



THE APPOINTMENT OF THE TWO PRESIDENTIAL TASK FORCES

Discussion Paper

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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Table of contents

1. Introduction	3
2. The use of Article 33 of the Constitution to establish Task Forces of this nature	4
3. Authority of the Task Forces	5
4. Specific concerns regarding the two Task Forces established on the 2 nd of June 2020	7
A. The Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society	7
I. The Purpose of the Task Force	7
II. The Composition of the Task Force	7
III. Powers of the Task Force	8
B. The Presidential Task Force for Archaeological Heritage Management in the Eastern Province	13
I. Background	13
II. The Composition of the Task Force	13
III. Mandate of the Task Force	14
5. Conclusion	17

1. Introduction

Sri Lanka has witnessed a spate of Presidential Task Forces in 2020. Three Task Forces were appointed by President Gotabaya Rajapaksa as a response to COVID-19, another relating to poverty alleviation and one on education affairs.¹ The most recent two are **the Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society** (established by [Gazette Extraordinary no. 2178/18](#)) and **the Presidential Task Force for Archaeological Heritage Management in the Eastern Province** (established by [Gazette Extraordinary no. 2178/17](#)), both dated 2nd June 2020.

These two Task Forces are appointed at a time when Parliament has not been functioning for more than three months, contrary to mandatory provisions of the Constitution². Notably, the Gazettes appointing the two Task Forces followed on the heels of the ruling by the Supreme Court of Sri Lanka refusing leave to proceed to all petitioners on the subject of the dissolution of Parliament for more than three months and the holding of free and fair elections.³ In the absence of a Parliament, there is no legislative oversight over executive action and this raises concerns regarding accountability and transparency of these Task Forces. Moreover, the composition of both these Task Forces, as is with the previous ones appointed in 2020, comprises of former and present military, law and order officials and others, with concerns raised about the creeping militarization in government and governance in Sri Lanka. With no oversight, effective checks and balances and growing reliance on military actors, the reliance of President Rajapaksa on Task Forces to govern Sri Lanka and its implications must be further studied. CPA notes that these present initiatives build on the campaign promise of President Rajapaksa prioritising discipline, stability and security. These steps, however, have serious ramifications for a free and open society and liberal democracy.⁴

¹ **Task Force to be established for poverty eradication and livelihood development**, Gazette Extraordinary No. No. 2159/64, 25th January 2020, http://documents.gov.lk/files/egz/2020/1/2159-64_E.pdf;

Presidential Task Force to direct, coordinate and monitor the delivery of continuous services for the sustenance of overall community life, Gazette Extraordinary No. No. 2168/8, 26th March 2020 http://documents.gov.lk/files/egz/2020/3/2168-08_E.pdf;

Task Force for Economic Revival and Poverty Alleviation, Gazette Extraordinary No. 2172/9, 22nd April 2020, http://documents.gov.lk/files/egz/2020/4/2172-09_E.pdf;

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, http://documents.gov.lk/files/egz/2020/4/2173-04_E.pdf

Task Force on Sri Lanka's Education Affairs, Gazette Extraordinary No. 2173/7, 28th April 2020, http://documents.gov.lk/files/egz/2020/4/2173-07_E.pdf

² Article 10(5)(a) of the Constitution provides that – ‘A Proclamation dissolving Parliament shall fix a date or dates for the election of Members of Parliament, and shall summon the new Parliament to meet on a date not later than three months after the date of such Proclamation.’. In *Sampanthan v. AG (Dissolution Judgment)* SCFR 351/2018 the Supreme Court held that “...Articles 70 (2), (3), (5), (6) and (7) specify requirements placed on the President’s

power of summoning Parliament and the instances where the President is mandatorily required to summon Parliament within specified time frames.” (at page 71). Judgement at

http://www.supremecourt.lk/images/documents/sc_fr_351_2018.pdf

³ ‘Supreme Court dismisses FR Petitions’, Daily News, 2nd June 2020, <https://www.dailynews.lk/2020/06/02/law-order/219880/supreme-court-dismisses-fr-petitions>

⁴ ‘Sri Lanka’s Recent Political Challenges & Prospects for the Future’, Centre for Policy Alternatives, March 2020, <https://www.cpalanka.org/wp-content/uploads/2020/03/Commentary-Sri-Lanka%E2%80%99s-Recent-Political-Challenges-Prospects-for-the-Future.pdf>

The Centre for Policy Alternatives (CPA) raised initial concerns⁵ with the two Task Forces and those appointed as a response to COVID19, questioning their need and legality.⁶ In this short discussion paper, CPA examines the legality of the two Task Forces appointed on 2nd June, the manner in which they were established and their implications. Other concerns are also raised regarding their composition, the *vires* of the powers bestowed on them, and their impact on the rule of law, constitutional democracy and reconciliation in Sri Lanka. The paper is structured in a manner where legal and broader concerns are raised relevant to both the Task Forces followed by a closer examination of the purported mandate of each Task Force and related issues.

