

## A Commentary

# Legal and Policy Issues related to the COVID19 Pandemic in Sri Lanka

*Centre for Policy Alternatives*

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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## **Introduction**

The COVID-19 health crisis has posed a range of unprecedented legal, political, economic and social challenges for Sri Lanka since March, 2020. While the government was successful in containing the first wave of COVID-19, the pandemic response has since unravelled, revealing issues with the heavily militarised and politicised approach favoured by the government. As the country gradually emerges from the latest wave of COVID-19, it has to grapple with the economic fallout and the rising cost of living brought on by the pandemic and its misgovernance, which may require an immediate and robust legal and policy response.

From the outset, the broader trends of militarisation, politicisation, repression, and marginalisation characterised the approach to manage the health crisis. Pandemic governance to date has also exacerbated ongoing processes of authoritarianism and executive aggrandisement, with grave implications for the rule of law, separation of powers and democratic governance.

Various briefs, guides and other documents were issued previously by the Centre for Policy Alternatives (CPA) (and included later in the document as annexures), capturing the different legal and policy regimes set in place at various stages of the pandemic response, and related concerns.

The present commentary serves as a non-exhaustive analysis of the pandemic response, with an aim to explore issues and implications that emerged from March 2020 to November 2021. To this end, the document will first provide an overview of the relevant structures and legal frameworks introduced to contain the spread of COVID-19. Secondly, it will identify issues related to governance, restriction and abuse of fundamental rights, continued marginalisation of vulnerable communities, and limited accountability for irregularities caused during the pandemic response,

to indicate that the current approach has resulted in restrictions on civil liberties, mismanagement of the health crisis, and other irregularities, with limited avenues to ensure transparency and accountability of the pandemic response.

## Structures

### Key points:

- Several task forces have been appointed with limited accountability and transparency
- These ad hoc structures bypass or overlap with existing institutions
- Militarisation and politicisation characterise these structures
- Limited information available on the activities of task forces and expert committees

## Task Forces and expert committees

Since March 2020, more than 10 task forces have been established to address a plethora of issues, signalling a pervasive culture of rule by ad hoc structures which are answerable only to the President. Several such ad hoc structures were specifically established to respond to various contingencies brought about by the pandemic.<sup>1</sup> Other task forces were also established to implement the policy of ‘Vistas of Prosperity and Splendour.’<sup>2</sup>

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<sup>1</sup> For more information about selected task forces, see ‘Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force’, 8th April 2020, Centre for Policy Alternatives. <https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/> (Annexure II) and ‘An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka’, 12th May 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/> (Annexure V)

<sup>2</sup> ‘The Appointment of the Two Presidential Task Forces’, June 2020, Centre for Policy Alternatives. <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>

## **Task forces appointed since March, 2020 related to,**

### **COVID-19 related issues:**

- ❖ National Operation Centre for Prevention of COVID-19 Outbreak (NOCPCO), 17th March 2020<sup>3</sup>
- ❖ Presidential Task Force to direct, coordinate and monitor the delivery of continuous services for the sustenance of overall community life, Gazette Extraordinary No. 2168/8, 26th March 2020
- ❖ Presidential Task Force to study and provide instructions on measures to be taken by all Armed Forces to prevent Coronavirus infection among members of the Tri-Forces, Gazette Extraordinary No. 2173/4, 27th April 2020
- ❖ Presidential Task Force for National Deployment and Vaccination Plan for COVID-19 Vaccine, Gazette Extraordinary No. 2208/33, 31st December 2020

### **Policies of 'Vistas of Prosperity and Splendour' and 'One Country, One Law':**

- ❖ Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society, Gazette Extraordinary No. 2178/18, 2nd June 2020
- ❖ Presidential Task Force for Archaeological Heritage Management in the Eastern Province, Gazette Extraordinary No. 2178/17, 2nd June 2020
- ❖ Presidential Task Force for One Country, One Law. Gazette Extraordinary No. 2251/30, 26th October 2021

Militarisation and politicisation are the overarching issues that can be identified in relation to the membership and functions of these ad hoc structures.

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<sup>3</sup> The National Operation Centre for Prevention of COVID-19 Outbreak (NOCPCO) will cease operations after completing one year and nine months. See, 'Covid Task Force headed by Shavendra ceases operations' 9 December 2021, The Colombo Gazette.  
<https://colombogazette.com/2021/12/09/covid-task-force-headed-by-shavendra-ceases-operations/>

The mandates of these Task Forces are also broad and with no mechanisms to ensure their accountability, which could potentially lead to abuse of power as well as their failure to effectively address the issues related to the pandemic.<sup>4</sup>

The task forces and the other structures do not come under parliamentary oversight. A number of these task forces were also appointed during the absence of a functioning Parliament, with checks and balances skewed in favour of a powerful Executive.

Many of the functions of the Task Forces may overlap or override the functions of other statutory bodies which come under parliamentary oversight.<sup>5</sup> The concerns regarding legality, transparency and accountability are compounded by the limited information available in the public domain relating to the ongoing activities of these structures.

In addition to the task forces, several expert committees were appointed to provide recommendations and guidelines on COVID-19 related issues. On 24 December 2020, an expert committee was established by the Ministry of Health to study the controversial mandatory cremation regulations, which were discriminatory towards the Muslim community and their burial rights. The committee recommended the revision of the regulations to include both cremation and burial.

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<sup>4</sup> 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force', 8th April 2020, Centre for Policy Alternatives.  
<https://www.cpalanka.org/wp-content/uploads/2020/04/FINAL-Presidential-Task-Force-on-COVID19-April-2020-copy.pdf> (Annexure II)

<sup>5</sup>Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's Accelerated Democratic Decay Amidst a Pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives 2021).  
<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

In February 2021, the regulations were amended.<sup>6</sup> While other expert committees were also reportedly appointed,<sup>7</sup> limited information is available in the public domain on their functions.

## Legal Framework

### Key Points:

- Legal basis for the various restrictions on movement and assembly were not clarified
- Questionable legal basis for the ban on protests
- Initial reluctance of the government to utilise existing laws or introduce new laws to manage the health crisis
- Newly introduced laws do not adequately address wide-ranging problems which arose as a result of the pandemic
- Possibility for arbitrary action through emergency regulations

### Restrictions on movement

Since the onset of the pandemic, a number of restrictions were imposed at various junctures to restrict movements of the public with a view to contain the spread of COVID-19. The restrictions were announced as ‘curfew’, ‘quarantine’, ‘police curfew’ and ‘quarantine curfew’.<sup>8</sup> The legal basis for these restrictions has been consistently questioned due to lack of clarity and consistency in application. Certain terms used to

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<sup>6</sup> For more details, see ‘Q and A on Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka’, 6th November 2020, Centre for Policy Alternatives, ‘An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka’, 12th May 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/> (Annexure IV); ‘Sri Lanka’s Vistas of Prosperity and Splendour: A Critique of Promises Made and Present Trends’ 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/sri-lankas-vistas-of-prosperity-and-splendour-a-critique-of-promises-made-and-present-trends/>

<sup>7</sup> For instance, the expert committee established to recommend what age groups ought to receive the Sinopharm vaccine.

<sup>8</sup> For a detailed account of these restrictions, see ‘Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka’, 21st April 2020, Centre for Policy Alternatives <https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/> (Annexure III)



identify these restrictions, such as ‘quarantine curfew,’ cannot be found in any known law.

The restrictions on movement are communicated to the public through announcements or press releases and concerns have also been raised over the absence of several such announcements in the Tamil language.

Despite these concerns, a record number of arrests were made due to alleged violations of the restrictions.<sup>9</sup> In a letter to the Inspector General of Police (IGP) in May 2021, the Human Rights Commission of Sri Lanka (HRCSL) observed that while restrictions placed on the movement of individuals are important in managing the health crisis, such restrictions should be imposed in adherence with the existing laws and constitutional safeguards relating to legality and non-discrimination.<sup>10</sup>

### **Restrictions on assembly**

On 6 July 2021, the Police Media Division announced a ban on protests and public meetings and stated that the transgressors of the ban would be dealt with according to quarantine regulations.<sup>11</sup> The ban came in the wake of a letter by the Director General of Health Services informing the police that public protests and rallies should not be held until further notice as there is a high risk of the COVID-19 transmission. The legal basis for the ban was not clarified in the announcement. CPA has recently commented on the legal issues related to state response to protests during the pandemic.<sup>12</sup> Despite this, a spate of arrests were made during various protests held throughout the country to air

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<sup>9</sup> For more details, see ‘An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka’, 12th May 2021, Centre for Policy Alternatives.

<https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/> (Annexure V)

<sup>10</sup> Recommendations on Regularizing the Imposition of Curfew, 08th June 2020, Human Rights Commission of Sri Lanka.

<https://www.hrcsl.lk/wp-content/uploads/2020/02/curfew.HRCSL-recommendation-final.pdf>

<sup>11</sup> ‘Sri Lanka bans protests and public meetings’ 6th July 2021, ColomboPage.

[http://www.colombopage.com/archive\\_21A/Jul06\\_1625587252CH.php](http://www.colombopage.com/archive_21A/Jul06_1625587252CH.php)

<sup>12</sup> ‘Comment: Legality of the State Response to the Right to Protest in light of the Covid-19 Pandemic’ November 2021, Centre for Policy Alternatives.

<https://www.cpalanka.org/comment-legality-of-the-state-response-to-the-right-to-protest-in-the-light-of-the-covid-19-pandemic/>

grievances related to a number of issues including the Kotelawala National Defence University (KNDU) Bill, demands for salary increments for school teachers,<sup>13</sup> the recent fuel price hike, and the ban on chemical fertiliser.<sup>14</sup>

The arrests and the forcible quarantine of protesters raised concerns about the legality of the ban, and the misuse of quarantine regulations and centres to curtail freedoms of movement, assembly and association. The conduct of the police also came under scrutiny as instances of disproportionate use of force and the arrest of protesters by policemen in civilian clothing were reported in the media.<sup>15</sup>

Media reports emerged of a meeting conducted by the Judicial Service Commission (JSC) between several judges including Magistrates, where Magistrates were directed to use sections 98 and 106 of the Criminal Procedure Code to control protesters and public gatherings.<sup>16</sup> According to these reports, concerns were raised about the impact this direction may have on the discretion to exercise the judicial mind by Magistrates. The Bar Association of Sri Lanka (BASL) also responded by raising concerns over the said direction and its impact on judicial independence.<sup>17</sup> The JSC later clarified in a

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<sup>13</sup> Twenty-two trade union members including General Secretary of the Ceylon Teachers' Union (CTU), Joseph Stalin who were arrested on 8th July 2021 for allegedly violating the ban on protests and public meetings, were sent to quarantine camps under legally questionable circumstances and were subsequently released. See Imesh Ranasinghe, 'Quarantined protesters in Sri Lanka released several days short of 14-day isolation period' 16th July 2021, EconomyNext.

<https://economynext.com/quarantined-protestors-in-sri-lanka-released-several-days-short-of-14-day-isolation-period-84091/>

<sup>14</sup> Dinitha Rathnayake and Pamodi Waravita, 'Ananda Palitha released on bail' 22nd August 2021, The Morning.

<https://www.themorning.lk/ananda-palitha-released-on-bail/>

<sup>15</sup> Ajith Siriwardana and Yohan Perera, 'Adopt proper procedure when arresting protesters: Anura' 6th August 2021, Daily Mirror Online.

[https://www.dailymirror.lk/latest\\_news/Adopt-proper-procedure-when-arresting-protesters-Anura/342-217690](https://www.dailymirror.lk/latest_news/Adopt-proper-procedure-when-arresting-protesters-Anura/342-217690)

<sup>16</sup> Lakmal Sooriyagoda, 'Judges and lawyers express dismay over recent JSC meeting' 15th August 2021, Daily Mirror Online.

[https://www.dailymirror.lk/latest\\_news/Judges-and-lawyers-express-dismay-over-recent-JSC-meeting/342-218276](https://www.dailymirror.lk/latest_news/Judges-and-lawyers-express-dismay-over-recent-JSC-meeting/342-218276)

<sup>17</sup> 'BASL expresses grave concerns; seeks answers from JSC' 22nd August 2021, The Sunday Times.

<https://www.sundaytimes.lk/210822/news/basl-expresses-grave-concerns-seeks-answers-from-jsc-452873.html>

letter addressed by the Justice Ministry Secretary to the Government Information Department Director General on 23 August 2021 that the webinar was organised by the Sri Lanka Judges' Institute and not the JSC.<sup>18</sup>

On 9th November 2021, new regulations were introduced by way of Gazette (Extraordinary) No. 2253/10<sup>19</sup> to make it mandatory to obtain prior approval of the Director General of Health Services to hold gatherings, activities, events or similar places of meetings. The regulations were introduced days before the Opposition planned to hold a mass demonstration in Colombo, and while several court orders were obtained by the police to prevent the mass protest by the Samagi Jana Balawegaya, it was, nevertheless, held with the participation of people from various parts of the country.<sup>20</sup>

### **New laws and regulations**

Since the onset of the pandemic, the lack of initiative by the government to utilise existing laws<sup>21</sup> or implement new laws to manage the health crisis has been subjected to criticism. This reluctance on the part of the government stands in contrast with the expedient passing of the 20th Amendment to the Constitution in 2020 and the Port City Bill in 2021.<sup>22</sup> Attempts at introducing COVID-19 related laws, such as the Private Member's Bill submitted by MP Sumanthiran on 20 October 2020 to provide for the declaration of a state of public health emergency and the adoption of special measures

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<sup>18</sup> Pamodi Waravita, 'JSC says it did not organise webinar' 23rd August 2021, The Morning.

<https://www.themorning.lk/jsc-says-it-did-not-organise-webinar/>

<sup>19</sup> Gazette (Extraordinary) No. 2253/10 of 9th November 2021.

[http://www.documents.gov.lk/files/egz/2021/11/2253-10\\_E.pdf](http://www.documents.gov.lk/files/egz/2021/11/2253-10_E.pdf)

<sup>20</sup> 'Sri Lanka Opposition to proceed with its protests today amidst enjoining orders', 16th November 2021, ColomboPage.

[http://www.colombopage.com/archive\\_21B/Nov16\\_1637044208CH.php](http://www.colombopage.com/archive_21B/Nov16_1637044208CH.php)

<sup>21</sup> For more details, see 'Brief Guide I: Evolving Legal Issues in the Context of COVID-19 evolving legal framework', 28th March 2020, Centre for Policy Alternatives

<https://www.cpalanka.org/brief-guide-i-evolving-legal-issues-in-the-context-of-covid-19/> (Annexure I)

<sup>22</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's Accelerated Democratic Decay Amidst a Pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives 2021).

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

in the interests of public health,<sup>23</sup> were disregarded. Notable among recently introduced laws and regulations to manage the COVID-19 crisis are the Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Bill and the Emergency (Provision of Essential Food) Regulations.

On 17 August, 2021, the Parliament approved the Coronavirus Disease 2019 (COVID-19) (Temporary Provisions) Bill with amendments made in keeping with the opinion of the Supreme Court. The Bill comes into effect from 01 March 2021 and will be operative for a period of 2 years. The Act provides reliefs in respect of litigation and contractual agreements.

However, there are other areas on which legislation may be required to address contingencies arising out of the pandemic. For instance, the Act makes no provision to regulate and monitor the vaccination process despite known irregularities in the vaccination process, including allegations of wastage of doses and violation of risk priority.<sup>24</sup> Moreover, the absence of legislation on reporting of epidemics and other public health emergencies in Sri Lanka has been highlighted. Against the backdrop of issues raised by the GMOA on the manipulation of the definition of deaths due to COVID-19 contrary to WHO International Guidelines,<sup>25</sup> and continuing concerns on the accuracy of official statistics, it is evident that the pandemic response currently lacks

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<sup>23</sup> Saman Idrajith, 'Sumanthiran moves private member's Bill to tackle health emergency' 21st October 2021, The Island.

<https://island.lk/sumanthiran-moves-private-members-bill-to-tackle-health-emergency/>

<sup>24</sup> 'GMOA points out irregularities in Covid vaccination program, demands inquiry', 12th June 2021, Newswire.

<https://www.newswire.lk/2021/06/12/gmoa-points-out-irregularities-in-covid-vaccination-program-demands-inquiry/>; Arundathie Sangakkara, 'Vaccine Thieves Of Sri Lanka' 20th May 2021, The Colombo Telegraph.

<https://www.colombotelegraph.com/index.php/vaccine-thieves-of-sri-lanka/>

<sup>25</sup> 'GMOA points out irregularities in Covid vaccination program, demands inquiry', 12th June 2021, Newswire.

<https://www.newswire.lk/2021/06/12/gmoa-points-out-irregularities-in-covid-vaccination-program-demands-inquiry/>

provisions for protocols and processes regarding reporting of epidemics as per World Health Organization (WHO) guidelines.<sup>26</sup>

It is also important to ensure that all measures to respond to the current health emergency are in compliance with the international legal obligations of Sri Lanka. The Siracusa Principles (1984) on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights specifies that all steps taken by States in response to public emergencies must have ascertainable legitimate objectives.

