (section 9(2)(b)(ii)). • In order to have effect, these regulations must have been approved by Parliament, and published in the Gazette (section 9(4)).
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Conclusion

As has been demonstrated above, there are numerous laws which already provide for the functions assigned to the Task Force while the powers purportedly given to the Task Force may in fact be *ultra vires*. At a fundamental level, questions must be raised as to whether Article 33(2) can be relied on to establish a Task Force with such an expansive mandate. These require urgent attention as action mandated by the Task Force may pose questions of legality, legitimacy and involve unforeseen consequences.

It is essential that the COVID-19 crisis is tackled efficiently and expeditiously but that does not justify blindly move towards autocratic governance. Sri Lanka has had many years of successfully tackling and dealing with emergencies, with structures introduced to ensure measures are in place to respond in future emergencies. Lessons have also been learnt from past instances where the need for transparency and accountability has been established. Thus, it is paramount for Parliament to be reconvened to ensure oversight and accountability, provide for the necessary funds to effectively deal with the present emergency and for any other action required in the present context.