2. The use of Article 33 of the Constitution to establish Task Forces of this nature

CPA has previously raised concerns regarding the use of Article 33 of the Constitution to set up Presidential Task Forces in this manner⁷. Neither of these Gazettes specify which sub-article of Article 33 has been used for this purpose, but since all the other powers granted to the President thereunder are very specific in nature, it can reasonably be assumed that Article 33(2)(h) has been used for this purpose. The Article reads as follows;

(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 authorized or required to do.

CPA raises two main concerns regarding the use of this Article to establish the Task Forces, namely;

- i. The purpose of Article 33(2)(h) relates to acts of Heads of States under customary international and jus cogens, and it attempts to limit what can be done under that to acts that are not inconsistent with municipal law. This Article does not in fact give the President the wide power to set up bodies and bestow considerable powers on them as has been done with these Task Forces. There is no correlation to the acts the President is authorized or required to do under International law, custom or usage.

⁵ Statement on 'the Appointment of two Presidential Task Forces', Centre for Policy Alternatives, 5th June 2020, <https://www.cpalanka.org/the-appointment-of-two-presidential-task-forces/>

⁶ 'Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force', Centre for Policy Alternatives, April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/04/FINAL-Presidential-Task-Force-on-COVID19-April-2020-copy.pdf>.

⁷ *ibid*

- ii. Even if it is assumed that the President has the power to establish Task Forces under Article 33(2)(h), the Article specifically requires that it is not inconsistent with the Constitution or written law. As such, this Article cannot be used to bestow upon the Task Force any power which has been already been bestowed on another authority under any written law.

Due to a lack of clarity in the Gazettes establishing these Task Forces, it is unclear if their role is intended to be limited to coordination between the various authorities empowered by law to carry out the various desired functions, or if they are intended as bodies which will execute these functions themselves, or both. Even if their role is limited to coordination, or the formulation of policy, it is unknown why this cannot be left to the respective line ministries, which are constitutionally and legally empowered to carry out such function.

CPA further notes that the trend of appointing Task Forces with vague and broad mandates, apart from questions of legality, raises serious implications undermining the Cabinet of Ministers and other entities mandated by the Constitution and legislation. The fact that the President is resorting to several Task Forces to govern with no certainty provided by law and no oversight, demonstrates worrying signs of authoritarian rule.

3. Authority of the Task Forces

At the outset, CPA states that due to certain grammatical errors in the wording of the English versions of the Gazettes, the powers of the Task Forces are unclear. However, on comparison with the language in the Sinhala versions of each Gazette⁸, it appears that the powers of the Task Forces are as follows:

Each Task Force is assigned multiple tasks. In order for them to carry out these tasks, the President has sought by the Gazettes to;

- Authorize the Task Forces to investigate and issue directions as may be necessary in connection with the functions entrusted to it.
- Authorize the Task Forces to submit reports to him from time to time .
- Authorize the Task Forces to issue instructions, or request that all Government Officers and other persons whose assistance is required comply with such instructions.
- Instruct all Government Officers and others to provide all possible assistance and provide all information that may be provided.
- Direct the Task Forces to report to him all cases of delay or default on the part of any Public Officer or Officer of any Ministry, Government Department, State

⁸ It must be noted that unlike in the case of some legislation, there is no indication as to which version of the Gazette must prevail in the case of inconsistencies within versions.

Corporation or other similar institution in the discharge of duties and responsibilities assigned to such public officer or such institution.

A detailed examination of the mandate of each of the Task Force is found in the below tables, but the above powers raises at the outset several concerns.