### **State of Emergency and Emergency Regulations**

On 30 August 2021, by way of Gazette Extraordinary No. 2243/3 the President declared a state of emergency under the Public Security Ordinance to prevent the hoarding of essential items. The Gazette was published subsequent to a Proclamation by the President under Section 2 of the Public Security Ordinance (Chapter 40) as amended, on 30th August by way of Gazette Extraordinary No. 2243/1.

The Emergency (Provision of Essential Food) Regulation, No. 1 of 2021 also came into force by way of Gazette 2243/3 dated 30 August 2021. The objectives of the regulations as detailed in Regulation 2 are 'to prevent the hiding, interrupting the distribution, charging high prices of especial food bulks including rice and sugar and causing market irregularities which cause inconvenience to the consumers and the welfare of the people.' According to Regulation 12, where a Competent Authority "deems it necessary to seize any essential food items including paddy, rice and any vehicle transporting such items for the purpose of providing essential supplies and services to the public, such competent authority may seize such food items including paddy and rice and any vehicle transporting such commodities."

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<sup>26</sup> 'Sri Lanka shuffles senior health official after Rajapaksa reveals wrong COVID-19 death figures' 19th June 2021, The New Indian Express. <https://www.newindianexpress.com/world/2021/jun/19/sri-lanka-shuffles-senior-health-official-after-rajapaksa-reveals-wrong-covid-19-death-figures-2318540.html>

In August 2021, emergency regulations were introduced to prevent the hoarding of essential items. The President appointed a former Army General as Commissioner General of Essential Services<sup>27</sup> under Regulation 9<sup>28</sup> who is tasked with the implementation and coordination of all activities relating to the maintenance of essential services. However, it was later reported that, following the abolition of price control on rice and paddy, the government is expected to review the decision to establish the CGES. On 27 September 2021, a decision was reportedly taken by the Cabinet of ministers to rescind the relevant gazette. CPA raised initial concerns about the absence of clear procedures providing leeway for arbitrary action, and emphasised the importance of ensuring that the emergency regulations are being used solely for the specific purposes recognised by the regulations.<sup>29</sup> CPA also reiterated that these emergency regulations should not be considered as a substitute for the existing legal framework.<sup>30</sup> However, a state of emergency lapses after a period of one month.<sup>31</sup>

## Governance

### Key Points:

- Increasing involvement of the military in the health response to the pandemic
- Politicization of appointments related to task forces and other government offices
- Lack of parliamentary oversight during the period parliament was dissolved paving way for the Executive to have unfettered control over public finance
- Increased dominance by the Executive

<sup>27</sup> Gazette (Extraordinary) No. 2243/5 of 30th August 2021.

[http://documents.gov.lk/files/egz/2021/8/2243-05\\_E.pdf](http://documents.gov.lk/files/egz/2021/8/2243-05_E.pdf)

<sup>28</sup> Gazette (Extraordinary) No. 2243/3 of 30th August 2021.

[http://documents.gov.lk/files/egz/2021/8/2243-03\\_E.pdf](http://documents.gov.lk/files/egz/2021/8/2243-03_E.pdf)

<sup>29</sup> 'The Declaration of a State of Emergency and Regulations for the Maintenance of Essential Supplies and Services', 2nd September 2021, Centre for Policy Alternatives.

<https://cpalanka.org/wp-content/uploads/2021/09/Initial-Comment-CPA-Essential-Food-Serivces-ERs-2021-1.pdf>

<sup>30</sup> Ibid.

<sup>31</sup> A proclamation declaring a state of emergency is valid only for a period of one month. Extension of the state of emergency should be done with the approval of parliament.

## Militarisation and politicisation

The militarisation of civilian spaces and authorities, and civil-military interactions during pandemic response, has been a cause for growing concern.

Militarisation has seeped into existing civilian authorities with former and present military officials being appointed to positions in government, such as the office of the Secretary to the Ministry of Health and the Director General of the Disaster Management Centre. Several members with a military background were also included in the various task forces established amidst the health crisis.

Army Commander Shavendra Silva, the head of the NOCPCO, was at the forefront of the response, and continuously communicated key decisions linked to health regulations to the public.<sup>32</sup>

In January 2021, senior army officers recommended by the Army Commander were appointed to coordinate COVID-19 prevention measures and oversee the quarantine process at the district level.<sup>33</sup>

The military was involved in contact tracing, the vaccine drive, and the forcible transportation of persons to quarantine centres, in addition to monitoring activities such as checkpoints and the usage of drones in isolated areas.<sup>34</sup> More recently, the Presidential Spokesman stated that the military will oversee the action which gives power to officials to ensure that essential items, including rice and sugar, are sold at

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<sup>32</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's Accelerated Democratic Decay Amidst a Pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives 2021).

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

<sup>33</sup> COVID-19 Control Work to be Further Strengthened with District Coordinating Officers, 01st January 2021, Sri Lanka Army.

<https://www.army.lk/news/covid-19-control-work-be-further-strengthened-district-coordinating-officers>

<sup>34</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's Accelerated Democratic Decay Amidst a Pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives 2021).

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>



government-guaranteed prices or prices based on import costs at customs and prevent hiding of stocks.<sup>35</sup>

Further, the politicized nature of the ad hoc structures could be observed through several key appointments.

For instance, several of these task forces are chaired by Basil Rajapaksa, including the Presidential Task Force on Continuous Supply, Operation and Coordination of Essential Services, leading to concerns about government supporters being prioritised in the distribution chain. It is noteworthy that these military and political appointments overlook experienced civil service with expertise in health and other relevant fields.<sup>36</sup> The recent months also witnessed resignations of several heads of state corporations, which add to growing doubts regarding the lack of independence of these institutions.

### **Role of Parliament during the pandemic**

Parliament was dissolved on 2nd March 2020, at a time when there was no known health emergency in Sri Lanka for Covid-19. However, with the subsequent detection of several COVID-19 positive cases in the country, calls were made to postpone elections. On 19th March, with the conclusion of the period for nominations, the Election Commission decided to postpone elections. As a result, for several months into the pandemic, there was no functioning parliament in the country. It must be noted here that nothing in the Constitution or the Parliamentary Elections Act prevented the President from withdrawing the Gazette which dissolved Parliament.<sup>37</sup>

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<sup>35</sup> 'Sri Lanka declares economic emergency to contain food prices as forex crisis worsens' 1st September 2021, The Hindu.

<https://www.thehindu.com/news/international/sri-lanka-declares-economic-emergency-to-contain-food-prices-as-forex-crisis-worsens/article36226141.ece>

<sup>36</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's Accelerated Democratic Decay Amidst a Pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives 2021).

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

<sup>37</sup> For more details, see 'Brief Guide I: Evolving Legal Issues in the Context of COVID-19, March 2020, Centre for Policy Alternatives.

<https://www.cpalanka.org/wp-content/uploads/2020/03/Brief-Guide-I- Evolving-Legal-Issues-in-the-Context-of-COVID-19.pdf> (Annexure I)



The lack of parliamentary oversight provided leeway for the Executive to have unfettered control over public finance.<sup>38</sup> At critical junctures of the pandemic response, the failure to summon the Parliament also prevented the Government from using several existing mechanisms to respond to the pandemic.<sup>39</sup>

Globally, it has been observed that the pandemic led to increased executive dominance, consolidation of authoritarian regimes, lack of parliamentary oversight and populist rather than effective laws and administrative measures.<sup>40</sup>

In such a situation, the absence of a functioning Parliament in Sri Lanka during the first few months of the pandemic gravely undermined the role of the Parliament in overseeing the emergency response, approval of funds to meet the public health needs, ensuring transparency of the COVID-19 response.<sup>41</sup>

## Rights

### Key Points:

- Increasing incidents of police abuses/ custodial deaths of those arrested for protesting or for violating health regulations
- Repression of freedom of expression through laws to counter 'fake news'
- Discriminatory policy towards the minority Muslims with regard to burial of Covid affected dead
- Unhygienic conditions, gaps in prioritization among low wage earners, migrant workers and prisoners
- Increased domestic violence against women and girls during the pandemic

<sup>38</sup> *ibid.*

<sup>39</sup> For instance, for a curfew to be imposed by the President as laid out in the Constitution and the Public Security Ordinance, an Order needs to be communicated to the Parliament in the same manner as a Proclamation of a State of Emergency under section 21(2) of the Public Security Ordinance, see 'Brief Guide III: Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka' April 2020, Centre for policy Alternatives.

<https://www.cpalanka.org/wp-content/uploads/2020/04/Brief-Guide-III-CURFEW.pdf> (Annexure III)

<sup>40</sup> Ronan Cormacain & Ittai Bar-Siman-Tov, 'Legislatures in the Time of Covid-19' (2020) 8 (1-2, 3-9) *The Theory and Practice of Legislation* (Routledge 2020).

<https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1816017?needAccess=true>

<sup>41</sup> 'Covid-19 and the Parliament's Role During a Pandemic', 24th March 2020, ParlAmericas [http://parlAmericas.org/uploads/documents/COVID19\\_and\\_Role\\_of\\_Parliaments\\_ENG.pdf](http://parlAmericas.org/uploads/documents/COVID19_and_Role_of_Parliaments_ENG.pdf)

## Police abuses

Against the backdrop of the COVID-19 crisis, media reports of recent police abuses, including allegations of arbitrary detention, torture, and the disproportionate use of force, has been a cause for concern.<sup>42</sup> The conduct of police during the Black Lives Matter solidarity protest in June 2020 garnered criticism<sup>43</sup> as video footage emerged displaying disproportionate force used by police officers in arresting protesters.<sup>44</sup>

Reports of custodial deaths of those arrested for violating quarantine regulations, and disproportionate and abusive enforcement of quarantine regulations have also caused grave concern.<sup>45</sup> These reports include an incident where a man who was going in search of food for his family was beaten and left on the road by police, where he was killed by a passing bus. Two policemen and two others linked to the incident were subsequently arrested.<sup>46</sup> More recently, reports emerged of four Sri Lankan military personnel attacking journalist Vishvalingham Vishvachandran for taking a photo of a Mullivaikkal road sign.<sup>47</sup>

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<sup>42</sup> 'Sri Lanka: Police Abuses Surge Amid Covid-19 Pandemic', 6th August 2021, Human Rights Watch <https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>

<sup>43</sup> In a letter addressed to the Health Services Director General Asela Gunawardena and Police Chief Chandana Wickramaratne on the recent ban on protests, the Bar Association of Sri Lanka (BASL) expressed grave concern regarding the excessive use of force and heavy-handedness of the police in arresting the protesters for ostensibly violating health regulations. See 'BASL Condemns Arrest And Forced Quarantining Of Peaceful Protesters', 10th July 2021, Colombo Telegraph. <https://www.colombotelegraph.com/index.php/basl-condemns-arrest-and-forced-quarantining-of-peaceful-protesters/>

<sup>44</sup> Meera Srinivasan, 'Concern over 'police brutality' in Sri Lanka', 10th June 2020, The Hindu. <https://www.thehindu.com/news/international/concern-over-police-brutality-in-sri-lanka/article31798486.ece>

<sup>45</sup> Additionally, Police Scotland put a scheme to train officers in Sri Lanka on hold following these allegations. See David Leask, 'Police training in Sri Lanka halted over abuse fears', 27th November 2021, The Times. <https://www.thetimes.co.uk/article/police-training-in-sri-lanka-halted-over-abuse-fears-3w87qk9rp>

<sup>46</sup> Basil Fernando, 'A Man Who Went In Search For Food For His Family Beaten & Killed', 28th May 2021, Colombo Telegraph. <https://www.colombotelegraph.com/index.php/a-man-who-went-in-search-for-food-for-his-family-beaten-killed/>

<sup>47</sup> 'Sri Lankan soldiers attack Tamil journalist with barbed wire', 27th November 2021, Tamil Guardian. <https://www.tamilguardian.com/content/sri-lankan-soldiers-attack-tamil-journalist-barbed-wire>

In January 2021, the UN High Commissioner for Human Rights, Michelle Bachelet in her report to the UN Human Rights Council wrote that she was “concerned by a recent series of deaths in police custody and in the context of police encounters with alleged criminal gangs” amid a “militarized approach to law and order and drug control.” Five possible extrajudicial killings involving the Sri Lankan police between June and October 2020 were highlighted in the report.<sup>48</sup>

Commenting on the recent incidents of police abuse, the Human Rights Watch (HRW) has also stated that the government should “restore independent oversight of the police and meaningfully investigate and prosecute alleged police abuses.”<sup>49</sup>

### **Repression**

On 1 April 2020, it was reported that Acting IGP C.D. Wickramaratna instructed the Criminal Investigation Department (CID) and all the Police OIC's to take legal action against those who publish posts on social media criticising government officials and obstructing their duties.<sup>50</sup>

Since then, provisions in the Penal Code and the Criminal Procedure Code have been used for the prevention of spreading fake news on social media. Individuals who spread fake news “including statements that impact national security and incite violence between communities” can be subjected to five-years imprisonment and a fine.

There have been several arrests of persons who criticised the government for their management of the pandemic.

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<sup>48</sup> ‘Sri Lanka on alarming path towards recurrence of grave human rights violations - UN report’ 27th January 2021, Office of the High Commissioner of Human Rights (OHCHR)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E>

<sup>49</sup> ‘Sri Lanka: Police Abuses Surge Amid Covid-19 Pandemic’, 6th August 2021, Human Rights Watch

<https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>

<sup>50</sup> ‘Strict action against those criticise state officials on social media’, 1st April 2020, Daily Mirror.

[https://www.dailymirror.lk/breaking\\_news/Strict-action-against-those-criticise-state-officials-on-social-media/108-186028](https://www.dailymirror.lk/breaking_news/Strict-action-against-those-criticise-state-officials-on-social-media/108-186028)

Trade Union member Ananda Palitha was arrested due to statements made to the media about an imminent fuel shortage,<sup>51</sup> and was later released on bail by the Colombo Additional Magistrate. The Magistrate highlighted that the expression of opinions based on factual information is not a matter for remand.<sup>52</sup> On 26 August 2021, five persons including a university student were also arrested for allegedly sharing false content.<sup>53</sup>

The Human Rights Commission of Sri Lanka has previously stated “that any arrest for the mere criticism of public officials or policies would be unconstitutional”, and the United Nations also reiterated that “any actions taken to stop the spread of false information must be proportionate.”<sup>54</sup>

The use of penal sanctions to control dissent and criticism of the government has grave implications for the freedom of expression guaranteed by the Constitution. Concerns have also been raised in relation to the proportionality of these sanctions, which may result in blurring the line between misinformation that is harmful or merely innocuous.

### **Continued discrimination of minority communities**

The Regulations issued by Gazette Extraordinary No. 2170/8 of 11 April 2020 made it mandatory to cremate the body of a person who has died or is suspected to have died of

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<sup>51</sup> Dinitha Rathnayake and Pamodi Waravita, ‘Ananda Palitha released on bail’, 22nd August 2021, The Morning.

<https://www.themorning.lk/ananda-palitha-released-on-bail/>

<sup>52</sup> ‘Expressing the TRUTH no reason to Remand’ - Magistrate, Releases Unionist’, 22nd August 2021, NewsFirst.

<https://www.newsfirst.lk/2021/08/22/expressing-the-truth-no-reason-to-remand-magistrate-releases-unionist/>

<sup>53</sup> ‘Five arrested for sharing false content on COVID-19’, 2nd April 2020, Daily Mirror.

[https://www.dailymirror.lk/breaking\\_news/Five-arrested-for-sharing-false-content-on-COVID-19/108-186120](https://www.dailymirror.lk/breaking_news/Five-arrested-for-sharing-false-content-on-COVID-19/108-186120). See further, Gehan Gunatilleke, ‘Criminalising Disinformation: Neither the Time nor the Place’, 26th May 2021, Groundviews.

<https://groundviews.org/2021/05/26/criminalising-disinformation-neither-the-time-nor-the-place/>

<sup>54</sup> ‘The Securitisation of COVID-19 Health Protocols’, August 2021, Asia Centre.

[https://www.hri.global/files/2021/08/18/HRI\\_Asia\\_Centre\\_-\\_Securitisation\\_FINAL.PDF](https://www.hri.global/files/2021/08/18/HRI_Asia_Centre_-_Securitisation_FINAL.PDF)

COVID-19.<sup>55</sup> The government later amended this controversial regulation<sup>56</sup> to include burials, following protests and international pressure.<sup>57</sup> Iranathivu island in the Gulf of Mannar was later designated as the site for burials. It lies some 300km (186 miles) away from Colombo, and was purportedly chosen because the area is thinly populated.<sup>58</sup>

However, some Muslim and Christian leaders have reacted negatively to the government's latest move. There are concerns that it is a form of pitting the Muslims against the Tamils living in those areas. The island reportedly has a population of around 250 Tamils, who were displaced due to the civil war in the early 90s, and only returned in 2018.<sup>59</sup>

While the discriminatory policy of mandatory cremation has been changed, selecting a remote area makes it difficult for family and friends to visit the burial place on important religious and other occasions.

