



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

May 2021

Since late April 2021, the number of COVID-19 cases in Sri Lanka has increased exponentially.¹ The average number of new infections reported each day has reached a new high, now reporting more than 2,000 patients daily.² 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.³ 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,

¹ 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> accessed on 10 May 2021.

² World Health Organization, 'Sri Lanka' available at <<https://covid19.who.int/region/searo/country/lk>> accessed on 10 May 2021.

³ 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.⁴ 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.⁵

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.⁶ 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.

⁴ *ibid.*

⁵ 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.

⁶ 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 processed 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.⁷ 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.

⁷ Gazette Extraordinary No. 2168/6 dated 25 March 2020 available at 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 2nd 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.⁸

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.⁹ 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 force¹⁰ and no political influence was used in the sudden lifting of a lockdown in Piliyandala. The

⁸ 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.

⁹ 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.

¹⁰ 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/>>

National Operation Center for Prevention of COVID- 19 Outbreak (NOCPCO) is headed by General Shavendra Silva.¹¹

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.¹²

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.¹³ 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.¹⁴ 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-

¹¹ 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.

¹² 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.

¹³ 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-fernandopulle-81638/>> accessed on 11 May 2021.

¹⁴ 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.

19 victims, following 10 months of sustained criticism by the Muslim and Christian minorities in the country as well as national¹⁵ and international rights groups.¹⁶ 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.”¹⁷

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.¹⁸ 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.¹⁹

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

¹⁵ Centre for Policy Alternatives, ‘Statement on Forced Cremations’ available at <<https://www.cpalanka.org/statement-on-forced-cremations/>> accessed 11 May 2021.

¹⁶ 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.

¹⁷ 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>

¹⁸ 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.

¹⁹ ‘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.

any inspector or other officer appointed under this Ordinance, or any police officer in the 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 30th October 2020 to 10th 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.²⁰

The Police Spokesperson stated²¹ 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.²²

²⁰Zulfick 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.

²¹ 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.

²² *ibid*.

These special operations have been criticized for being yet another instance of the selective application of the law.²³

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.²⁴

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.

²³ *ibid.*

²⁴ 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.²⁵ 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.²⁶ Most recently, the NMRA approval was also given for the Pfizer COVID-19 vaccine.²⁷

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

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.

²⁵ 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.

²⁶ *ibid.*

²⁷ 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.

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.²⁸

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.²⁹

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.

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,

²⁸ 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.

²⁹ ‘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 accessed 10 May 2021.

accountability and legality of all actions to ensure that citizens receive the full benefit of mechanisms put in place to respond to emergencies.³⁰

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.³¹ 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.

³⁰ 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> 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.

³¹ 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.