- i. Firstly, the power to ‘investigate and issue directions’ coupled with each of the purported mandates can lead to a situation where the Task Forces have extremely broad powers that can impact citizens, professionals, the public service, academics, law and order, military, the opposition and others and can lead to possible targeting of individuals and institutions for political and other purposes. This, in the absence of clear limits and oversight, can have a chilling effect on dissent.
- ii. Secondly, the above powers may potentially encroach on and undermine the independence of public officials. Those working in government offices, independent institutions and others provided by law are given powers under written law. An ad-hoc Task Force cannot compel them to act in contravention of these powers.
- iii. Thirdly, it is unclear how funds will be allocated to these Task Forces for the implementation of their functions. The Secretary of a Ministry is also its chief accounting officer, and since the Secretary to the Ministry of Defence is also the Chairperson of both these Task Forces, concerns regarding a conflict of interest are raised. This issue is compounded by the absence of oversight that can be provided by a functioning legislature.

These concerns can have far reaching implications in stifling the public service and society on the whole as well as accountability and transparency. They will require greater scrutiny.

4. Specific concerns regarding the two Task Forces established on the 2nd of June 2020

A. The Presidential Task Force to build a Secure Country, Disciplined, Virtuous and Lawful Society

I. The Purpose of the Task Force

Despite the Gazette setting out the mandate, there is limited clarity as to the purpose of this Task Force. Several terms used throughout its text have no legal definition and are vague, providing for wide interpretation and possible abuse. For example, “Secure Country”, “Disciplined”, “Virtuous”, “civilized society”, “other social illnesses caused by drug abuse” and “antisocial activities” are some of the concerning phrases contained in the Gazette.

While it may appear on the face of it that the purpose of the Task Force is to prevent the use and trafficking of dangerous narcotics, the use of certain phrases suggests the likelihood of a potentially broader and collateral purposes for which this Task Force may be used. This vague language is open to abuse as seen in other instances where vague terminology coupled with moral policing has led to situations of targeting, discrimination and abuse⁹. CPA is troubled that the presence of such vague terms coupled with the ad-hoc nature of the Task Force and its composition could lead to a situation where the behaviour of citizens and society at large could be policed and lead to the stifling of dissent.

II. The Composition of the Task Force

The Task Force is made up solely of Military (present and retired) personnel, and members of the Police. In summary, its composition is the Secretary to the Ministry of Defence, (retired military), the Commanders of the three Armed Forces, the Directors of the Intelligence Units of the three Armed Forces, the Acting Inspector General of Police (IGP) and two Deputy IGPs, the Chief of the National Intelligence Service, the Director of the State Intelligence Service and the Director-General of Customs (all three being retired military). The Task Force is headed by the Secretary to the Ministry of Defence.

The lack of civilian representation in this Task Force is consistent with the descent into militarization of the State apparatus which has been taking place over the last few months, with retired military personnel being appointed to several high ranking official

⁹ For example, this can lead to a situation similar to how the vague term ‘gross indecency’ under section 365A of the Penal Code has been abused.

Equal Ground Sri Lanka, ‘Human Rights violations against lesbian, gay, bisexual and transgender people in Sri Lanka – A shadow report, 59th Session of the Committee on economic, social and cultural rights (Pre-sessional working group) (October 2016), page 3. Available at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_ICO_LKA_25036_E.pdf

positions¹⁰, and for the most part, taking control of the Country's response to the COVID-19 crisis. Whilst militarization is not a new phenomenon in Sri Lanka, the consolidation of military and intelligence in governance is at an unprecedented level with serious implications towards the rule of law, reconciliation and constitutional democracy. CPA has on several occasions previously commented on why militarization is undesirable in a Democracy¹¹, especially in post-war country which, is yet to see genuine reconciliation and transitional justice. In the absence of legislative oversight, the chilling effect of a Task Force having such control over civilian life, including possibly moral policing, is alarming.

III. Powers of the Task Force

The Task Force is directed to carry out four tasks as set out in the Gazette, which are as follows;

- 1. Taking necessary immediate steps to curb the illegal activities of social groups which are violating the law which is emerging as harmful to the free and peaceful existence of society at present in some places of the country.*
- 2. Take necessary measures for prevention from drug menace, prevent entry of drugs from abroad through ports and airports and to fully eradicate drug trafficking in the country and to prevent other social illnesses caused by drug abuse*
- 3. Take necessary measures to take legal action against persons responsible for the illegal and antisocial activities conducting in Sri Lanka while locating in other countries*
- 4. To investigate and prevent any illegal and antisocial activities in and around prisons*

In carrying out the four tasks, it is unclear if the role of the Task Force is to coordinate efforts between authorities which are empowered to carry out the said functions by law, or if their role encompasses the actual empowerment to carry out these functions themselves. For instance, the Task Force has been empowered to 'investigate' certain illegal activities under task 4, and it is unclear if this means they are expected to direct authorities empowered by law to carry out investigations (eg, the Police or an inquirer appointed by the Minister under section 108 of the Code of Criminal Procedure), or if they are empowered to carry out the investigation themselves.