Apart from this, there has been increased militarization in enforcing movement restrictions especially in the North and the East. Widespread and increasingly concerning attacks by the police and soldiers on Tamil civilians who violated

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<sup>55</sup> 'Q and A on Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka', 6th November 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/q-and-a-on-regulations-issued-under-the-quarantine-and-prevention-of-diseases-ordinance-how-this-impacts-the-covid-19-response-in-sri-lanka/> (Annexure IV)

<sup>56</sup> For more details, see 'Q and A on Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka', 6th November 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/q-and-a-on-regulations-issued-under-the-quarantine-and-prevention-of-diseases-ordinance-how-this-impacts-the-covid-19-response-in-sri-lanka/> (Annexure IV) and 'An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka', 12th May 2021, Centre for Policy Alternatives. <https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/> (Annexure V)

<sup>57</sup> 'Covid-19: Sri Lanka chooses remote island for burials', 2nd March 2021, BBC. <https://www.bbc.com/news/world-asia-56249805>

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

curfew/movement restriction in the North and the East have been reported.<sup>60</sup> This raises concerns as to police and military harassment of minorities under the guise of enforcing measures to counter the spread of the pandemic.

### **Impact on vulnerable populations and communities and structural inequalities**

The impact of the pandemic and the resulting economic fallout on the particularly vulnerable and disadvantaged sections of the society requires attention.<sup>61</sup> These sections include low-wage earners, Free Trade Zone (FTZ) workers, migrant workers and the estate community. Low-wage and productivity-based garment workers from parts of Katunayake Free Trade Zone have been suffering from poor and overcrowded living conditions amidst the health crisis. Discrimination of garment factory workers was also apparent during quarantining processes by the military. In October 2020, a complaint was made to the Human Rights Commission by representatives of such workers alleging cruel, inhuman and degrading treatment.<sup>62</sup> More recently in December 2021, the UN Special Rapporteur on Contemporary Forms of Slavery in his statement emphasized the vulnerable condition of garment workers and migrant workers, among others.<sup>63</sup>

However, during the lockdown imposed from 21 May 2021, President Gotabaya Rajapaksa ordered garment factories to remain open. Trade unions and public health inspectors have reported numerous virus outbreaks in factories, as well as in the

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<sup>60</sup> Subash Somachandran, 'COVID-19: Military steps up repression in war-ravaged northern Sri Lanka', 16th May 2020, World Socialist Web Site.

<https://www.wsws.org/en/articles/2020/05/16/nort-m16.html>

<sup>61</sup> 'Sri Lanka's Vistas of Prosperity and Splendour: A Critique of Promises Made and Present Trends', 13th July 2021, Centre for Policy Alternatives.

<https://www.cpalanka.org/sri-lankas-vistas-of-prosperity-and-splendour-a-critique-of-promises-made-and-present-trends/>

<sup>62</sup> 'Sri Lanka: A complaint logged against General Shavendra Silva for cruel, inhumane & degrading treatment in quarantining FTZ workers' 17th October 2020, Sri Lanka Brief.

<https://srilankabrief.org/sri-lanka-a-complaint-logged-against-general-shavendra-silva-for-cruel-inhumane-degrading-treatment-in-quarantining-ftz-workers/>

<sup>63</sup> 'End of Mission Statement by the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences on his country visit to Sri Lanka' (26 November-3 December 2021) OHCHR.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27895&LangID=E>

congested boarding houses where many workers live, and alleged that employers were under-testing and under-reporting cases to maintain production levels.<sup>64</sup>

Overcrowding in prisons and detention centres and unhygienic living conditions have also led to the quick spread of the virus in prisons. Protests in Mahara prison in Gampaha District, Bogambara prison in Kandy, and Anuradhapura prison led the security forces to attack them. This culminated in the death of eleven, one, and two prisoners respectively, with more than 100 individuals injured.<sup>65</sup> While actions have been taken recently to vaccinate FTZ workers<sup>66</sup> and the prisoners,<sup>67</sup> gaps in prioritisation and implementation need to be addressed to prevent further spread of COVID-19 among these populations.

The gendered impact of the pandemic is inadequately addressed by the government. Since the onset of the pandemic, data and reports worldwide have emerged of the intensification of violence against women and girls, particularly domestic violence, leading to a “shadow pandemic.”<sup>68</sup> Sri Lanka is no exception to this global trend. Reports emerged of an increase in the number of domestic violence incidents during the lockdown, due to a variety of reasons ranging from women being confined at home with perpetrators, stress due to loss of jobs, financial difficulties, and others.<sup>69</sup> The

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<sup>64</sup> ‘Sri Lanka: Protect Garment Workers’ Rights During Pandemic’ 12th July 2021, Human Rights Watch. <https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>

<sup>65</sup> ‘The Securitisation of COVID-19 Health Protocols’, August 2021, Asia Centre. [https://www.hri.global/files/2021/08/18/HRI\\_Asia\\_Centre\\_-\\_Securitisation\\_FINAL.PDF](https://www.hri.global/files/2021/08/18/HRI_Asia_Centre_-_Securitisation_FINAL.PDF)

<sup>66</sup> Kanchana Ruwanpura, Samanthi Gunawardana, and Buddhima Padmasiri, ‘Vaccine Inequality and the Cost to Garment Sector Workers’, 22nd May 2021, Groundviews.

<https://groundviews.org/2021/05/22/vaccine-inequality-and-the-cost-to-garment-sector-workers/>

<sup>67</sup> Dilini Madushanki, ‘Vaccination of prison inmates against COVID-19 begins today’, 5th August 2021, Ceylon Today.

<https://ceylontoday.lk/news/vaccination-of-prison-inmates-against-covid-19-begins-today>

<sup>68</sup> ‘The Shadow Pandemic: Violence against women during COVID-19’ UNWomen <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>

<sup>69</sup> Minoan Gamage and Rochelle Tummodara, ‘A Study On The Rise Of Domestic Violence Against Women In Sri Lanka During The Lockdown’, 12th March 2021, Colombo Telegraph.

<https://www.colombotelegraph.com/index.php/a-study-on-the-rise-of-domestic-violence-against-women-in-sri-lanka-during-the-lockdown/>



pandemic and the restrictions on movement have also created difficulties in lodging complaints with the authorities and accessing support networks.<sup>70</sup> The pandemic response should therefore take cognisance of the gendered impact of the COVID-19 health crisis, and strengthen the existing legal framework and institutions linked to the prevention of violence against women.

## Accountability & Governance

### Key Points:

- The lack of transparency and accountability relating to the Itukama Fund
- Delay, lack of transparency and mismanagement in vaccine procurement
- Undue influence over the National Medicines Regulatory Authority (NMRA)
- Concerns regarding the risk prioritization in the vaccine roll out

## Irregularities with the Itukama Fund

On 23 March 2020, the “Itukama” COVID-19 Healthcare and Social Security Fund was established by the President to “strengthen the mitigation activities aimed at controlling the spread of the COVID-19 virus in the country and related social welfare programmes.”<sup>71</sup>

It was established with a donation of Rs. 100 million from the President’s Fund. Members of the public, several local institutions, as well as Sri Lankan expatriates made donations to the Fund.<sup>72</sup>

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<sup>70</sup>Piyumi Fonseka, ‘Pandemic-related Domestic Violence: Victims don’t often get the desired help’, 11th June 2021, Daily Mirror.

<https://www.dailymirror.lk/news-features/Pandemic-related-Domestic-Violence%3A-Victims-don%E2%80%99t-often-get-the-desired-help/131-213849>

<sup>71</sup> ‘The government spent only 6% of the Itukama COVID-19 fund balance’, 5th May 2021, PublicFinance.lk

<https://publicfinance.lk/en/topics/The-government-spent-only-6-of-the-Itukama-COVID-19-fund-balance-1620900512>

<sup>72</sup> Maheesha Mudugamuwa, ‘Itukama Covid-19 Fund: Cannot be directly audited: Auditor General’s Department’, 23rd May 2021, The Morning.

<https://www.themorning.lk/itukama-covid-19-fund-cannot-be-directly-audited-auditor-general-department/>



In response to public scrutiny of the Itukama Fund, the President's Media Division (PMD) released a statement setting out its income and expenditures since establishment. According to the statement, only 23% of the Fund has been utilised as of May 2021. The remainder of the Fund is expected to be spent on the vaccination drive.<sup>73</sup>

The Deputy Auditor General of the National Audit Office (NAO) asserted that the NAO does not possess the constitutional powers to audit the Fund directly, since it has not been passed in Parliament under a separate act. As such, the Fund will have to be audited during the annual Presidential Secretariat Audit.<sup>74</sup>

He further asserted that the NAO will commence the audit of the Fund and complete it before the next budget is presented in Parliament.<sup>75</sup> Despite the lack of transparency and accountability, donations continue to be made to the Fund by local and foreign donors.<sup>76</sup> In October 2021, a Right to Information (RTI) request filed by the Sunday Times revealed that more than Rs. 1.6 billion in the Fund have not been used. Accordingly, a little more than Rs. 189 million had been utilised up to 21 September 2021. Information released under the RTI request further reveals that Rs. 42.6 million was spent on PCR testing and Rs. 67.5 million was spent on an "advocacy programme."

The President's Office reportedly did not have information about the advocacy programme as it "was totally implemented by the Ministry of Health." An additional Rs. 38 million is listed as expenditure for transport facilities provided to take people to quarantine centres.<sup>77</sup>

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<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's accelerated democratic decay amidst a pandemic' in Pradeep Peiris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives, 2021)

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

<sup>76</sup> 'Lanka Hospitals PLC donates Rs.10 million to 'ITUKAMA' Fund', 23rd September 2021, Daily News. <https://www.dailynews.lk/2021/09/23/local/260073/lanka-hospitals-plc-donates-rs10-million-%E2%80%99itukama%E2%80%99-fund>

<sup>77</sup> Sandun Jayawardana, 'Highly publicised COVID-19 fund: More than 1.6bn still not used', 24th October 2021, The Sunday Times.

## **Irregularities related to vaccine procurement**

Delays, mismanagement and other irregularities related to vaccine procurement has been a cause for concern as the country continues its vaccination campaign. Procurement guidelines provide extraordinary powers to the Government to make emergency procurement through any means necessary. The existing guidelines on COVID-19 related procurement detailed in a Ministry of Finance circular published on 9 April 2020 authorises the Cabinet to deviate from tender procedures in “very urgent and exceptional circumstances” for procurements above Rs. 25 million that can be approved directly by the Cabinet.<sup>78</sup>

Accordingly, the Cabinet can rely on a Standing Cabinet-Appointed Procurement Committee (SCAPC) or a “suitable” committee to expedite procurements above Rs 25 million.<sup>79</sup>

The process of procurement also requires approval from the National Medicines Regulatory Authority (NMRA). While NMRA approval is not required for pre-ordering a vaccine, approval would be required prior to the importation of the vaccine.<sup>80</sup>

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<https://www.sundaytimes.lk/211024/news/highly-publicised-covid-19-fund-more-than-1-6bn-still-not-used-459654.html>

<sup>78</sup> ‘Did pushing aside Serum Institute’s local agent cause a vaccination delay in Sri Lanka?’, 22nd June 2021, EconomyNext.

<https://economynext.com/did-pushing-aside-serum-institutes-local-agent-cause-a-vaccination-delay-in-sri-lanka-83204/>

See also, circular ‘Further Relaxation of Provisions under Supplement 35 issued to the Procurement Manual 2006 (Goods and Works) to facilitate expeditious handling of Covid 19 related Emergency Procurements- PFD/PMD/149/000/ 2020-02 dated 09 April 2020

[https://theleader.lk/images/Vaccine\\_2.pdf](https://theleader.lk/images/Vaccine_2.pdf)

<sup>79</sup> ‘Did pushing aside Serum Institute’s local agent cause a vaccination delay in Sri Lanka?’, 22nd June 2021, EconomyNext.

<https://economynext.com/did-pushing-aside-serum-institutes-local-agent-cause-a-vaccination-delay-in-sri-lanka-83204/>

<sup>80</sup> Dr. Gehan Gunatilleke, ‘President must probe into Sri Lanka’s vaccine tragedy’, 20th August 2021, DailyFT. <https://www.ft.lk/opinion/President-must-probe-into-Sri-Lanka-s-vaccine-tragedy/14-721939>

The government was initially unable to pre-order and procure vaccines in a timely manner. No pre-ordering of an early consignment of 'Covishield' vaccines from India's Serum Institute took place, as the government waited for NMRA approval before placing an order.

The procurement process also suffered from procedural issues and mismanagement on the part of State Pharmaceutical Corporation (SPC), leading to further delays. Undue influence over the NMRA also led to irregularities. The procurement of Covishield had to be suspended since Serum Institute started experiencing production problems due to a fire, and due to issues related to the COVID-19 outbreak in India in early March 2021. These circumstances provided a convenient excuse for the government to detract attention from its own failure to pre-order vaccines. As a result, there was a delay in receiving the second dose of AstraZeneca for over 500,000 people.<sup>81</sup>

Additionally, the lack of transparency in relation to varying costs of the vaccines elicited criticism.<sup>82</sup> For instance, the Chinese manufacturer for Sinovac reportedly barred the Sri Lankan local agent from disclosing the price of a dose of the vaccine. Concerns were raised about the unwillingness of disclosing to the public the price of a vaccine procured by the Government using public funds, with critics arguing that this concealment may be in violation of the right to information guaranteed by the Constitution.<sup>83</sup>

In response, the Chinese Embassy in Sri Lanka defended the strict Non-Disclosure Agreement between the manufacturer of the Sinovac vaccine and Sri Lanka, stating that the Non-Disclosure Agreements (NDAs) are a common feature of the procurement process for pharmaceutical companies and that Sinopharm, Sinovac, Pfizer and Moderna also impose NDAs and penalties in their deals with buyers.<sup>84</sup>

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<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> 'Chinese embassy defends Sinovac vaccine Price Non-Disclosure Agreement with Sri Lanka', 28th June 2021, NewsWire.

The information available in the public domain about the procurement process, guidelines, task forces and their actions is inadequate and raises corresponding concerns about transparency and accountability related to public finance and procurement. Transparency International Sri Lanka (TISL) also filed several RTI requests with the relevant authorities on matters such as the procurement of the Oxford Astrazeneca and other relevant vaccines, the vaccine rollout plan for the general public including the criteria for selecting priority recipients of the vaccine, and information relating to medical approval for the relevant vaccines, and called for the Government to provide to the general public, accurate, timely and comprehensive information of these matters.<sup>85</sup>

### **Irregularities related to vaccine rollout**

The vaccine rollout in Sri Lanka began on 29 January 2021. From the very beginning, concerns were raised with regards to criteria for risk prioritisation and the lack of information available on island-wide deployment.<sup>86</sup>

Several issues such as inadequacies in planning, prioritisation, and risk communication in the vaccination campaign were also evident. The lack of a public campaign to create awareness among the public has also contributed to the fear and uncertainty surrounding vaccination.<sup>87</sup>

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<https://www.newswire.lk/2021/06/28/chinese-embassy-defends-sinovac-vaccine-price-non-disclosure-agreement-with-sri-lanka/>

<sup>85</sup> 'TISL Highlights Two Key Issues on COVID-19 Vaccine Rollout', 2nd February 2021, Transparency International Sri Lanka.

<https://www.tisrilanka.org/tisl-highlights-two-key-issues-on-covid-19-vaccine-rollout/>

<sup>86</sup> For more details, see 'An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka', 12th May 2021, Centre for Policy Alternatives.

<https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/> (Annexure V)

<sup>87</sup> Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's accelerated democratic decay amidst a pandemic' in Pradeep Pieris (ed), *Is the Cure Worse than the Disease? Reflections on Covid Governance in Sri Lanka* (Centre for Policy Alternatives, 2021)

<https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

Allegations of political interference and undue influence arose during the rollout process.<sup>88</sup> The involvement of the military in the vaccination drive has also elicited criticism as yet another aspect of the broader trend of militarisation. While the ongoing vaccination campaign in Sri Lanka has been regarded as a success,<sup>89</sup> allegations of wastage of doses and violation of risk priority are among the pressing concerns that need to be addressed.<sup>90</sup> It is therefore imperative that leadership, effective decision-making, organisation, and lines of responsibility on decisions related to the vaccine rollout<sup>91</sup> are effectively communicated to the public to ensure transparency and accountability of the process.

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<sup>88</sup> Imesh Ranasinghe, 'The vaccination mess: Government tells officials don't give in to political influence', 9th March 2021, EconomyNext.

<https://economynext.com/the-vaccination-mess-government-tells-officials-dont-give-in-to-political-influence-79633/#modal-one>

<sup>89</sup> 'Vaccination: Success assured', 12th September 2021, Sunday Observer.

<https://www.sundayobserver.lk/2021/09/12/vaccination-success-assured>

<sup>90</sup> 'GMOA points out irregularities in Covid vaccination program, demands inquiry', 12th June 2021, NewsWire.

<https://www.newswire.lk/2021/06/12/gmoa-points-out-irregularities-in-covid-vaccination-program-demands-inquiry/>; Arundathie Sangakkara, 'Vaccine Thieves of Sri Lanka', 20th May 2021, Colombo

Telegraph. <https://www.colombotelegraph.com/index.php/vaccine-thieves-of-sri-lanka/>

<sup>91</sup> 'Let's talk about the vaccine: the need for strategy, clarity and equality', 2021, Law & Society Trust (LST). [https://lstlanka.org/images/pdf/2021/Lets\\_talk\\_about\\_the\\_vaccine\\_English.pdf](https://lstlanka.org/images/pdf/2021/Lets_talk_about_the_vaccine_English.pdf)

## Annexure I

# Brief Guide I

## Evolving Legal Issues in the Context of COVID-19

Centre for Policy Alternatives (CPA)  
28 March 2020

The Centre for Policy Alternatives (CPA) has prepared this brief guide to raise several legal issues and highlight consequences in the context of Covid-19 in Sri Lanka. Sri Lanka has taken swift action in recent weeks to contain Covid-19 outbreak. These actions have been taken in the backdrop of Parliament being dissolved by President Gotabaya Rajapaksa on 2<sup>nd</sup> March 2020. Whilst CPA acknowledges the work done by those in the frontlines in containing the spread of the virus, increasing concerns are raised of emerging governance and rights issues in the response to the present health emergency. This brief guide aims to constructively engage with the authorities to ensure the Government is able to deal with Covid-19 pandemic efficiently, lawfully and constitutionally. In the effort to tackle the virus, CPA underlines the importance of upholding of the rule of law and adherence to constitutional governance in Sri Lanka.

### **Executive Summary**

Firstly, attention is drawn to the postponement of parliamentary elections. Parliament was dissolved on 2<sup>nd</sup> March 2020, at a time when there was no known health emergency in Sri Lanka for Covid-19. However, with numbers rising, calls were made to postpone elections but to no avail. Notable here is the point that nothing in the Constitution or the Parliamentary Elections Act prevented the President from withdrawing the Gazette which dissolved Parliament.

On 19<sup>th</sup> March, with the conclusion of the period for nominations, the Election Commission decided to postpone elections. In such a context, Parliament remains dissolved with uncertainty as to when elections will take place. Moreover, despite the Gazette issued on 2<sup>nd</sup> March summoning “the new Parliament to meet on” the 14<sup>th</sup> May 2020, no such Parliament will be in existence to meet on the said date.

The guide also examines issues around the dissolution of Parliament and its ramifications. Whilst the Election Commission had little choice in postponing the election, it has nonetheless impacted on the fundamental rights of citizens. CPA notes that if the President

had withdrawn the Gazette dated 2<sup>nd</sup> March 2020, Parliament would continue to function until the end of August 2020.

CPA discusses here several consequences that flow from the absence of a functioning Parliament. In terms of Article 148, Parliament is responsible for full control over public finance, a position reiterated by several Supreme Court determinations. In the absence of a functioning Parliament, serious consequences arise including the lack of oversight over the constitutional limitations on the President's ability to make appropriations. This may give unfettered control over public finance to the Executive against the letter and spirit of the Constitution, and with no checks and balances. In order to ensure both constitutionality and efficiency in the response to the emergency, it is critical for Parliament to be summoned to pass the necessary appropriations.

Despite Sri Lanka having decades of experience tackling numerous disasters, Covid-19 presents an unprecedented challenge with the need for new frameworks. In the absence of a functioning Parliament, concern is also raised as to how this would be done. Furthermore, not summoning Parliament also prevents the government from using several existing mechanisms which could be used by the Government to deal with the present emergency.

Parliament as an institution has an important role in situations of emergency, and it is paramount that the different arms of the Government function in a manner that would both effectively respond to the emergency, and do so in a manner that respects the Constitution and the rule of law. These issues, discussed in detail in the guide, require urgent attention to ensure that Sri Lanka's response to the emergency are effective, measured, and in adherence to the constitutional framework. Inaction and/or unwillingness in this regard will have serious and long-term consequences.

## **Background**

President Gotabaya Rajapaksa issued a Gazette notification dissolving Parliament on 2<sup>nd</sup> March 2020.<sup>92</sup> In terms of this notification;

- i) Parliament would stand dissolved at midnight on 2<sup>nd</sup> March 2020;
- ii) The Parliamentary Elections are to be held on 25<sup>th</sup> April 2020;
- iii) Nominations for Parliamentary Elections to be accepted between 12<sup>th</sup> March 2020 and 12 noon on the 19<sup>th</sup> March 2020; and
- iv) The new Parliament to commence sittings on 14<sup>th</sup> May 2020.

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<sup>92</sup>Gazette (Extra Ordinary) No 2165/8, 2 March 2020, available at [www.presidentsoffice.gov.lk/wp-content/uploads/2020/02/2165-08\\_E.pdf](http://www.presidentsoffice.gov.lk/wp-content/uploads/2020/02/2165-08_E.pdf)

The President had from December 2019 been of the position that he would dissolve Parliament at the first available opportunity, which is when the Parliament elected in August 2015 would have completed four and a half years of its five-year term. At the time he dissolved Parliament, there were no active Covid-19 cases within Sri Lanka, despite a growing crisis in China and Europe, and large numbers of cases in other East Asian countries.

The first confirmed case of a Sri Lankan citizen was reported on 11<sup>th</sup> March 2020, and by 18<sup>th</sup> March 2020 the total number of confirmed cases had risen to 53.<sup>93</sup> During this period there were several calls from some political parties and election monitoring organisations to postpone Parliamentary Elections for a few months until the threat of the disease had abated.<sup>94</sup>

Furthermore, the government declared 16<sup>th</sup> March 2020 as a Public Holiday and the 17<sup>th</sup> to 19<sup>th</sup> March were declared “special holidays”, with the government announcing several other measures aimed at curbing the spread of Covid-19.<sup>95</sup> The members of the Election Commission also met public health officials to discuss the “contingency measures” for Parliamentary Elections.<sup>96</sup>

Upon conclusion of the period for nominations on 19<sup>th</sup> March 2020, the Election Commission informed the media that Parliamentary Elections would be postponed.

### **Current position regarding the Parliamentary Elections in Sri Lanka**

The Election Commission issued a Gazette notification officially announcing that the elections would be a contested election in all 22 electoral districts, in terms of section 24(1) of the Parliamentary Elections Act.<sup>97</sup>

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<sup>93</sup> Epidemiology Unit Ministry of Health & Indigenous Medical Services, Coronavirus disease 2019 (COVID-19)-Situation Report –19.03.2020, available at

[http://www.epid.gov.lk/web/images/pdf/corona\\_virus\\_report/sitrep-sl-en-19-03\\_10.pdf](http://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-19-03_10.pdf)

<sup>94</sup> Newswire.lk, “Safety of public of ‘paramount concern’, Postpone Election – TNA”,

<http://www.newswire.lk/2020/03/16/safety-of-public-of-paramount-concern-postpone-election-tna/>; The Centre for Monitoring Election Violence, “CMEV Calls for Postponement of General Election 2020”,

<https://cmev.org/2020/03/17/cmev-calls-for-postponement-of-general-election-2020/>

<sup>95</sup> President's Media Division, “More decision to contain COVID – 19 outbreak”,

<http://www.pmdnews.lk/more-decision-to-contain-covid-19-outbreak/>

<sup>96</sup> Manjula Fernando, “EC, Health Ministry to decide on contingency measures tomorrow”, The Sunday Observer, available at

<http://www.sundayobserver.lk/2020/03/15/news/ec-health-ministry-decide-contingency-measures-tomorrow>

<sup>97</sup> Gazette (Extra Ordinary) No. 2167/12, 20<sup>th</sup> March 2020, available at

[http://www.documents.gov.lk/files/egz/2020/3/2167-12\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/3/2167-12_E.pdf)



However, by further Gazette notification dated 21<sup>st</sup> March 2020, the Commission notified the public that the poll in all 22 electoral districts cannot be taken on 25<sup>th</sup> April 2020 due to the Covid-19 outbreak in Sri Lanka.<sup>98</sup> The notification further specified that the Commission would appoint a date after 14<sup>th</sup> May 2020 as a date for the poll and that “the said date will be notified by a Gazette Notification in due course.”<sup>99</sup>

As such, Parliament remains dissolved and there is presently no exact date as to when the poll for Parliamentary Elections will take place.

Whilst the nomination period has ended, the names of candidates nominated by the respective political parties and independent groups for each electoral district have not been gazetted in terms of S. 24(1) (b) of the Parliamentary Elections Act.

Furthermore, whilst the President in his proclamation summoned the new Parliament to meet on 14<sup>th</sup> May 2020, no such Parliament will be in existence to meet on the said date.

### **Legal Consequences of Postponing Parliamentary Elections**

In terms of Article 70(1) of the Constitution, the President has the power to dissolve Parliament any time after the lapse of four and a half years from the date of Parliament’s first meeting. This was the provision that was used by the President to issue the Gazette dated 2<sup>nd</sup> March 2020 dissolving Parliament, noted above. If the President had not dissolved Parliament, then in terms of the Constitution, that Parliament would have continued until 1<sup>st</sup> September 2020.<sup>100</sup>

The Election Commission used the powers granted to it in terms of section 24(3) of the Parliamentary Elections Act to postpone the poll for Parliamentary Elections in all 22 electoral districts. In terms of that Act, the Election Commission can only exercise this power after it has issued a declaration that the election is a contested one in terms of section 24(1).<sup>101</sup>

Up until the point the Election Commission issued the order postponing the poll, there was nothing in the Constitution or the Parliamentary Elections Act which prevented the President from withdrawing the Gazette dated 2<sup>nd</sup> March 2020. The President does have an

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<sup>98</sup> Gazette (Extra Ordinary) No. 2167/19, 21<sup>st</sup> March 2020, available at [http://www.documents.gov.lk/files/egz/2020/3/2167-19\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/3/2167-19_E.pdf)

<sup>99</sup> Ibid Para (ii)

<sup>100</sup> Article 62(2) of the Constitution.

<sup>101</sup> Which it did on the 20<sup>th</sup> March 2020. See Footnote 6 above.

obligation to act reasonably and does not have the power to withdraw such a Gazette in an arbitrary manner.<sup>102</sup>

Given the present circumstances, however, he would have been entirely justified in withdrawing the Gazette and it is unlikely that any accusation of arbitrariness would have been raised. The effect of the withdrawal would have been to retract the dissolution of Parliament.

The decision of the Election Commission to postpone the Parliamentary Elections is welcome as holding elections during the Covid-19 pandemic is likely to have had disastrous consequences.

However, the Elections Commission postponing the Parliamentary elections has raised several consequences discussed below:

#### 1. The Election Campaign

The Election Commission's decision to postpone the election does not directly impact campaigning through activities which are not prohibited in terms of the Parliamentary Elections Act. This could have led to a situation where candidates continued to campaign and thereby act as vectors for the spread of Covid-19 and place the public at greater risk.

The Commission has sought to mitigate this risk by not issuing the Gazette specifying the names of candidates and their respective serial numbers as assigned by the Commission. In the absence of the official serial number issued by the Commission, a candidate can only engage in a limited range of activities.

Furthermore, even without the declaration of a 'curfew', the Police Ordinance and the Code of Criminal Procedure both contain several provisions which could be used to prevent public campaigning and election meetings which could exacerbate the spread of Covid-19.

<sup>103</sup>

#### 2. Dissolution of Parliament

The Election Commission only has the power to postpone the election. This order does not undo the proclamation issued by the President dissolving Parliament. As such at present,

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<sup>102</sup> See **Rajavarithiam Sampanthan and Others Vs. The Hon. Attorney General and Others, SC FR 351-356/ 2018, SC FR 358- 361/ 2018**

<sup>103</sup> See generally S. 77 – 81 of Police Ordinance, S. 106 of the Code of Criminal Procedure Act.

Parliament remains dissolved in terms of Article 70 of the Constitution, with no clearly defined date for elections or reconvening a newly elected Parliament. This raises several legal challenges.

### I. The Sovereignty of the People

In terms of Article 3 of the Constitution, the sovereignty of the people includes the powers of the government, fundamental rights and the franchise. Parliament, consisting of the elected representatives of the people is the main instrument by which the legislative power of the people is exercised.

The Supreme Court has recognised in several judgements that the failure to hold elections on the due date or postponing such elections is a violation of the franchise and a violation of the fundamental rights of the people.<sup>104</sup> Whilst the Election Commission had little choice in postponing the election due to the prevailing circumstances, it has nonetheless resulted in an abridgement of the fundamental rights of citizens. Had the Gazette dated 2<sup>nd</sup> March 2020 dissolving Parliament been withdrawn by the President (instead of the Election Commission being forced to postpone the poll), this would not have violated the franchise of the people as Parliament would have been able to continue to function until the end of August 2020.

As well being an affront to the sovereignty of the people, the absence of a functioning Parliament has several other serious consequences on governance.

### II. Public Finance

In terms of Article 148<sup>105</sup> of the Constitution, Parliament has full control over public finance. Article 149 – 152 of the Constitution provides for specific enumeration of this control, including in relation to government income / revenue and government expenditure.

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<sup>104</sup> **Karunatileke Vs. Dissanayake (1999) 1 S.L.R. 157 at pg. 173-174; Mohamed Hussain Hajjar Muhammad and others vs. The Election Commission of Sri Lanka and others SC FR 35/2016**

<sup>105</sup> “Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.”

The Supreme Court in several determinations<sup>106</sup> has concluded that Article 148 makes it mandatory that Parliament retains full control of matters relating to public finance. The Supreme Court has further explained that the obligation on Parliament to exercise full control means:

- (i) Control over the sources of finances, i.e., imposition of taxes, levies, rates and the like and the creation of any debt of the Republic.
- (ii) Control by way of allocation of public finance to the respective departments and agencies of the Government and the setting of limits of such expenditure; and
- (iii) Control by way of continuous audit and check as to due diligence in performance in relation to (i) and (ii) above.

Importantly, the Supreme Court goes further in its determinations in providing a rationale for why this control is important. Firstly, the full control by Parliament is part of the function of Parliament as a check on the executive. Secondly, Parliament is not exercising this power for its own benefit but is exercising power in “trust” for the people. As such, it is incumbent on Parliament to ensure that public finance is controlled in a transparent and open manner.

It goes without saying that Parliament as a deliberative assembly, is best placed to exercise such control in a transparent manner. The business of Parliament is made public and is a matter of public record. Bills, motions and resolutions passed by Parliament are also public. Members of the government and the opposition have the freedom of speech to raise questions, make statements and engage in debate within Parliament.

Moving public finance outside the domain of Parliament and giving the Executive unfettered control would not only be clearly unconstitutional, but also unwise, and against the public interest.

However, there is one<sup>107</sup> important exception to this rule, which is contained in Article 150(3):

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<sup>106</sup> See **Supreme Court Special Determination 3&4 /2008 [in re the Appropriation Bill] ; Supreme Court Special Determination 28 & 29/ 2016 [ In re the Fiscal Management (Responsibility) (Amendment) Bill ]**

<sup>107</sup> See also Article 150 (4), which relates to election related expenditure “Where the President dissolves Parliament and fixes a date or dates for a General Election the President may, **unless Parliament has already made provision in that behalf**, authorize the issue from the Consolidated Fund and the expenditure of such sums as he may, after consultation with the Commissioner of Elections, consider necessary for such elections.”

“Where the President dissolves Parliament **before the Appropriation Bill for the financial year has passed into law**, he may, **unless Parliament shall have already made provision**, authorize the issue from the Consolidated Fund and the expenditure of **such sums as he may consider necessary for the public services** until the expiry of a period of three months **from the date on which the new Parliament is summoned to meet**.

An analysis of this provision shows us that it relates to a very specific situation. It applies only where:

- (i) Parliament has not made any provision regarding expenditure for the period after the dissolution of a Parliament and the commencement of a newly elected Parliament;
- (ii) The President can make allocations from the Consolidated Fund, but only to the extent “necessary for public services”;
- (iii) The time period for this allocation is limited and not open ended.

After the Presidential Election in November 2019, the new government did not present a budget. Instead, Parliament passed a Vote on Account on 23<sup>rd</sup> October 2019, covering the period commencing from 1<sup>st</sup> January 2020 and ending on 30<sup>th</sup> April 2020 or on a date on which the Appropriation Act for 2020 commences, whichever comes first.<sup>108</sup> In a situation where Parliament is dissolved there is no chance of the Appropriation’s Act being passed during April 2020, as such 30<sup>th</sup> April 2020, is the date on which appropriations made by Parliament through the vote on account come to an end. As such the President’s powers in terms of Article 150(3) can only be triggered after the 30<sup>th</sup> April 2020.<sup>109</sup>

The time period for the President to make such allocations is limited to “until the expiry of a period of three months **from the date on which the new Parliament is summoned to meet**”. Presently the Gazette dated 2<sup>nd</sup> March 2020 issued by the President remains valid and operational. As such the President can only make such payments of sums “necessary for public services” until 14<sup>th</sup> August 2020 (i.e. 3 months from the date the new Parliament is summoned to meet). Thus, not only would Parliamentary Elections need to take place before that, the Parliament would also have to pass an Appropriations Bill before 14<sup>th</sup>

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<sup>108</sup> See [https://www.parliament.lk/files/documents\\_news/2019/vote-on-account/resolution.pdf](https://www.parliament.lk/files/documents_news/2019/vote-on-account/resolution.pdf)

<sup>109</sup> See **Supreme Court Special Determination 30, 31, 32 & 33/ 2016 [In re the Value Added Tax (Amendment) Bill]** where the Court to the view that in light of the specific nature of these provisions, the procedure set forth to pass Bill and/or resolutions related to Finance need to be strictly adhered to. The Court went on to justify its strict interpretation on the basis that “.....it is the paramount duty of this Court to ensure that constitutional provisions are not violated and the powers conferred upon each Branch of the Government by the Constitution is safeguarded...”