The four tasks contain the phrases 'taking steps to curb' (task 1), 'prevent' (task 2), 'take legal action against' (task 3) and 'investigate' (task 4), which suggest that the latter approach is what is intended. This is highly problematic as existing authorities are presently empowered by law to carry out these functions (see table below), and these empowering laws also contain checks to ensure that these powers are not abused. If this is an attempt to in fact bestow fresh powers on the Task Force, it is both *ultra vires* the

¹⁰ See note 4.

¹¹ See note 5; see also Statement on 'Practical steps to effective reconciliation', 17th February 2012, <https://www.cpalanka.org/practical-steps-to-meaningful-reconciliation/>

powers of the President under Article 33(2)(h) of the Constitution, as well as the individual laws which authorize other authorities to carry out these functions.

Task 3, which empowers the Task Force to ‘take legal action’ is particularly problematic. It is unclear what this constitutes, especially in the context of it applying to persons based outside Sri Lanka. This appears to usurp the powers of the Attorney – General, who is not himself, or through a subordinate officer, represented in the Task Force. Section 12 of the Code of Criminal Procedure only permits a High Court to take cognizance of an offence by or at the insistence of the Attorney – General, and thus it is only the Attorney – General who can institute legal action for offences that can only be tried by a High Court.¹²

This is made more ominous by the fact that there is no reference to narcotics under this task, meaning that this may be an attempt to allow the Task Force to take legal action for any offence, even those unrelated to narcotics, bypassing the Attorney-General’s Department.

If the role of the Task Force is limited to requesting the Attorney – General to institute legal action, this still raises the question of the impact this has on the discretion of the Attorney – General. The Task Force is empowered to ‘issue instructions’ on Government Officers. However, without such power being granted by legislation, the Task Force cannot be given the power to issue instructions on the Attorney - General. Possible implementation of such will be *ultra vires*.

¹² Eg- The importation of dangerous drugs into Sri Lanka as per section 54A (c) of the Poisons, Opium, and Dangerous Drugs Ordinance.

Further concerns regarding the specific tasks, as well as the laws under which these powers are already exercised are examined in the following table

Task	Alternative laws and mechanisms	Comments
1. Taking necessary immediate steps to curb the illegal activities of social groups which are violating the law which is emerging as harmful to the free and peaceful existence of society at present in some places of the country	Unknown as there is no indication as to what offences are encompassed in this task, or what activities amount to 'curbing'.	<p>This task is extremely vague and raises several questions.</p> <p>'Illegal activities' could mean any activity that is illegal or criminalized under the law. It is unclear what the phrase 'harmful to the free and peaceful existence of society' means. However, this phrase makes this task highly susceptible to abuse as it could be used to stifle dissent.</p> <p>The use of the phrases 'social groups' and 'present in some places in the country' suggest that there may be specific groups or geographical areas this is intended to be applicable to, but this is not clearly indicated.</p>
2. Take necessary measures for prevention from drug menace, prevent entry of drugs from abroad through ports and airports and to fully eradicate drug trafficking in the country and to prevent other social illnesses caused by drug Abuse	<p>The National Dangerous Drugs Control Board Act, No. 11 of 1984 establishes a Board under Section 2 of the Act, which is comprised of members representing a wide range of professions and fields. This task appears to be <i>ultra vires</i> the powers granted to the Board under Section 7 of the Act.</p> <p>This includes formulating a national policy relating to the prevention and control of the abuse of dangerous drugs (Section 7(a)), coordinating the activities of agencies engaged in the prevention and control of dangerous drugs (Section 7(d)), promotion, treatment and rehabilitation measures for drug dependent persons (Section 7(e)) and undertaking research studies into the social, cultural and economic implications of the abuse of dangerous drugs (Section 7(f)).</p> <p>The Drug Dependent Persons (Treatment and Rehabilitation) Act, No. 54 of 2007 provides the procedure for the admission of persons to treatment centers (Section 9 deals with voluntary admissions and Section 10 deals with compulsory admissions).</p>	<p>The phrase 'social illnesses caused by drug abuse' has no definition in law. It may be limited to drug dependency, but as the term 'social illnesses' has been used, it is possible that there may be an attribution of various legal activities to 'drug abuse', and result in the moral policing of society by the Task Force.</p> <p>Even if the said 'social illnesses' are limited to dealing with drug dependency, it is noteworthy that there isn't a single medical officer in the Task Force, and drug dependency is a sensitive issue which cannot be dealt with using military style force.</p>