August 2020 deadline. In the current context of the Covid-19 pandemic, this seems to be an unrealistic deadline.

Thus, the power of the President in terms of Article 150(3) is limited by time, and in scope to only expenditures that are “necessary for public services.” While what is “necessary for public services” is not defined, it is clear the Constitution contemplates only such expenditures as are essential to keep public services running until such time as full provision through a budget approved by Parliament can be made. Additionally, the Government is constrained by several laws as to the amount of local and foreign debt.<sup>110</sup> These amounts can only be changed by other Acts of Parliament.

The Constitution also envisages several mechanisms for the President to resolve this difficulty with regard to finance. The most straightforward of these mechanisms is for the President to rely on Article 70(7) of the Constitution and summon Parliament due to the emergency that has arisen.<sup>111</sup> Once Parliament is summoned, it can pass the appropriations needed to deal with the Covid-19 pandemic. This will also provide the necessary transparency for the raising and spending for the funds needed for the crisis response. In the present context, it is not at all likely that any opposition party would deny the government funds it needs to deal with the pandemic, especially in light of the seriousness of the crisis and the impending election.

The added advantage of relying on Article 70(7) in the present context is that Parliament will stand dissolved upon the termination of the emergency or upon the conclusion of the Parliamentary Elections on a date determined by the Election Commission, whichever is earlier. This would add a further layer of accountability to ensure Parliamentary Elections will take place without an unnecessary delay.

### III. Special Powers dealing with Public Emergencies.

The Government has taken several steps over the past two weeks in order to prevent the spread of Covid-19 within Sri Lanka. These include:

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<sup>110</sup> See Appropriations Act for 2019 and the Active Liability Management Act.

<sup>111</sup> If at any time **after the dissolution of Parliament**, the President is satisfied that **an emergency has arisen** of such a nature that an earlier meeting of Parliament is necessary, he may by **Proclamation summon the Parliament** which has been dissolved to meet on a date not less than three days from the date of such Proclamation and such **Parliament shall stand dissolved upon the termination of the emergency or the conclusion of the General Election, whichever is earlier.**

- Placing individuals in quarantine both within their own homes and within government-run facilities, especially those who are suspected to have been exposed to the virus.
- Requesting persons who have returned to Sri Lanka from certain foreign countries to register with health officials and tracing such individuals who have not so registered.
- Declaring public holidays and other holidays to prevent mass gatherings.
- Declaring curfew in several parts of the country.
- Put in place mechanisms to coordinate delivery efforts of food and other essential items to citizens.

All of these were required measures to prevent the spread of the virus and to protect public health. However, whilst some of the actions undertaken by the Government had a clear legal basis,<sup>112</sup> in relation to others, the legal basis remains opaque. Thus, whilst the Government would be able to deal with the lack of legal basis in the short term, the long-term consequences are problematic.<sup>113</sup>

Despite the decades of experience tackling numerous disasters, Covid- 19 represents an unprecedented challenge for the Sri Lankan State with wide ranging consequences for human life, rights, governance and the economy. At the very least this would require the Government to set up administrative and decision-making structures which are accountable, transparent and effective. Such mechanisms would be difficult to set up within the existing legal framework, due to the unique nature of the challenges.<sup>114</sup>

The Government cannot afford to delay the establishment of such mechanisms until a new Parliament is elected. As such, the President should immediately move to summon Parliament in terms of Article 70(7) of the Constitution.

The Government, for reasons not publicly known, seems reluctant to summon Parliament. By not summoning Parliament, the Government is depriving itself of tools it can use to more effectively deal with Covid-19 including not using existing legislation meant to deal with emergency situations.<sup>115</sup> These laws arguably grant the Government wide authority

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<sup>112</sup> In terms of S. 3 of the Quarantine and Prevention of Diseases Ordinance, the Minister has the power to make regulation regarding quarantining certain persons.

<sup>113</sup> There are several consequences that could arise due to this, including especially to individual Public officials and also raise complications if the Government intends to take legal action against those who disregard the said orders/ efforts by the Government.

<sup>114</sup> For an example both the Contagious Diseases Ordinance and the Quarantine and Prevention of Diseases Ordinance pre- independence legislation which were developed in a very different social and economic context.

<sup>115</sup> See Public Security Ordinance and Sri Lanka Disaster Management Act.

and discretion in dealing with public emergencies with very little oversight but require limited parliamentary oversight after a declaration of public emergency and/or disaster has been made by the President.<sup>116</sup>

It is a common thread in our constitutional scheme<sup>117</sup> and legal system<sup>118</sup> that Parliament has to be called upon to assist the executive in discharging its functions in such situations of emergency. In fact, the Supreme Court has had to intervene and point out that giving open ended authority to the executive branch of government to deal with disasters and emergencies without any parliamentary oversight could lead to such powers being misused and result in arbitrary acts contrary to the Constitution.<sup>119</sup> Thus, it can be argued that our legal system as a whole requires the different arms of the Government to function in a manner that would both effectively respond to the emergency / disaster at hand and do so in a manner that respects the Constitution and the rule of law.

In any event, the checks on the executive are not extensive and give the executive considerable leeway to respond to the situation. It is puzzling as to why the Government would constrain itself by not using such existing legislation which gives it broad powers and instead resort to mechanisms which are patently unconstitutional and illegal.<sup>120</sup> Such acts could reduce public confidence in the Government's capacity to respond to such situations, to its commitment to the rule of law and constitutional governance, and to its capacity to exercise its authority in the public interest. It distracts the Government with unnecessary legal complications and reduces its effectiveness to respond to public needs.

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<sup>116</sup> See Article 155 of the Constitution; S.2(3), S. 16 and 21 of the Public Security Ordinance; S. 10 & 11 of the Sri Lanka Disaster Management Act.

<sup>117</sup> See Article 70(7) and 155 of the Constitution.

<sup>118</sup> See .2(3), S. 16 and 21 of the Public Security Ordinance; S. 10 & 11 of the Sri Lanka Disaster Management Act.

<sup>119</sup> Vide **Supreme Court Special Determination 04/ 2005 [In re the Sri Lanka Disaster Management Bill]**

<sup>120</sup> Gazette (Extra Ordinary) No. 2168/8, 26<sup>th</sup> March 2020, available at [http://www.documents.gov.lk/files/egz/2020/3/2168-08\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/3/2168-08_E.pdf)



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

Centre for Policy Alternatives (CPA)  
8 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*<sup>121</sup>'. 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.<sup>122</sup> Following the 2004 Tsunami, several other structures were established including three Task Forces,<sup>123</sup> the Reconstruction and Development Agency (RADA) and the Disaster Management Centre.<sup>124</sup> 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.<sup>125</sup>

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<sup>121</sup> 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-forprevention-of-covid-19-outbreak/>

<sup>122</sup> Regulation 9, Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005 (as amended), <https://www.refworld.org/pdfid/471712342.pdf>

<sup>123</sup> Task Force for Rescue and Relief (TAFRER), Task Force for Logistics, Law and Order (TAFLOL) and Task Force for Rebuilding the Nation (TAFREN)

<sup>124</sup> Set up under the Sri Lanka Disaster Management Act No. 13 of 2005

<sup>125</sup> Reliefweb.int, 'Sri Lanka: President appoints new Task Force to rebuild north', <https://reliefweb.int/report/srilanka/sri-lanka-president-appoints-new-task-force-rebuild-north>

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.<sup>126</sup> 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) 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.***

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<sup>126</sup> CMEV letter, 6<sup>th</sup> April 2020

It can thus be logically concluded that the President used this provision to set up the present Task Force.<sup>127</sup> 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 President to do so.<sup>128</sup> 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.<sup>129</sup>

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<sup>127</sup> 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).

<sup>128</sup> 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>Untitled

<sup>129</sup> *ibid*

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, 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:<sup>130</sup>

- 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:<sup>131</sup>

- 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 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.

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<sup>130</sup> 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](http://www.disastermin.gov.lk/web/index.php?option=com_content&view=article&id=51&Itemid=64&lang=en)

<sup>131</sup> Sri Lanka Disaster Management Act No.13 of 2005, section 4(d), (i) and (o)

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 coordination with such organisations and secretaries'*.<sup>132</sup>

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 the 28<sup>th</sup> of January 2020, 12 hospitals had already been identified as treatment centres,<sup>133</sup> the second confirmed patient (and first local patient) was detected on the 11<sup>th</sup> of March

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<sup>132</sup> Ibid., section 8(2)(e).

<sup>133</sup> 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](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](http://www.epid.gov.lk/web/index.php?option=com_content&view=article&id=225&Itemid=480&lang=en)



2020,<sup>134</sup> and by the 20<sup>th</sup> of March 2020, several holidays<sup>135</sup> and island wide ‘curfews’ had already been declared.<sup>136</sup>

The Task Force was appointed only on the 26<sup>th</sup> 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 avoid 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.	<a href="#">Agrarian Services Act</a> 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.

<sup>134</sup> 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](http://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-12-03_10.pdf)

<sup>135</sup> Newsfirst.lk, ‘Government Declares Three day Holiday’,  
<https://www.newsfirst.lk/2020/03/17/government-declares-three-day-holiday/>

<sup>136</sup> Newsfirst.lk, ‘Island-wide curfew will be in effect from 06:00 PM today’  
<https://www.newsfirst.lk/2020/03/20/islandwide-curfew-will-be-in-effect-from-0600-pm-today/>



<p><b>Comment:</b>  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>	<ul style="list-style-type: none"> <li>● '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)</li> <li>● Agrarian Services Committees have the power to coordinate agricultural activities and implement government policies within their areas of authority (Section 46)</li> <li>● 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))</li> <li>● 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.</li> </ul> <p><b><u>Promotion of Export Agriculture Act</u></b> No. 46 of 1992</p> <ul style="list-style-type: none"> <li>● Allows the Minister to declare what crops are Export Agricultural Crops to which the Act will apply, provided that they are any perennial crop</li> </ul>
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		<p>other than tea, rubber, coconut and cashew, of which at least 50% of the annual production is exported (section 2)</p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• 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)).</li> </ul>
2	<p>Organise and operate Lanka Sathosa, cooperative network, Cargills, Keells, Arpico and Laugfs retail network to supply agricultural products direct to customers.</p> <p><b>Comment:</b> 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><a href="#"><u>Consumer Affairs Authority Act</u></a> No.9 of 2003 – regulates internal trade and empowers the Consumer Affairs Authority.</p> <ul style="list-style-type: none"> <li>• 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)).</li> <li>• The Authority is empowered to take action to promote, assist and encourage the State or other</li> </ul>

		<p>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).</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● The hoarding of goods by any trader or person is an offence (section 17)</li> </ul>
4	<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"> <li>● Under section 6 of <a href="#">the Sri Lanka Ports Authority Act</a> 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.</li> <li>● 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))</li> </ul>

		<ul style="list-style-type: none"> <li>● Under section 103 of the <a href="#">Sri Lanka Customs Ordinance</a> 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.</li> <li>● Under the <a href="#">National Medicines Regulatory Authority Act</a> (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)).</li> <li>● The <a href="#">Imports and Exports (Control) Act</a> 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)).</li> <li>● A licence granted to any person shall, subject to the conditions set out in the license and to the provisions of this Act or any regulation made thereunder, authorise such person to</li> </ul>
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		<p>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)</p> <ul style="list-style-type: none"> <li>• Under section 2(1) of the <a href="#">Essential Public Services Act</a>, 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.</li> <li>• 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 after summary trial before a Magistrate.</li> </ul>
6	<p>Provide health and sanitation facilities to drivers and assistants of vehicles such as lorries, three wheelers, buses and motorcycles 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 <a href="#">Ceylon Petroleum Corporation Act</a> 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. 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,</p>	<p>The <a href="#">Seed Act</a> No. 22 of 2003 aims to regulate the quality of seeds and planting materials, and deals with several connected matters:</p>

<p>Farmer Organisations, and private seed production organisations to supply seed, seedlings, fertiliser and machinery for farming activities.</p> <p><b>Comment:</b> 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>	<ul style="list-style-type: none"> <li>● 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)).</li> <li>● 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</li> </ul>
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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.

## Annexure III

### Brief Guide III

### Curfew in response to COVID-19:

### Legal Framework and Relevant Questions in Sri Lanka

Centre for Policy Alternatives (CPA)  
21 April 2020

Curfews, which are generally understood to be a government regulation requiring people to remain indoors during specified hours, are a means of restricting the fundamental freedom of free movement, in view of a greater public aim such as ensuring public health, national security, public safety and such purposes. Whilst such restrictions are permissible, they must adhere to the principles of legality and proportionality. In Sri Lanka the power of imposing curfew has been exercised by the Executive President and the Police.

On 20th March 2020, the Government of Sri Lanka made a public announcement of imposing 'curfew'. Whilst the reason for imposing such restrictions on movement due to the public health emergency is not questioned, the Government has failed to provide the legal framework used to provide for such 'curfew' and with it raising questions of its legality.<sup>137</sup> The following is a brief timeline relevant to the present 'curfew'.

→ **18 March 2020** : Police curfew in the Puttalam District and Kochchikade Police Division in Negombo until further notice.<sup>138</sup>

→ **19 March 2020**: Police curfew in Puttalam, Chilaw, Negombo-Kochchikade to be temporarily lifted while curfew imposed within the Ja-Ela and Wattala Police Divisions.<sup>139</sup>

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<sup>137</sup> The press release issued by the Acting Inspector General of Police, stated that 'Police Curfew' has been imposed for the whole island with a view to prevent violation of provisions and regulations of the Quarantine and Prevention of Diseases Ordinance imposed for prevention of COVID19. However the legal basis for imposition of such curfew has not been cited.

See, 'Press Release 2020.03.20' (*Department of Government Information, 2020*)

<<https://www.dgi.gov.lk/news/press-releases-sri-lanka?start=5>> accessed 15 April 2020.

<sup>138</sup> Police Curfew To Be Imposed In Puttalam, Chilaw&Negombo-Kochchikade' (*Adaderana.lk, 2020*)

<<http://www.adaderana.lk/news.php?nid=61497>> accessed 14 April 2020.

<sup>139</sup> Police Curfew In Puttalam, Chilaw, Negombo-Kochchikade To Be Temporarily Lifted' (*Adaderana.lk, 2020*)

<<http://www.adaderana.lk/news.php?nid=61526>> accessed 14 April 2020.

- **20 March 2020:** Island-wide curfew imposed till 23 March 2020.<sup>140</sup>
- **23 March 2020:** Curfew imposed in the country temporarily lifted for a period of 8 hours except for 8 districts.<sup>141</sup>
- **24 March 2020:** Curfew imposed in 8 districts temporarily lifted for a period of 8 hours. Colombo, Gampaha and Kalutara districts were identified as high risk areas for COVID-19 and the curfew imposed on those districts was to be continued until further notice.<sup>142</sup>
- **30 March 2020:** Curfew temporarily lifted in all but 6 districts.<sup>143</sup>
- **6 April 2020:** Curfew temporarily lifted for 8 hours in all but 6 districts.<sup>144</sup>
- **7 April 2020:** President's Media Division (PMD) announced the publishing of circular specifying new regulations for issuing curfew passes.<sup>145146</sup>
- **9 April 2020:** Curfew in 19 districts temporarily lifted.<sup>147</sup>
- **16 April 2020:** Curfew in 19 districts temporarily lifted.<sup>148</sup>
- **19 April 2020:** Government decides to relax the ongoing curfew in several districts and police divisions<sup>149</sup>
- **20 April 2020:** Curfew which was set to be lifted on the 22<sup>nd</sup> of April (in 4 districts) extended until the 27<sup>th</sup> of April.<sup>150</sup>

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<sup>140</sup> Island-Wide Curfew To Be Imposed Until Monday' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61577>> accessed 14 April 2020.

<sup>141</sup> Curfew Temporarily Lifted Except For 8 Districts' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=61707>> accessed 14 April 2020.

<sup>142</sup> Colombo, Gampaha&Kalutara Districts Classified COVID-19 High Risk Zones; Curfew Until Further Notice' (*Adaderana.lk*, 2020) <<http://www.adaderana.lk/news.php?nid=61771>> accessed 14 April 2020.

<sup>143</sup> 'Curfew Temporarily Lifted In All But 6 Districts' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62017>> accessed 14 April 2020.

<sup>144</sup> Curfew In 6 Districts To Continue Until Further Notice' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62269>> accessed 14 April 2020.

<sup>145</sup> New Regulations For Issuing Curfew Passes Announced' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62368>> accessed 14 April 2020.

<sup>146</sup> 'Curfew\_Pass\_Instruction.Pdf' (*www.police.lk*, 2020)

<<https://drive.google.com/file/d/1pctm6WXKu2FJaf7axPiQDs6KNErX4nmg/view>> accessed 9 April 2020.

<sup>147</sup> 'Curfew In 19 Districts Temporarily Lifted' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62420>> accessed 15 April 2020.

<sup>148</sup> Curfew In 19 Districts Temporarily Relaxed Until 4Pm' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62672>> accessed 18 April 2020.

<sup>149</sup> Curfew In Several Districts And Police Areas To Be Relaxed' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news.php?nid=62771>> accessed 18 April 2020.

<sup>150</sup> In all other districts, the curfew will be effective from 8.00pm to 5.00am till Friday, the April 24<sup>th</sup>.