	<p>Section 7 of the Act establishes Assessment Panels comprised of experts on the subject, who are to assess persons seeking admission, and those undergoing admission to treatment centres, and shall have powers and functions which can be specified by regulation (Section 7(3)).</p> <p>Regulations under this Act are to be made by the Minister (Section 21(1)), and require Parliamentary approval (Section 21(4)).</p> <p>The Customs Ordinance provides for the search of baggage, vessels and persons entering the country. Section 107A provides for the search of persons and baggage coming in to Sri Lanka, and for any prohibited goods to be forfeited. This search is to be done in accordance with regulations made by the Minister (Section 107A (1)) which must be approved by Parliament (Section 107A (4)).</p> <p>Section 118 permits officers of Customs to board any ship in any port in Sri Lanka and search for prohibited goods.</p> <p>Section 138 permits officers of Customs to board any ship in any port or airport and search a person, their baggage or their belongings, or persons who have landed or are transiting there. However this is subject to there being good reason to believe such person has prohibited goods on them.</p> <p>The Police Narcotic Bureau was established in 1973 and it has been the practice for this Bureau to engage in drug law enforcement. Similarly, the Narcotics Control Unit of Sri Lanka Customs has led law enforcement in the prevention of Drug Trafficking.</p> <p>The following Acts contain laws relating to trafficking of drugs. It is unclear if the Task Force will seek to enforce them, or coordinate their enforcement.</p> <p>Section 54A of the Poisons, Opium, and Dangerous Drugs Ordinance sets out certain offences relating the dangerous drugs. This includes offences for relating to the manufacture, trafficking, import, export and possession of various drugs, in varying quantities.</p> <p>Section 2(1) of the Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 1 of 2008 contains a list of offences, which as per the proviso to the section must be committed in Sri Lanka. Section 2(1)(a) of this list makes the import and trafficking of any narcotic drugs or psychotropic substances an offence. However, as per Section 2(2) a person who attempts, abets or conspires to commit such offence even outside Sri Lanka shall have committed an offence, regardless of where they are.</p> <p>Section 4(2) provides certain aggravating circumstances including involvement in International organized criminal activities. (Section 4(2)(b)).</p>	
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<p>3. Take necessary measures to take legal action against persons responsible for the illegal and antisocial activities conducting in Sri Lanka while locating in other countries</p>	<p>Section 17(1) of the Extradition Law No. 8 of 1977 provides the procedure for the extradition of a person to Sri Lanka, from a Commonwealth Country or a Treaty State. As per this section, it is the Minister who may make such request for extradition.</p> <p>Sections 17(2) restricts the offences which a person who has been extradited can be tried under, and Section 18 empowers the Minister to send the extradited person back free of charge if proceedings are not instituted within 6 months, or if the person is acquitted or discharged.</p> <p>Section 19 empowers the Minister to make Regulations under the Act.</p> <p>The Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 1 of 2008 provides special provisions for extradition relating to offences committed under the said Act. Sections 10 and 24 amend the Extradition Law to bring offences under this Act within it.</p> <p>Section 13 provides that even where there is no extradition agreement in force, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 maybe considered an extradition agreement with other convention countries. However, the Minister must publish an order in the Gazette to that effect. In a similar manner, Section 25 permits the Minister to use the SAARC Convention on Narcotic Drugs and Psychotropic Substances 1990 as an extradition agreement with SAARC Countries.</p>	<p>It is unclear what is meant by 'take legal action', and how the Task Force can be empowered to do such act in the absence of enabling legislation providing the power to do so, and procedure.</p> <p>If the Task Force is to take necessary legal action against persons located outside Sri Lanka, it would be necessary that this is restricted to offences that the local courts have jurisdiction to try.</p> <p>This Task implies that the Task Force can take steps to have person extradited to Sri Lanka. It is important that the procedures provided for by law are followed in such process and they contain checks to prevent the abuse of power.</p> <p>This task has no mention of drug trafficking related offences, and it is thus unclear if the mandate of the Task Force is limited to drug trafficking related crimes, as described in Task 2.</p> <p>The term antisocial activities in vague, and is susceptible to abuse.</p>
<p>4. To investigate and prevent any illegal and antisocial activities in and around prisons</p>	<p>Chapter V of the Code of Criminal Procedure provides for the manner in which Investigations must be done. The powers therein are only given to certain Police Officers, or Inquirers appointed by the Minister under section 108 of the Code.</p> <p>Part X of the Prisons Ordinance describes the Offences relating to prisons, and how and by whom they can be investigated or punished.</p>	<p>If an act is 'antisocial' (by whatever definition of the term), but not illegal, it cannot be 'prevented' by the Task – Force.</p>