See, 'Curfew In Colombo, Gampaha, Kalutara, Puttalam Districts Extended Till April 27' (*Adaderana.lk*, 2020)

<<http://www.adaderana.lk/news/62818/curfew-in-colombo-gampaha-kalutara-puttalam-districts-extended-till-april-27>> accessed 20 April 2020.



At the time of writing this guide, the Government has announced measures to relax the ongoing 'curfew' in some areas,<sup>151</sup> however there is still no information publicly available as to the legislative framework used when imposing the said 'curfew'. In the absence of this information, questions are raised as to whether the 'curfew' is legally valid. This will raise several difficulties for public officials if attempts are made to prosecute the 33,155<sup>152</sup> persons arrested for violating the 'curfew' and raise further concerns if a need arises to continue/impose curfew in the coming weeks and months.

In this guide, the Centre for Policy Alternatives (CPA) briefly examines the legal framework relating to the imposition of curfew and related questions that require attention. Whilst CPA notes that some measures are needed to combat the COVID-19 pandemic including limiting movement, it is paramount that any steps taken are in adherence to the constitutional and legal framework.

### **Curfew imposed by Executive President**

The power of the President to impose curfew has been laid out in the Constitution<sup>153</sup> and the Public Security Ordinance.<sup>154</sup>

The Public Security Ordinance refers to the imposition of curfew as a 'Special Power of the President'.<sup>155</sup> Section 16 of the Public Security Ordinance which expressly recognizes curfew, provides that the President may, by Order published in Gazette, prohibit persons in a specific area, to be in public places between such hours as may be specified, except under the authority of a written permit granted by such person as may be specified in the Order. This section clearly recognizes the power of the President to impose curfew upon fulfilling the procedural requirement of publishing such Order in the Gazette. The section further provides that the contravention of such Order is an offence punishable by fine and/or imprisonment.

#### **Section 16**

*(1)Where the President considers it necessary to do so for the maintenance of public order in any area, he may, by Order published in the Gazette, direct that, subject to such exemption as may be made by that Order or by any subsequent Order made under this section, no person in such area shall, between such hours as may be specified in the Order, be on any public road, railway, public park, public*

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<sup>151</sup> Curfew Regulations Relaxed To Restore Normalcy In Civilian Life - President's Media Division' (*President's Media Division*, 2020)

<<http://www.pmdnews.lk/curfew-regulations-relaxed-to-restore-normalcy-in-civilian-life/>> accessed 19 April 2020.

<sup>152</sup> Total number of arrests made over curfew violations since 20th March 2020 (as at 6 a.m. on 19.04.2020) See, 'Sri Lanka : Police Arrest 1,475 People For Violating Curfew In Last 24 Hours' (*Colombopage.com*, 2020) <[http://www.colombopage.com/archive\\_20A/Apr19\\_1587309025CH.php](http://www.colombopage.com/archive_20A/Apr19_1587309025CH.php)> accessed 20 April 2020.

<sup>153</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 Hereinafter referred to as 'The Constitution

<sup>154</sup> Public Security Ordinance No 25 of 1947

<sup>155</sup> Part III of the Public Security Ordinance No 25 of 1947

*recreation ground or other public ground or the seashore except under the authority of a written permit granted by such person as may be specified in the Order.*

*(3) If any person contravenes an Order made under this section, he shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine.*

Once an Order is published in the gazette as required, it shall be in operation for a period of one month from the date of its publication (in the Gazette). But the Order may be rescinded before the expiry of such period or a further Order may be made at or before the end of that period.<sup>156</sup>

More importantly, subsection (2) of Section 21, provides that such Order needs to be communicated to the Parliament in the same manner a Proclamation of State of Emergency<sup>157</sup> has to be communicated to the Parliament.

#### *Section 21(2)*

*(2) The provisions of subsection (3) of section 2 shall, mutatis mutandis, apply to an order made under section 12, **section 16** or section 17 in like manner as they apply to a Proclamation made under subsection (1) of section 2.*

Above provisions state that an Order to impose curfew by virtue of section 16, is required to follow the procedure (Section 2(3)) applicable to a Proclamation made when bringing Emergency Regulations in to operation.

#### *Section 2(3)*

*(3) Where a Proclamation is made under the preceding provisions of this section, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by that Proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.*

Accordingly, it becomes clear that the President's Order to impose curfew, is required to be published in the Gazette and subsequently communicated to the Parliament. However, there is no indication that such a step has been taken with regard to the 'curfew' imposed in March 2020.

In addition to section 16 of the Public Security Ordinance, past governments have used Emergency Regulations as a means of restricting individual rights (including the right of free movement) during what is termed an emergency situation.

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<sup>156</sup> Section 21 of the Public Security Ordinance No 25 of 1947

<sup>157</sup> Brought in to operation by Section 2 of the Public Security Ordinance No 25 of 1947

The President is empowered to make Emergency Regulations which he opines are necessary or expedient in the interests of public security by virtue of the Constitution and the Public Security Ordinance.<sup>158</sup><sup>159</sup> Article 155 of the Constitution confers to the President, the power to issue Emergency Regulations as provided in the Public Security Ordinance. These regulations have the legal effect of over-riding, amending or suspending the operation of any law, except the provisions of the Constitution.<sup>160</sup> However such Emergency Regulations shall not come into operation, except upon the making of a Proclamation which brings in a State of Emergency in the country.<sup>161</sup>

*Article 155 (3)*

*The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of over-riding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.*

Once such a Proclamation has been issued it needs to be communicated to the Parliament.<sup>162</sup> Even if Parliament had been dissolved at the time of issuing such Proclamation, it should be summoned on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting.<sup>163</sup> The Proclamation needs to be approved by a resolution of Parliament within fourteen days, failing which, it would render the Proclamation expired.<sup>164</sup> Once made, such proclamation shall be in operation for a period of one month unless the President revokes it earlier.<sup>165</sup>

It is then clear that, for the President to impose curfew under Emergency Regulations, a State of Emergency is needed to be declared by Proclamation, which is subsequently approved by Parliament.

Since the Government has not taken such steps, the curfew imposed on the 20th of March 2020 cannot be premised on the President's power to issue emergency regulations.

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<sup>158</sup> Part II, Section 5 of the Public Security Ordinance No 25 of 1947

<sup>159</sup> Section 5(2) of the Public Security Ordinance refers to a list of regulations that may be made by the President. Although 'curfew' has not been expressly mentioned in the list, the section also provides that the list causes no prejudice to the generality of President's powers to make emergency regulations.

<sup>160</sup> Article 155(2) of the Constitution

<sup>161</sup> Article 155(3) of the Constitution

<sup>162</sup> Article 155(4) of the Constitution

<sup>163</sup> Article 155(4) (i) of the Constitution

<sup>164</sup> Article 155(6) of the Constitution

<sup>165</sup> Article 155(5) of the Constitution

## Police Curfew

There is no express legal provision which statutorily empowers the Police to impose curfew. However, the concept of Police Curfew has been often practiced in Sri Lanka during emergency situations. The Police Ordinance makes no express reference to the concept of police curfew. But Sections 261 and 262 in the Penal Code of Sri Lanka refers to 'Public Nuisances' which recognizes the public right to safety.

***Section 261.** A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.*

*A public nuisance is not excused on the ground that it causes some convenience or advantage.*

***Section 262.** Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

Given the highly contagious nature of the COVID-19 Pandemic, it can reasonably be concluded that remaining in public places may cause danger to the health/lives of others. But this cannot be construed as a power conferred to the Police to impose curfew. Although Section 56 of the Police Ordinance provides that it is every police officer's duty to *use his best endeavours and ability to prevent public nuisances*, the Ordinance does not make reference to powers to make regulations that may curtail the right of movement within an area.

In the absence of express powers conferred to impose curfew, the customary practice of 'police curfew' should be exercised with caution. Attention is required if the present 'curfew' is premised on this.

In the event the Public Security Ordinance has been used, a Police officer may arrest without warrant any person who is committing or has committed or whom he has reasonable ground for suspecting to be committing or to have committed an offence in violation of such Order.<sup>166</sup> But for this to be applicable, the steps provided in the Public Security Ordinance (discussed above) must be followed.

## Impact on rights by other laws during COVID-19

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<sup>166</sup> Section 18 of the Public Security Ordinance No 25 of 1947

In addition to the above, other laws may inhibit individual rights in the situation of a public health crisis such as COVID-19.

The Quarantine and Prevention of Diseases Ordinance provides that the relevant Minister may make, revoke or vary regulations as may seem necessary for the purpose of preventing the introduction or spread of any disease in Sri Lanka<sup>167</sup>. Section 3 of the Ordinance lists the matters in respect of which regulations may be made by the Minister. However, nothing in the list grants any power to impose curfew or restrict the freedom of movement of the general public. Therefore imposition of curfew cannot find any legal basis within the Quarantine and Prevention of Diseases Ordinance.

### Present Status

While certain measures are required to combat the pandemic, it is important to question if the ‘curfew’ was imposed lawfully. At the time of writing, the President has not taken steps to bring into operation any emergency regulations as per Article 155 of the Constitution nor issued a Gazette in accordance with section 16 of the Public Security Ordinance. Thus, questions must be posed as to the legal basis of the curfew imposed on the 20th of March 2020 and subsequently extended. It must also be noted that in the absence of a legal basis for the ‘curfew’, the legality of action taken on reliance of the said ‘curfew’ will also put into question. With significant ramifications, it is prudent for the Government to publicly state the basis for the ‘curfew’ and ensure curfew and all other action needed to combat COVID-19 are taken in adherence to the Constitutional and legal framework in Sri Lanka. The following table lays down the statutory provisions which are applicable in understanding the legal basis of the curfew imposed in view of COVID-19.

Source	Relevant Legal Provision
The Constitution	<p>Article 76 (2)</p> <p><i>76. (1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power.</i></p> <p><b><i>(2) It shall not be a contravention of the provisions of paragraph (1) of this Article for Parliament to make, in any law relating to public security, provision empowering the President to make emergency regulations in accordance with such law.</i></b></p>

<sup>167</sup> Section 2 of Quarantine and Prevention of Diseases Ordinance No 3 of 1897

Article 155

*(1) The Public Security Ordinance as amended and in force immediately prior to the commencement of the Constitution shall be deemed to be a law enacted by Parliament. (2) The power to make emergency regulations*

*(2) The power to make emergency regulations under the Public Security Ordinance or the law for the time being in force relating to public security shall include the power to make regulations having the legal effect of over-riding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution*

*(3) The provisions of any law relating to public security, empowering the President to make emergency regulations which have the legal effect of over-riding, amending or suspending the operation of the provisions of any law, shall not come into operation, except upon the making of a Proclamation under such law, bringing such provisions into operation.*

*(4) Upon the making of such a Proclamation, the occasion thereof shall, subject to the other provisions of this Article, be forthwith communicated to Parliament and accordingly –*

*(i) if such Proclamation is issued after the dissolution of Parliament such Proclamation shall operate as a summoning of Parliament to meet on the tenth day after such Proclamation, unless the Proclamation appoints an earlier date for the meeting which shall not be less than three days from the date of the Proclamation; and the Parliament so summoned shall be kept in session until the expiry or revocation of such or any further Proclamation or until the conclusion of the General Election whichever event occurs earlier and shall thereupon stand dissolved ;*

*(ii) if Parliament is at the date of the making of such Proclamation, separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days.*

*(5) Where the provisions of any law relating to public security have been brought into operation by the making of a Proclamation under such law, such Proclamation shall, subject to the succeeding provisions of this Article, be in operation for a period of one month from the date of the making thereof, but without prejudice to the earlier revocation of such Proclamation or to the making of a further Proclamation at or before the end of that period. (6) Where such provisions as are referred to in paragraph (3) of this Article, of any law relating to public security, have been brought into operation by the making of a Proclamation under such law, such Proclamation shall expire after a period of fourteen days from the*

	<p><i>date on which such provisions shall have come into operation, unless such Proclamation is approved by a resolution of Parliament: Provided that if - (a) Parliament stands dissolved at the date of the making of such Proclamation ; or (b) Parliament is at such date separated by any such adjournment or prorogation as is referred to in paragraph (4)(ii) of this Article ; or (c) Parliament does not meet when summoned to meet as provided in paragraphs (4)(i) and (4)(ii) of this Article, then such Proclamation shall expire at the end of ten days after the date on which Parliament shall next meet and sit, unless approved by a resolution at such meeting of Parliament. (7) Upon the revocation of a Proclamation referred to in paragraph (6) of this Article within a period of fourteen days from the date on which the provisions of any law relating to public security shall have come into operation or upon the expiry of such a Proclamation in accordance with the provisions of paragraph (6), no Proclamation made within thirty days next ensuing shall come into operation until the making thereof shall have been approved by a resolution of Parliament.</i></p> <p><i>(9) If the making of a Proclamation cannot be communicated to and approved by Parliament by reason of the fact that Parliament does not meet when summoned, nothing 114[contained in paragraph (6) or (7), of this Article], shall affect the validity or operation of such Proclamation : Provided that in such event, Parliament shall again be summoned to meet as early as possible thereafter.</i></p>
<p><b>Public Security Ordinance</b></p>	<p><b>Section 5</b></p> <p><i>(1) The President may make such regulations (hereinafter referred to as "emergency regulations" as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community.</i></p> <p><i>(2) Without prejudice to the generality of the powers conferred by the preceding subsection, emergency regulations may, so far as appears to the President to be necessary or expedient for any of the purpose mentioned in that subsection-</i></p> <p><i>(a) authorize and provide for the detention of persons;</i></p> <p><i>(b) authorize- (i) the taking of possession or control, on behalf of the State, of any property or undertaking; (ii) the acquisition on behalf of the State of any property other than land;</i></p> <p><i>(c) authorize the entering and search of any premises;</i></p> <p><i>(d) provide for amending any law, for suspending the operation of any law and for applying any law with or without modification;</i></p>



	<p><i>(e) provide for charging, in respect of the grant or issue of any license, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations; (f) provide for payment of compensation and remuneration to persons affected by the regulations;</i></p> <p><i>(g) make provisions for the apprehension and punishment of offenders and for their trial by such courts, not being courts martial, and in accordance with such procedure, as may be provided for by the regulations, and for appeals from the orders or decisions of such courts and the hearing and disposal of such appeals.</i></p> <p><i>(3) Any emergency regulation may be added to, or altered or revoked by resolution of Parliament or by regulation made under the preceding provisions of this section.</i></p>
	<p><b>Section 16</b></p> <p><i>(1) Where the President considers it necessary to do so for the maintenance of public order in any area, he may, by Order published in the Gazette, direct that, subject to such exemption as may be made by that Order or by any subsequent Order made under this section, no person in such area shall, between such hours as may be specified in the Order, be on any public road, railway, public park, public recreation ground or other public ground or the seashore except under the authority of a written permit granted by such person as may be specified in the Order.</i></p> <p><i>(3) If any person contravenes an Order made under this section, he shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine.</i></p>
	<p><b>Section 18</b></p> <p><b>18.</b> <i>Any police officer may arrest without warrant any person who is committing or has committed or whom he has reasonable ground for suspecting to be committing or to have committed any offence under section 16 or section 17.</i></p>



	<p>Section 21(2)</p> <p><i>(2) The provisions of subsection (3) of section 2 shall, mutatis mutandis, apply to an order made under section 12, section 16 or section 17 in like manner as they apply to a Proclamation made under subsection (1) of section 2.</i></p>
<p>Police Ordinance</p>	<p>Section 56</p> <p><i>56. Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka, It shall be his duty</i></p> <p><i>(a) to use his best endeavours and ability to prevent all crimes, offences, and public nuisances</i></p> <p><i>(b) to preserve the peace ;</i></p> <p><i>(c) to apprehend disorderly and suspicious characters ;</i></p> <p><i>(d) to detect and bring offenders to justice ;</i></p> <p><i>(e) to collect and communicate intelligence affecting the public peace ; and</i></p> <p><i>(f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority.</i></p>
<p>Quarantine and Prevention of Diseases Ordinance.</p>	<p>Section 2</p> <p><i>2. The Minister may, from time to time, make. and when made revoke or vary, such regulations as may seem necessary or expedient for the purpose of preventing the introduction into Ceylon of any disease, and also preventing the spread of any disease in and outside Ceylon.</i></p> <hr/> <p>Section 3</p> <p><i>3(2) Provided always that nothing in this section contained shall in any way restrict or be construed to restrict the generality of the powers conferred on the Minister by section 2, but such powers shall extend to all matters, whether similar or not to those in this section mentioned, as to which it may be expedient to make regulations for the better carrying into effect of the objects of this Ordinance.</i></p>

Penal Code	<p>Section 261</p> <p><i>261. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.</i></p>
	<p>Section 262</p> <p><i>262. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.</i></p>

## Annexure IV

# **Questions and Answers: Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka**

Centre for Policy Alternatives (CPA)  
6 November 2020

Following the detection of a spate of new COVID-19 cases in Sri Lanka, regulations were made by the Minister of Health under Sections 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (the Ordinance) by Gazette Extraordinary No. 2197/25 of Thursday, October 15, 2020. This guide briefly examines the legal framework relating to these regulations as well as other action taken to combat the COVID-19 pandemic.

The Centre for Policy Alternatives (CPA) has consistently reiterated the importance of the effort to tackle the pandemic adhering to constitutional governance and upholding the rule of law in Sri Lanka. Several other documents were issued previously by CPA on a range of legal and human rights issues linked to COVID-19 which are available on the [CPA website](#).

### **1. What are the quarantine regulations which have been gazetted following the COVID-19 outbreak in Sri Lanka?**

- Gazette Extraordinary No. 2167/18 - Friday, March 20, 2020 declaring COVID-19 a quarantinable disease for the purposes of the existing Quarantine Regulations passed under the Ordinance in 1925 and 1960 making these regulations applicable to procedures taken in relation to COVID-19.
- Gazette Extraordinary No. 2168/6 of Wednesday, March 25, 2020 defining the proper authority and a diseased locality.
- Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020 on mandatory cremation of persons who die of COVID-19.

- Gazette Extraordinary No. 2197/25 of Thursday, October 15, 2020 on restriction of movement and guidelines to be followed in public places.

## 2. How do these regulations impact ordinary citizens?

These regulations have a direct impact on the lives of ordinary citizens as follows:

- The maximum occupancy rates for public buildings and public transportation may be limited to ensure adequate social distancing.<sup>168</sup>
- Where a proper authority has established and designated a hospital or place of observation, no unauthorized person may approach or come within one hundred yards of it.<sup>169</sup>
- A proper authority may “cause any person diseased, or *suspected to be diseased*<sup>170</sup>, in any house or place to be removed to some public hospital or other place provided for the purpose, for such period as may be directed” or direct such person for self-quarantine and obstructing this process is an offence under the Ordinance.<sup>171</sup>
- A proper authority may enter a house or premises for the purposes of ascertaining whether any of the occupants are suffering from any disease of a contagious, infectious or epidemic nature.<sup>172</sup>
- A person suffering from a contagious or infectious disease is prohibited from using public conveyance<sup>173</sup> (including taxis and ride-hailing options). The regulations also forbid an owner or driver of a public conveyance from carrying such a diseased passenger, without the sanction of a proper authority.<sup>174</sup>

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<sup>168</sup> Regulations 61 and 65 of the 1925 Regulations and Regulations 90, 94, 95 and 97 of the Regulations of October 2020.

<sup>169</sup> Regulations 43 and 44 of the Quarantine Regulations 1925

<sup>170</sup> Due to this, an individual may not refuse to report for quarantine on the basis that he was not symptomatic.

<sup>171</sup> Regulation 49 of the Quarantine Regulations 1925 and Section 4 (1) of the Ordinance; Regulation 91 and 92 of the Regulations of October 2020.

<sup>172</sup> Regulation 66 of the Quarantine Regulations 1925

<sup>173</sup> A Public Conveyance is broadly defined as any railroad car, street car, ferry, cab, bus, airplane or other vehicle which carries passengers for hire.

<sup>174</sup> Regulation 69 of the Quarantine Regulations 1925

- Every person in a public place or any other place where such person may come into close contact with another person, in any diseased locality must wear a face mask at all times and maintain social distancing of not less than one meter between two persons.<sup>175</sup>
- A person shall not open to the public any institution, place of business or any other similar premises in a diseased locality within the period determined by the proper authority, unless permitted by the proper authority. The proper authority may allow functioning of any institution, work place, super market, shop, sales outlet or any other place of business which provides essential services or any other service required for maintaining national security or public health in any diseased locality.<sup>176</sup>
- The employer or person in charge of any institution or work place or a person who owns or is in charge of a super market, shop, sales outlets or any other place of business providing essential services is authorized to;
  - a) Ensure that the maximum number of persons permitted within the premises is not exceeded and ensure that social distancing is maintained.
  - b) Ensure that all persons wear a face mask at all times.
  - c) Ensure that body temperature of all persons entering is measured.
  - d) Provide adequate handwashing facilities and ensure that all persons wash their hands before entering.<sup>177</sup>
- Where the body temperature of any person is more than the body temperature as determined by the proper authority, such person shall not be allowed to enter such premises.<sup>178</sup>
- The driver, conductor and the owner of a vehicle used for public transportation in any diseased locality shall ensure social distancing between passengers and follow other disease preventive measures.<sup>179</sup>

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<sup>175</sup> Regulation 90 of the Regulations of October 2020.

<sup>176</sup> Regulation 92 and 93 of the Regulations of October 2020.

<sup>177</sup> Regulation 94 and 95 of the Regulations of October 2020.

<sup>178</sup> Regulation 96 of the Regulations of October 2020.

<sup>179</sup> Regulation 97 of the Regulations of October 2020.

### **3. Who is the Proper Authority?**

The Director General of Health Services was designated as the “Proper Authority” in respect of the whole of Sri Lanka by Gazette Extraordinary No. 2168/6 dated 25 March 2020.

According to Regulation 1 of the regulations issued by the above Gazette, the Director General of Health Services **may delegate** some of his powers to the Medical Officer of Health as well as the Chairpersons of the local authorities, medical officers in ports, airports and in any military, naval or air force establishment and the District Director of Health Services or the Regional Director of Health Services.

However, the Attorney General in a letter addressed to the Acting Inspector General of Police (IGP), has stated that the Director General of Health Services has delegated his powers as the proper authority to the Acting IGP.<sup>180</sup> Although this letter has been used to sanction the legitimacy of several actions carried out by the police as part of the COVID-19 response, it is not clear under what legal provisions and/or regulations that the powers of the proper authority have been delegated to the Acting IGP.

### **4. What is a diseased locality? Who can identify a diseased locality?**

Under the Quarantine and Prevention of Diseases Ordinance, ‘diseased’ is defined to mean infected or suspected of being infected with disease.

Gazette Extraordinary No. 2168/6 dated 25 March 2020 defines a ‘diseased locality’ as any locality infected or suspected of being infected with disease and declared to be diseased by the Proper Authority as a diseased locality for such period as the Proper Authority shall determine.

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<sup>180</sup> MENAFN, ‘Sri Lanka- AG approves steps enforced by Police’ available at <https://menafn.com/1100099455/Sri-Lanka-AG-approves-steps-enforced-by-Police> accessed 04 November 2020.

According to these regulations, the Proper Authority must identify a diseased locality. However, at present the public communications identifying diseased localities are issued by the police, which is not identified as a Proper Authority under the Gazette.

#### **5. Who has the power to carry out the quarantine process under the regulations?**

According to Regulation 91 and 92 of the Regulations issued in October 2020, a Proper Authority may “cause any person diseased, or suspected to be diseased, in any house or place to be removed to some public hospital or other place provided for the purpose, for such period as may be directed” or direct such person for self-quarantine.

However, at present, the quarantine process is being carried out by the Police and/or the military, which is not identified as a Proper Authority under the Regulations. This raises concerns about the accountability of the process and potential abuse of power.

#### **6. What are the procedures to be followed when directing a person to a quarantine centre or for self-quarantine?**

Under the Quarantine Regulations 1925, a Proper Authority may enter a house or premises to ascertain whether any of the occupants are suffering from any contagious disease.<sup>181</sup> Obstructing this process would be an offence under the Ordinance.

However, in view of a variety of complaints and expressions of concerns received relating to the process, the Human Rights Commission of Sri Lanka (HRCSL) has issued guidelines to be followed in the quarantine process.

The HRCSL recommends that the quarantine process be regularized under the law by;

- Transparency in delegation of powers by the “Proper Authority”
- Vest powers of testing on designated qualified personnel
- List the places designated as quarantine centres and the designating authority.

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<sup>181</sup> Regulation 66 of the Quarantine Regulations 1925

- Clarify the period of required quarantining
- Create a receipt system for quarantined persons including the reason for quarantine, the place they are being taken to and the length of isolation
- External scrutiny of quarantine centres, especially by the “Proper Authority”
- Prohibit those handling quarantine from informing the media of the proposed quarantining efforts, exposing those being quarantined to public gaze as though they were offenders rather than unfortunate victims of a virulent virus.

The HRCSL also makes the following recommendations to ameliorate the hardships imposed by the quarantining process.

- Ensuring quarantined period is considered paid/ duty leave
- Ensuring financial or any other assistance to families of those in quarantine
- The Grama Niladhari be immediately informed when a person is quarantined
- In the circumstances where the vulnerable dependents in the families are left behind due to quarantine process, the Grama Niladhari to ensure provision of all necessary support to vulnerable persons including alerting the proper authorities.

## **7. What is the legal basis for the curfew imposed in some areas at present?**

The legal validity of the curfew imposed in response to the COVID-19 health emergency had been previously questioned.<sup>182</sup>

The present curfew is often referred to as a “Quarantine Curfew”.

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<sup>182</sup> Centre for Policy Alternatives, ‘Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka’ available at <https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/> accessed 03 November 2020. ; Human Rights Commission of Sri Lanka, ‘HRCSL Recommendations on Regularizing the Imposition of Curfew’ available at <https://www.hrsl.lk/wp-content/uploads/2020/02/curfew.HRCSL-recommendation-final.pdf> accessed 03 November 2020.



However, the Quarantine and Disease Prevention Ordinance does not make provision for the imposition of any type of ‘curfew’. The term ‘Curfew’ can only be found in Section 16 of the PSO to be imposed by the President.

- Section 21(2) of the PSO stipulates “the provisions of subsection (3) of section 2 shall, *mutatis mutandis*, apply to an order made under section 12, **section 16** or section 17”.
- Section 02(3) of the PSO prescribes, “where a Proclamation is made under the preceding provisions of this section, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days”.

Therefore, in accordance with the law, the President is obliged to officially gazette the imposition of curfew and thereafter disclose the details of the gazette to the Parliament.

### **8. Who has the power to conduct random temperature checks of the public?**

Media reports indicate that military mobile squadrons patrolling and carrying out random temperature checks. Army Spokesman Brigadier Chandana Wickremesinghe said, “Army squadrons are carrying out temperature checks in all parts of Colombo at random. This is to ensure vigilance and awareness for possible positive cases. In addition, impromptu roadblocks were also operating in the Colombo and Gampaha Districts, checking around 2,500 vehicles each day. Up to now, we have checked up to 25,000 vehicles and few less than 100 have been directed to hospitals.”

The Gazette Extraordinary No. 2197/25 authorizes<sup>183</sup> an employer or person in charge of any institution or work place and a person who owns or is in charge of a supermarket, shop, sales outlets or any other place of business to ensure that the body temperature of every person is measured before entering such premises.

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<sup>183</sup> Regulations 94, 95 and 96 of the Regulations of October 2020.

There is no provision for the military to conduct temperature checks as per the gazettes issued to date under Ordinance.

**9. What is the legal procedure to be followed where there is failure by a person to comply with the regulations under the Quarantine and Prevention of Diseases Ordinance?**

The Ordinance makes it a punishable offence for any person, without lawful authority or excuse, to contravene any regulation promulgated under the Ordinance. Where a person fails to comply with the regulations he may be charged before a Magistrate's Court, and if convicted be sentenced to a term of rigorous or simple imprisonment not exceeding six months, to impose a fine, or both.

Alternatively, he may be charged under section 262 of the Penal Code which makes it an offence to unlawfully or negligently do any act which is likely to spread the infection of any disease dangerous to life or section 264 of the Penal Code which makes it an offence to knowingly disobey any rule made and promulgated by the Government for regulating the intercourse between places where an infectious disease prevails and other places.

**10. What is the legal position on mandatory cremation of persons who die of COVID-19?**

Section 3(1)(i) of the Ordinance authorizes the Minister to make regulations for prescribing the mode of burial or cremation of any person dying of disease. Regulations issued by Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020 makes it mandatory to cremate the body of a person who has died or is suspected to have died of COVID-19.

There is WHO Interim Guidance dated 24 March 2020 on Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19. The Guidance states that 'cadavers do not transmit disease' and that 'It is a common myth that persons who have died of a communicable disease should be cremated, but this is not true.

Cremation is a matter of cultural choice and available resources'. The Guidance further advises the authorities to 'manage each situation on a case-by-case basis, balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection'. Where disposal is concerned, the Guidance says that 'People who have died from COVID-19 can be buried or cremated'. The Government has recently stated that they will reconsider the mandatory nature of cremation as per Regulation No 2170/8.

## Annexure V

# **An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka**

Centre for Policy Alternatives (CPA)  
12 May 2021

Since late April 2021, the number of COVID-19 cases in Sri Lanka has increased exponentially.<sup>184</sup> The average number of new infections reported each day has reached a new high, now reporting more than 2,000 patients daily.<sup>185</sup> The number of COVID-19 related deaths has also been rising, mainly due to the heightened pressure on already overwhelmed health infrastructure and medical staff. A collective of medical professionals including the Sri Lanka Medical Association, the Government Medical Officers Association, the Association of Medical Specialists, and the SLMA Intercollegiate Committee, have pointed out in a letter to President Gotabaya Rajapaksa that the national healthcare system has reached a breaking point.<sup>186</sup> The identification of several new varieties of the COVID-19 virus has caused further concern among medical professionals as well as the general public. Sri Lanka is in an unprecedented health crisis with the likelihood of further deaths, economic hardship and much more if immediate measures are not taken to effectively respond to the pandemic.

It has been proved from experience in other countries battling the rapid spread of the virus that the adoption of stringent travel restrictions, ramping up the testing process,

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<sup>184</sup> Colombo Page, 'Sri Lanka's daily COVID-19 cases break another record with 1662 cases, total rise to 108,146' available at <[http://www.colombopage.com/archive\\_21A/Apr30\\_1619799640CH.php](http://www.colombopage.com/archive_21A/Apr30_1619799640CH.php)> accessed on 10 May 2021.

<sup>185</sup> World Health Organization, 'Sri Lanka' available at <<https://covid19.who.int/region/searo/country/lk>> accessed on 10 May 2021.

<sup>186</sup> The Sunday Times, 'Medical experts urge President to impose travel restrictions or face disaster' available at <<http://www.sundaytimes.lk/210509/news/medical-experts-urge-president-to-impose-travel-restrictions-or-face-disaster-443061.html>> accessed on 11 May 2021.

strengthening healthcare facilities and accelerating the vaccination process are the best steps to be taken in such a situation.<sup>187</sup>

However, the lack of proper information available to the general public and the resulting atmosphere of fear and misinformation has weakened the COVID-19 response of Sri Lanka. Additionally, increasing arbitrary action, especially with regard to the vaccination process, and isolation and quarantine procedures could potentially put the health and lives of citizens at risk.

Against this dire backdrop, it is critical to ensure laws and policies are in adherence to the constitutional and legal framework and not arbitrary and ad-hoc. The Centre for Policy Alternatives (CPA) has consistently reiterated the need to adhere to the principles of democratic governance and the rule of law in Sri Lanka's efforts to address the COVID-19 pandemic and this remains the case at present.<sup>188</sup>

Several guides and policy briefs were issued previously by CPA on a range of legal and policy issues linked to COVID-19, including a Q and A on the Regulations issued under the Quarantine and Prevention of Diseases Ordinance.<sup>189</sup>

The present document reassesses and re-examines recent developments in this regard, in light of the regulations issued under the Quarantine and Prevention of Diseases Ordinance as well as other relevant legal and regulatory frameworks.

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<sup>187</sup> *ibid.*

<sup>188</sup> Centre for Policy Alternatives, 'Brief Guide I: Evolving Legal Issues in the Context of COVID-19' available at <<https://www.cpalanka.org/brief-guide-i-evolving-legal-issues-in-the-context-of-covid-19/>> accessed on 7 May 2021.

<sup>189</sup> Centre for Policy Alternatives, 'Q and A on Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka' available at <<https://www.cpalanka.org/q-and-a-on-regulations-issued-under-the-quarantine-and-prevention-of-diseases-ordinance-how-this-impacts-the-covid-19-response-in-sri-lanka/>>; 'Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka' available at <<https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/>>; 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force' available at <<https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/>> accessed on 10 May 2021.

## **Regulations issued under the Quarantine and Prevention of Diseases Ordinance**

### **Following are several regulations issued in recent months:**

1. Gazette Extraordinary No. 2167/18 - Friday, March 20, 2020 declaring COVID-19 a quarantinable disease for the purposes of the existing Quarantine Regulations passed under the Ordinance in 1925 and 1960 making these regulations applicable to procedures taken in relation to COVID-19.
2. Gazette Extraordinary No. 2168/6 of Wednesday, March 25, 2020 defining the proper authority and a diseased locality.
3. Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020 on mandatory cremation of persons who die of COVID-19.
4. Gazette Extraordinary No. 2197/25 of Thursday, October 15, 2020 on restriction of movement and guidelines to be followed in public places.
5. Gazette Extraordinary No. 2216/38 of Thursday, February 25, 2021 on cremation or burial of persons who die of COVID-19.

CPA also raises the following key issues that require attention:

### **The isolation of high-risk areas**

Recent events have raised concern as to the legality of isolating areas and the processes to be used. Under the above regulations, the Director General of Health Services was designated as the “Proper Authority” in respect of the whole of Sri Lanka.<sup>190</sup> According to Regulation 1 of the regulations issued by the above Gazette, the Director General of Health Services may delegate some of his powers to the Medical Officer of Health as well as the Chairpersons of the local authorities, medical officers in ports, airports and in any military, naval or air force establishment and the District Director of Health Services or the Regional Director of Health Services.