B. The Presidential Task Force for Archaeological Heritage Management in the Eastern Province

I. Background

On 14th May 2020, a delegation, led by the Governor of the Eastern Province, the Secretary to the Ministry of Defence, Chief of Defence Staff and Commander of the Army, Commander of the Navy, acting Inspector General of Police, Chief of National Intelligence, Commander of Security Forces-East, along with other military and police officials visited the Deegawapiya and Pottuvil areas.¹³

The delegation was said to have visited these areas to look into a series of public concerns and allegations of encroachments on lands of archaeological value. However, by the Antiquities Ordinance No. 9 of 1940, the Minister is empowered to deal with situations of any neglect or potential damage to monuments or places of archaeological importance.

On the 16th May 2020 the Defence Secretary, on the instructions of the President, ordered the Commander of the Navy to immediately establish a naval contingent to protect the Pottuvil Muhudu Maha Vihara temple and its land.¹⁴ Following this, during a meeting with the Buddhist Advisory Council, the President said that a Presidential Task Force will be appointed to conduct a comprehensive survey of archaeological sites in the East and to take measures to preserve them.¹⁵

It was consequent to this that the Presidential Task Force for Archaeological Heritage Management in the Eastern Province was established on 2nd June. CPA has previously commented on the complex and contested land issues in the Eastern Province and reiterates its concerns here and the need for a transparent and inclusive process when deciding next steps.¹⁶ CPA further reiterates the need for the full implementation of the Thirteenth Amendment to the Constitution including the establishment of the National Land Commission to resolve land issues in Sri Lanka.

II. The Composition of the Task Force

The Task Force comprises two Buddhist priests, the Secretary to the Ministry of Defence, four Government officials (i.e. the Director General of Archaeology, the Land Commissioner General, the Surveyor General and the Provincial Land Commissioner – Eastern Province), two academics (i.e. Prof. Raj Kumar Somadeva of University of Kelaniya and Prof. Kapila Gunawardena of the Medical Faculty of the University of

¹³ 'Statement on recent developments in Pottuvil Muhudu Maha Viharaya: Misuse of land acquisition laws and the military', People's Alliance for Right to Land, 20th May 2020, <https://drive.google.com/file/d/1uXb7fZSvH6nLYQhYC6qxEqHDzAN1-b f/view>

¹⁴ 'Navy instructed to establish contingent to protect the Pottuvil Muhudu Maha Vihara temple', Businessnews.lk, 16th May 2020, <https://www.businessnews.lk/2020/05/16/navy-instructed-to-establish-contingent-to-protect-the-pottuvil-muhudu-maha-vihara-temple/>

¹⁵ 'Presidential Task Force to protect archaeological sites', PMD News, 22nd May 2020, <http://www.pmdnews.lk/presidential-task-force-to-protect-archaeological-sites/>

¹⁶ Land in the Eastern Province: Politics, Policy and Conflict, <https://www.cpalanka.org/land-in-the-eastern-provincepolitics-policy-and-conflict/>

Peradeniya), the Senior DIG for the Western Province and the Chairman of a private media network.

It is unclear as to why the Police representation is the Senior DIG of the Western Province when the mandate of the Task Force is limited to the Eastern Province. Further, it is also unclear as to the reasons for appointing a representative of a private media network.

The Presence of persons who are not public officers in this Task Force raises serious questions. This empowers persons who are not public officers to issue instructions and directions on public officers. It is also unclear if such persons would also fall within the definition of a public officer for the purpose of the Bribery Act, and if they would be subject to less scrutiny than the average public official.