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<sup>190</sup> Gazette Extraordinary No. 2168/6 dated 25 March 2020 available at [http://www.documents.gov.lk/files/egz/2020/3/2168-06\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/3/2168-06_E.pdf) accessed 7 May 2021.

However, according to media reports, recent action under the Quarantine and Prevention of Diseases Ordinance has been taken usurping the legal authority of the Director General of Health Services (DGHS).

The Piliyandala police area was isolated with immediate effect on the evening of 2<sup>nd</sup> May 2021 in an attempt to control the spread of Covid-19. However, this isolation was lifted the next day and instead, 10 grama niladhari divisions in the Piliyandala police area were placed under isolation. According to the Health Ministry, the decision to lift the Covid-19-related isolation imposed on the Piliyandala police area was not taken by the Ministry of Health as the order did not come from Director General of Health Services (DGHS) Dr. Asela Gunawardena. It was reported later that the request of Kesbewa Medical Officer of Health Dr. Samanthika Wijesundara was to lock down the entire Piliyandala area and that she was not informed of the move to lift the imposed blanket isolation.<sup>191</sup>

Following public outcry on this, the government sent a team of experts to assess the Covid-19 situation in Piliyandala which decided that there was no need for a lockdown in the area.<sup>192</sup> The highest number of Covid-19 cases in the Colombo District has been reported from Piliyandala during the past several days.

Co-cabinet spokesman Minister Ramesh Pathirana reported that all decisions with regard to lockdowns and isolations are taken by the national COVID-19 task force<sup>193</sup> and no political influence was used in the sudden lifting of a lockdown in Piliyandala.

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<sup>191</sup> Hiranyada Dewasiri, 'Piliyandala lockdown lifting not by Health Ministry' (*The Morning*, 5 May 2021) available at <<https://www.themorning.lk/piliyandala-lockdown-lifting-not-by-health-ministry/>> accessed 10 May 2021.

<sup>192</sup> EconomyNext, 'Govt denies undue political influence in relaxing Piliyandala lockdown' available at <<https://economynext.com/govt-denies-undue-political-influence-in-relaxing-piliyandala-lockdown-81472/>> accessed 11 May 2021. ; The Island, 'When mutts try to be docs' available at <<https://island.lk/when-mutts-try-to-be-docs/>> accessed 10 May 2021.

<sup>193</sup> EconomyNext, 'Govt denies undue political influence in relaxing Piliyandala lockdown' available at <<https://economynext.com/govt-denies-undue-political-influence-in-relaxing-piliyandala-lockdown-81472/>> accessed 11 May 2021. See also Centre for Policy Alternatives, 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force' available at <<https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/>>

The National Operation Center for Prevention of COVID- 19 Outbreak (NOCPCO) is headed by General Shavendra Silva.<sup>194</sup>

CPA has previously raised concerns about the police and other actors identifying and taking action with regard to ‘diseased localities’ usurping the legal authority of the designated proper authority.<sup>195</sup>

Recently, the State Minister of Primary Health Care, Epidemics and COVID-19 Disease Control Dr Sudarshini Ferandopulle stated that if the epidemic situation in Sri Lanka calls for it, the country might have to go into lockdown.<sup>196</sup> A country-wide lockdown may be implemented by the Director General of Health Services as per the regulations made under the Quarantine and Prevention of Diseases Ordinance. In the past, lockdowns to contain the spread of the COVID-19 virus were implemented through curfew imposed by the President or the police. CPA has previously raised concerns on the legality of such lockdown mechanisms.<sup>197</sup> In the case of a situation necessitating a country-wide lockdown, it must be ensured that all action in this regard is taken based on need and in adherence to existing legal frameworks.

### **The cremation or burial of persons who die of COVID-19**

Gazette Extraordinary No. 2216/38 of Thursday, February 25, 2021, on cremation or burial of persons who die of COVID-19 revised the controversial order (issued by Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020) to cremate the bodies of COVID-19

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<sup>194</sup> Daily News, ‘No decision taken to declare a complete lockdown’ available at <<http://www.dailynews.lk/2021/05/10/local/248889/no-decision-taken-declare-complete-lockdown>> accessed 11 May 2021.

<sup>195</sup> Centre for Policy Alternatives, ‘Q and A on the Regulations Issued under the Quarantine and Prevention of Diseases Ordinance’ available at <<https://www.cpalanka.org/q-and-a-on-regulations-issued-under-the-quarantine-and-prevention-of-diseases-ordinance-how-this-impacts-the-covid-19-response-in-sri-lanka/>> accessed 10 May 2021.

<sup>196</sup> Economy Next, ‘Sri Lanka may go into lockdown if situation calls for it: State Minister Fernandopulle’ available at <<https://economynext.com/sri-lanka-may-go-into-lockdown-if-situation-calls-for-it-state-minister-fernan-dopulle-81638/>> accessed on 11 May 2021.

<sup>197</sup> Centre for Policy Alternatives, ‘Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka’ available at <<https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/>> accessed on 11 May 2021.



victims, following 10 months of sustained criticism by the Muslim and Christian minorities in the country as well as national<sup>198</sup> and international rights groups.<sup>199</sup> The previous order was amended to include burial in addition to cremation, and a new sub-regulation was added to ensure that “[I]n the case of burial, the corpse of such person shall be buried in accordance with the directions issued by the Director General of Health Services at a cemetery or place approved by the proper authority under the supervision of such authority.”<sup>200</sup>

### **Continued arrests of persons violating quarantine regulations**

In a statement issued on 10th May 2021, Police Spokesperson DIG Ajith Rohana reiterated that persons violating quarantine regulations would be prosecuted under the provisions of the Quarantine and Prevention of Diseases Ordinance and criminal law.<sup>201</sup> Persons violating quarantine regulations could be charged under Sections 4 and 5 of the Quarantine and Prevention of Diseases Ordinance, and Section 264 of the Penal Code.<sup>202</sup>

Section 4(1) of the Quarantine and Prevention of Diseases Ordinance stipulates that, “[I]f any person, without lawful authority or excuse (proof whereof shall lie on him), contravenes any regulation made under this Ordinance, or does or omits to do anything which under the provisions of this Ordinance or of any regulations made thereunder he ought not to do or omit, or if he obstructs or impedes or assists in obstructing or impeding any inspector or other officer appointed under this Ordinance, or any police officer in the

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<sup>198</sup> Centre for Policy Alternatives, ‘Statement on Forced Cremations’ available at <<https://www.cpalanka.org/statement-on-forced-cremations/>> accessed 11 May 2021.

<sup>199</sup> The Hindu, ‘Sri Lanka ends forced cremations of COVID-19 victims’ available at <<https://www.thehindu.com/news/international/sri-lanka-ends-forced-cremations-of-covid-19-victims/article33940422.ece>> accessed 10 May 2021.

<sup>200</sup> Gazette (Extraordinary) No. 2216/38 of Thursday, 25 February 2021 available at <[http://www.documents.gov.lk/files/egz/2021/2/2216-38\\_E.pdf](http://www.documents.gov.lk/files/egz/2021/2/2216-38_E.pdf)>

<sup>201</sup> Zulfick Farzan, ‘351 arrested for violating quarantine rules; 7000+ arrested since October 2020’ (*NewsFirst*, 10 May 2021) available at <<https://www.newsfirst.lk/2021/05/10/351-arrested-for-violating-quarantine-rules-7000-arrested-since-october-2020/>> accessed 10 May 2021.

<sup>202</sup> ‘Police arrest 75 in WP for quarantine violations’ (*Daily News*, 6 May 2021) available at <<http://www.dailynews.lk/2021/05/06/law-order/248538/police-arrest-75-wp-quarantine-violations>> accessed 10 May 2021.

execution of any provision of this Ordinance or of any regulation made thereunder, he shall be guilty of an offence against this Ordinance.”

According to Section 5(1), “[I]f any person is guilty of an offence against this Ordinance, he shall be liable on conviction before a Magistrate to imprisonment of either description for a term not exceeding six months or to a fine not less than two thousand rupees and not exceeding ten thousand rupees, or to both.”

Similarly, Section 264 of the Penal Code stipulates that “[W]hoever knowingly disobeys any rule made and promulgated by Government... for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

During the period from 30<sup>th</sup> October 2020 to 10<sup>th</sup> May 2021, a total of 7316 persons have been arrested for non-compliance with quarantine regulations, such as failing to wear face masks and maintain social distance.<sup>203</sup>

The Police Spokesperson stated<sup>204</sup> that special teams have been deployed in public premises to inspect public adherence to the quarantine rules and regulations. He further stated that the police will continue to carry out special operations mainly in the Colombo city limits as well Gampaha and Kalutara districts, and that raids will be conducted in public places, such as bus terminals, railway stations, beaches, parks, and restaurants.<sup>205</sup>

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<sup>203</sup>Zulfick Farzan, ‘351 arrested for violating quarantine rules; 7000+ arrested since October 2020’ (*NewsFirst*, 10 May 2021) available at <<https://www.newsfirst.lk/2021/05/10/351-arrested-for-violating-quarantine-rules-7000-arrested-since-october-2020/>> accessed 10 May 2021.

<sup>204</sup> Imesh Ranasinghe, ‘Police arrest 7,316 Sri Lankans for alleged non-compliance of quarantine regulations’ (*EconomyNext*, 10 May 2021) <<https://economynext.com/police-arrest-7316-sri-lankans-for-alleged-non-compliance-of-quarantine-regulations-81736/>> accessed 10 May 2021.

<sup>205</sup> *ibid.*

These special operations have been criticized for being yet another instance of the selective application of the law.<sup>206</sup>

### **Establishment of the Presidential Task Force for National Deployment and Vaccination Plan for COVID-19 Vaccine**

The Presidential Task Force for National Deployment and Vaccination Plan for COVID-19 Vaccine was established by Gazette Extraordinary No. 2208/33 of Thursday, December 31, 2020. The Task Force was established by the President under Article 33 of the Constitution, making it the most recent task forces appointed in recent months.<sup>207</sup>

The mandate of the Task Force is as follows,

- (a) Identify a safe and efficacious COVID-19 vaccine(s) that is most appropriate for Sri Lanka in consultation with technical experts and on available evidence.
- (b) Establish appropriate and streamlined regulatory and administrative procedures for emergency approval, fast track procurement, imports, customs clearances and release to the national immunization programme in order to facilitate timely access to COVID-19 vaccines.
- (c) Collaborate with relevant embassies, donors, UN Agencies and professional groups for technical and material support.
- (d) Identify and prioritize population groups who are at higher risk from COVID-19 for vaccination in the first phase, and thereafter sequence the delivery for the general public.

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<sup>206</sup> *ibid.*

<sup>207</sup> CPA has previously examined the legal and practical implications of the establishment of Presidential task forces. See Centre for Policy Alternatives, 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force' available at <https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/> >

(e) Formulate and implement a COVID-19 vaccine deployment and vaccination plan including inter alia clear responsibilities, standard operating procedures and time-lines for participating stakeholders, chain of reporting and management structures.

(f) Assess existing supply chain systems in order to identify and address gaps, such as in storage, distribution, temperature monitoring and tracking and reporting vaccine stocks.

(g) Establish a robust supply chain information system on stock management and distribution that includes monitoring and reporting of vaccine utilization.

(h) Devise appropriate logistics plans for the roll out of the vaccination plan, including identification of locations for vaccination, vaccination teams, procurement of required equipment, consumables and their distribution, cold chain capacities and storage of the vaccine, and monitor its implementation.

(i) Identify the human resources, technology, and budgetary requirements to ensure timely delivery of vaccines and vaccination.

(j) Regularly review global information related to COVID-19 vaccines and incorporate it, where appropriate, into the planning and preparation for COVID-19 vaccine deployment and vaccination processes.

(k) Enforce a vaccination vigilance plan to record and monitor the process of vaccination and report adverse events in real-time.

(l) Ensure proper training for supply chain and health staff for the successful and timely deployment of vaccines and vaccination and liaise with relevant experts and agencies to ensure quality of training.

(m) Establish a public communication mechanism to report on the progress of the vaccine deployment and vaccination strategy.

The Task Force is further empowered to issue directions, make inquiries, and investigate such matters as may be necessary for the execution of its mandate. All public officers and

such other persons to whom the Task Force may issue instructions are required to comply with such instructions and render all such assistance.

Sri Lanka started its vaccine rollout on January 29 this year, with 925,242 citizens including frontline workers in the health sector and the military receiving their first dose of the vaccine. Members of the public in selected areas also received their first dose of this vaccine over the next few weeks.

However, the vaccination process was suspended on April 15 amid allegations that a priority list had been unceremoniously discarded leading to irregularities.<sup>208</sup> From April 23 to May 09, 196,546 people out of the 925,242 including frontline workers received their second dose of AstraZeneca.

Of a total of 1,264,000 of AstraZeneca doses either donated by the Indian government, received through the COVAX facility or purchased directly from the manufacturer, authorities retained 338,758 in storage to be administered as the second dose. As of today, 586,484 have yet to receive their second dose.

Meanwhile, following the approval of the National Medicines Regulatory Authority (NMRA), Sri Lanka has started rolling out the Chinese made Sinopharm vaccine and the Russian-made Sputnik V vaccine to the general public.<sup>209</sup> Most recently, the NMRA approval was also given for the Pfizer COVID-19 vaccine.<sup>210</sup>

However, numerous shortcomings and irregularities in the vaccination process have been reported over the past months.

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<sup>208</sup> Chanka Jayasinghe, 'Over 7,500 Sri Lankans have received Sinopharm, Sputnik V vaccines against COVID-19' (*EconomyNext*, 10 May 2021) available at <https://economynext.com/over-7500-sri-lankans-have-received-sinopharm-sputnik-v-vaccines-against-covid-19-81758/> accessed 10 May 2021.

<sup>209</sup> *ibid.*

<sup>210</sup> Daily FT, 'NMRA approves Pfizer vaccine for use in SL' available at <http://www.ft.lk/front-page/NMRA-approves-Pfizer-vaccine-for-use-in-SL/44-717560> accessed 10 May 2021.

The General Secretary of the All Ceylon Nurses Union has said that nurses are yet to receive the COVID-19 vaccine despite being on the frontlines of the COVID-19 response.

Members of opposition parties have pointed out that the government failed to administer the vaccines that were received free of charge, based on an internationally accepted mechanism.<sup>211</sup>

Dr. Sudarshini Fernandopulle, State Minister of Primary Health Care, Epidemics and COVID Disease Control has admitted that due to the decisions taken by certain parties, problems have arisen in the method of administering the COVID-19 vaccine.

“This is due to the actions of the top officials of the Ministry of Health who have no understanding of public health. As Minister of COVID control I do not know there is a meeting of the COVID suppression Committee. There is a certain confusion due to communication problems. This needs to be changed,” the State Minister said.<sup>212</sup> Irregularities in the vaccination process are compounded by the lack of a consolidated public campaign to provide information to the public on the process related to vaccine rollout, resulting in fear and uncertainty.

There is inadequate information available on how the national deployment of the vaccine would take place island-wide, as the attention has largely been focused on the Western province. These must be immediately rectified.

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<sup>211</sup> News First, ‘Nurses yet to receive COVID-19 vaccines; union claims’ available at <<https://www.newsfirst.lk/2021/05/03/nurses-yet-to-receive-covid-19-vaccines-union-claims/>> accessed 10 May 2021.

<sup>212</sup> ‘State Minister acknowledges problems in administering the COVID vaccine, blames top officials of Health Ministry’ (ColomboPage, 24 February 2021) available at <[http://www.colombopage.com/archive\\_21A/Feb24\\_1614188873CH.php](http://www.colombopage.com/archive_21A/Feb24_1614188873CH.php)> accessed 10 May 2021.

## Conclusion

In its previous guides, CPA has demonstrated the availability of an adequate legal and structural framework to effectively deal with the pandemic. Sri Lanka has had many years of experience in successfully tackling emergencies and disasters with a strong public health sector and extensive disaster management mechanisms.

Past instances of disasters and national emergencies have also demonstrated the need for transparency, accountability and legality of all actions to ensure that citizens receive the full benefit of mechanisms put in place to respond to emergencies.<sup>213</sup>

Despite this, the past year has seen the creation of successive Presidential Task Forces to address various COVID-19 related issues, from reducing the spread of the virus and the delivery of essential services to regulating the administration of the COVID-19 vaccine. CPA has raised concerns on the legality of these structures and the unforeseen consequences this may have on the effective control of the pandemic and democracy at large.<sup>214</sup> The present crisis shows that these structures have failed to address the evolving health crisis and CPA proposes a more robust role of health professionals and other experts in the COVID-19 response as opposed to the present militarized approach and *ad hoc* procedures.

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<sup>213</sup> It must be noted in this regard that media reports indicate issues with the Itukama COVID-19 fund which has been underutilized raising questions of accountability and transparency. Daily FT. 'COVID challenges' available at <[http://www.ft.lk/ft\\_view\\_editorial/COVID-challenges/58-717654](http://www.ft.lk/ft_view_editorial/COVID-challenges/58-717654)> accessed 11 May 2021. ; Transparency International. 'Ensuring COVID-19 Relief Reaches Sri Lanka's People' available at <<https://www.transparency.org/en/blog/ensuring-covid-19-relief-reaches-sri-lankas-people>> accessed on 11 May 2021.

<sup>214</sup> Centre for Policy Alternatives, 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force' available at <<https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/>> accessed 11 May 2021.

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