As previously noted by CPA¹⁷, the present Task Force is mono ethnic in composition with all the clergymen representative of one religion. This is despite the diverse population in the Eastern Province, the archaeology representative of all communities and the complexity surrounding the issues at hand. In such a contested and sensitive setting, it is troubling to see a pan Sinhala Task Force headed by a retired major general given a broad mandate to potentially define a course that can have significant implications for identity politics, demographics, land control and use and reconciliation.

III. Mandate of the Task Force

The Task Force is directed to carry out four tasks as set out in the Gazette, which are as follows;

- 1. Identify sites of archaeological importance in the Eastern Province.*
- 2. Identify and implement an appropriate program for the management of archaeological heritage by conserving and restoring such identified sites and antiquities.*
- 3. Identify the extent of land that should be allocated for such archaeological sites and take necessary measures to allocate them properly and legally.*
- 4. Preserve the cultural value of sites of archaeological importance and promote the uniqueness of Sri Lanka, both locally and internationally, and make recommendations for the promotion of such heritages.*

¹⁷ See note 5.

Further concerns regarding the specific tasks, as well as the laws under which these powers are already exercised are examined in the following table

Task	Alternative laws and mechanisms	Comments
1. Identify sites of archaeological importance in the Eastern Province	<p><u>Antiquities Ordinance No. 9 of 1940</u></p> <p>Under Section 16(1), 17(1) and 18 of this Ordinance, the Minister may declare any monument which has existed or is believed to have to be an ancient monument or protected monument.</p> <p>Section 19 requires that notice if such an order should be given in the Gazette with opportunity for objections given.</p> <p>Under Section 24(1) regulations may be made prohibiting, or restricting the erection of buildings etc. within the prescribed distance of any ancient monument. Under Section 25(1) the owner of any land affected by such prohibition may claim for compensation.</p> <p>Sections 26-30 provide that the Minister shall, on the receipt of such claim, establish a compensation board and refer the claim to such board. The board shall inquire into the claim and give its decision. The claimant or the Director-General of Archaeology may appeal from any decision of the board to the District Court of the district in which the land in respect of which compensation has been claimed is situate.</p> <p>As per Section 33(1) The Director-General of Archaeology may declare any area an archaeological reserve with the approval of the Land Commissioner, or the Minister</p> <p>As per Section 34 Every person who encroaches on any such reserve, shall on conviction after summary trial before a Magistrate be liable for punishment by a fine or imprisonment or both.</p> <p>As per Section 39A (1) The Minister may, by Order published in the Gazette, establish an Archaeological Advisory Committee (hereinafter referred to as "the Advisory Committee".)</p> <p>Section 40 provides that the Director-General of Archaeology is empowered to</p> <p>(b) to inventorise the archaeological heritage of Sri Lanka and</p> <p>(c) to protect and maintain such archaeological heritage</p> <p>Section 47(1) provides that the Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.</p>	<p>Questions must be asked as to why the Task Force is provided this task when existing laws provide for this.</p> <p>No information is provided as to what would fall within the definition of 'archaeological'.</p> <p>The Gazette notification empowering the Task Force to carry out its activities does not make provision for any decision of the Task Force to be challenged.</p> <p>The decisions of the actors and mechanisms empowered under existing legislation to identify and acquire sites of archaeological importance are open to review by court or other quasi-judicial bodies or subject to approval by the Parliament. It is vital that the Task Force is held to the same levels of accountability.</p>
2. Identify and implement an appropriate program for the management of	<p><u>Archaeological sites of National Importance Act, No. 16 of 1990</u></p> <p>As per Section 2(2) the Minister may, by Order published in the Gazette, declare any other archaeological activities, sites</p>	<p>Questions must be asked as to why the Task Force is provided this task when existing laws provide for this.</p>

archaeological heritage by conserving and restoring such identified sites and antiquities.	<p>and remains not described in the First Schedule to this Act, or any antiquities to be of national importance.</p> <p>Subsection (3) provides that every Order made under subsection (2) shall come into force on the date of its publication in the Gazette and shall be brought before Parliament, with a motion that such Order be approved. Where Parliament refuses to approve, it shall, with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of anything done thereunder.</p>	Further, what criteria would the Task Force use to 'identify' 'archaeological heritage' and what initiatives would be undertaken to 'implement an appropriate program'
3. Identify the extent of land that should be allocated for such archaeological sites and take necessary measures to allocate them properly and legally.	<p><u>Cultural Property Act, No. 73 of 1988</u></p> <p>Sections 7-10 provide for the establishment of the Cultural Property Board which shall act as an Advisory Board to advise the Archaeological Commissioner in the exercise of his powers or on any other matters referred to the Board for their opinion.</p> <p>Under Section 11 the Minister in consultation with the Board and with the approval of the Cabinet may by Notification published in the Gazette specify the categories of cultural property that shall be registered under this Act.</p> <p>Under Section 22 the Archaeological Commissioner is empowered <i>inter alia</i></p> <ul style="list-style-type: none"> (a) to prepare a list of the categories of cultural property required to be registered under the Act, and (b) to conserve, maintain, repair and restore cultural property that requires registration <p>and the Archaeological Commissioner or any officer authorized by him may inspect any cultural property in the possession of any person.</p> <p>Section 25 (1) provides that where the Archaeological Commissioner thinks that any cultural property of national importance owned by or in the custody or possession of any person, is in danger of being destroyed, he shall with the concurrence of the Board give directions to such person to safeguard such property.</p> <p>If such directions will not be complied with, he shall with the concurrence of the Board take such property into his custody.</p> <p>Section 28 The Minister may make regulations in respect of any matter required by this Act.</p> <p>Section 29 "cultural property" includes cultural property which on religious or secular grounds is specifically designated by the Minister with the approval of the Cabinet, as being of importance for archaeology, prehistory. history, literature, art or science</p>	<p>No information is provided as to how land will be identified and allocated and whether this would entail state and/or private land.</p> <p>This may lead to further appropriation of land by the State. If appropriations of land done being done it is essential that they are carried out in accordance with the procedure set out by law wherein there are checks and balances (i.e. as per <u>the Land Acquisition Act</u> and <u>Antiquities Ordinance</u>.)</p>
4. Preserve the cultural value of sites of archaeological importance and	<p><u>Central Cultural Fund Act No 57 of 1980</u></p> <p>Sections 2 and 3 provide for the establishment of the Central Cultural Fund and for vesting the administration, management</p>	No information is provided as to how the task of <i>preserving cultural value of sites of</i>

<p>promote the uniqueness of Sri Lanka, both locally and internationally, and make recommendations for the promotion of such heritage</p>	<p>and control of the fund in a Board of Governors as provided in the Act.</p> <p><u>State Lands (Recovery of Possession) Act No. 7 of 1979</u> This Act makes provision for the recovery of possession of state lands from persons in unauthorized possession or occupation thereof and for other connected matters.</p> <p>The <u>Department of Archaeology</u> of Sri Lanka functions as Sri Lanka's apex institution and chief regulatory body for the management of archaeological heritage. The Department of Archaeology is entrusted with the protection of the total archaeological heritage of Sri Lanka, i.e., inventorisation and conservation the archaeological heritage of Sri Lanka, including sites, monuments and movable antiquities</p> <p>The <u>legal division</u> of the Department of Archaeology is entrusted with taking legal measures to protect antiquities, making use of the Antiquities Ordinance and other Acts incidental to it, and taking legal action to punish persons who violate provisions of such Acts, through courts. This includes coordination of work of the Department of Archaeology with the Police Department and the Attorney General's Department.</p>	<p><i>archaeological importance</i> is to be done.</p> <p>It is unknown who the Task Force make recommendations to.</p>
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5. Conclusion

President Rajapaksa's 2019 election campaign pledged a disciplined, secure and stable Sri Lanka. Recent developments indicate that his preferred path to fulfilling these promises circumvents existing legal structures including his own Cabinet of Ministers, with a determination and force that arouses little or no opposition. As discussed in the present paper, he has chosen the path of ad-hoc Task Forces with wide powers to commence implementing his vision, and in the process undermine and potentially usurp powers of institutions provided for by law. Moreover, he has recognised loyalty above all else, appointing officials close to him to head each Task Force and filling each with present and retired military and law and order officials and a few others. The militarization and securitization of government and governance, set in motion with combatting COVID-19, is now consolidating itself in the absence of an elected legislature. The Government's determination for efficiency is evident with the speed with which this has been introduced. Notably, this has happened in the absence of a Parliament and any effective checks and balances. If unchecked, such executive overreach will have a chilling impact on a free and open society and transform it into one defined by ethno nationalism propelled by an authoritarian and militarized State.