

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# SRI LANKA: RESPECT HUMAN RIGHTS IN THE AFTERMATH OF EASTER ATTACKS

Amnesty International reiterates its solidarity with the victims of the horrific Easter Sunday attacks on 21 April 2019 that claimed the lives of more than 250 people and injured hundreds in three churches and three hotels in Sri Lanka.

As Sri Lanka's authorities investigate the attacks and the government responds with increased security measures, Amnesty International calls on the government to ensure that international human rights law and standards are upheld, and that its responses are limited to those that are proportionate and strictly required by the exigencies of the situation. According to local news reports, as many as 150 people have already been arrested in connection with the attacks.<sup>1</sup> At present, information is not publicly available as to under what laws these arrests were made. Amnesty International has long raised grave concerns as to the effect of the Prevention of Terrorism Act in Sri Lanka (PTA)<sup>2</sup>, which has draconian provisions which permit the detention of people for lengthy periods of time, putting them at risk of torture and other ill-treatment. On 25 April 2019, three days after the attacks, Sri Lanka also passed Emergency Regulations No. 2120/5 under the Public Security Ordinance. A second set of Emergency Regulations were passed on 29 April.<sup>3</sup> These regulations contain several draconian provisions which, if abused, may amount to violations of human rights. At this critical juncture, Amnesty International makes the following recommendations to the government of Sri Lanka, as it investigates the perpetrators of this heinous crime and ensures that this moment is not exploited to stoke hatred and create dangerous divisions in society.

## ENSURE THE SAFETY OF RELIGIOUS MINORITIES

Amnesty International urges the government to ensure the safety of all religious minorities, particularly the Christian community that was directly targeted by the Easter Sunday attacks as well as the Muslim minority that is increasingly at risk of a backlash.<sup>4</sup> There has been little progress in accountability for previous attacks on Muslim and Christian minorities. These include the attack on the Methodist church in Anuradhapura on Palm Sunday in April 2019,<sup>5</sup> the attack on Muslims in Digana in March 2018,<sup>6</sup> and the attacks on Muslims in Aluthgama in June 2014,<sup>7</sup> although limited arrests were made after these a few of these attacks. Local civil society groups and media have reported recurrent attacks on Christians and Muslim minorities over several years.<sup>8</sup>

In addition, the new Emergency Regulations have already been used, within days of the attack, to ban face coverings, essentially meaning that face veils and burqas are now banned.<sup>9</sup> The ban states "No person shall wear in any public place any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person",<sup>10</sup> Full face is further defined as including the ears. Amnesty International is concerned<sup>11</sup> that the order, made under the regulations, would restrict the freedom of expression and religion of women who wear the

<sup>1</sup> <https://www.bbc.co.uk/news/world-asia-48088834>; <http://www.ft.lk/front-page/Over-150-arrested-over-Easter-Sunday-terror-attacks/44-677361>

<sup>2</sup> Prevention of Terrorism Act (Temporary Provisions) Act No. 48 of 1979

<sup>3</sup> [http://documents.gov.lk/files/egz/2019/4/2121-01\\_E.pdf](http://documents.gov.lk/files/egz/2019/4/2121-01_E.pdf)

<sup>4</sup> <https://www.aljazeera.com/news/2019/04/suspicion-stalks-sri-lanka-muslim-community-bombings-190426053208891.html>; <https://www.nytimes.com/2019/04/24/world/asia/sri-lankas-muslims.html>; <https://www.thehindu.com/news/international/easter-sunday-blasts-sri-lankas-muslim-community-fears-backlash/article26926046.ece>

<sup>5</sup> <http://www.sundayobserver.lk/2019/04/21/news-features/palm-sunday-violence-against-anuradhapura-methodist-church>;

<sup>6</sup> <https://www.bbc.co.uk/news/world-asia-43300913>; <https://groundviews.org/2019/03/05/digana-one-year-on/>

<sup>7</sup> <https://www.bbc.co.uk/news/world-asia-27864716>

<sup>8</sup> <http://www.minormatters.org/en/crisis-map>; <https://www.nytimes.com/interactive/2019/04/23/world/asia/sri-lanka-isis-religious-ethnic-tensions-map.html>

<sup>9</sup> [http://documents.gov.lk/files/egz/2019/4/2121-01\\_E.pdf](http://documents.gov.lk/files/egz/2019/4/2121-01_E.pdf); <https://www.aljazeera.com/news/2019/04/sri-lankans-share-views-face-veil-ban-190429120515773.html>; <https://www.reuters.com/article/us-sri-lanka-blasts-burqa/sri-lanka-bans-face-veils-after-attacks-by-islamist-militants-idUSKCN1S50JG>

<sup>10</sup> Regulation 32, [http://www.documents.gov.lk/files/egz/2019/4/2121-01\\_E.pdf](http://www.documents.gov.lk/files/egz/2019/4/2121-01_E.pdf)

<sup>11</sup> <https://www.amnesty.org/en/latest/news/2019/04/sri-lanka-ban-on-face-veil-risks-stigmatizing-muslim-women/>

covering as an expression of their identity and belief. The ban on face coverings is not directly necessary in order to investigate the attacks on Easter Sunday, and a need to heighten scrutiny of faces of persons could as easily be addressed by allowing for female police or security officers to request the face covering to be removed for the purposes of identification. Persons should only be asked to remove a veil or identify themselves if there are reasonable grounds to believe that they have, or are going to, commit a crime. A comprehensive ban on face coverings will restrict many women to their homes and deny them the right to express their belief and religion. It will also further entrench discrimination of Muslim women who express their religion and identity through the wearing of burka or niqab. We urge the government of Sri Lanka to repeal this amendment to the emergency regulations that may be subject to abuse and violate human rights standards.<sup>12</sup>

In this context, it is essential that the government actively protects the rights of religious and ethnic minorities, and ensures accountability for hard-line groups that have been responsible for earlier attacks on minorities. Following a claim of responsibility by the armed group calling itself the Islamic State and a local affiliate 'National Thowheed Jamath',<sup>13</sup> there are fears that Sri Lanka's community will be subject to a backlash. There have already been attacks on refugees from Muslim heterodox communities, including Pakistani Ahmadis and Afghan Hazaras.<sup>14</sup> It is important that Sri Lankan authorities provide religious minorities the protection they need, actively promote their rights, and directly confront those who advocate discrimination against them.

There are currently 1,600 refugees and asylum-seekers at heightened risk in Sri Lanka. They include Christians and Ahmadi Muslims from Pakistan, Shi'a Hazaras from Afghanistan and Iranian citizens. Following the Easter Sunday attacks, approximately 1200 individuals from this group faced reprisals from mobs for their perceived association with Islam. Forced to flee their accommodation near Negombo, where the attack on the St. Sebastian's Church took place on Easter Sunday, they have been desperately searching for safety, moving between temporary accommodation provided by UNHCR, police stations, places of worships and other sanctuaries provided to them by local NGOs and civil society activists. Every few days, they have been told to leave in the face of threats.

The refugees and asylum-seekers from Pakistan, Afghanistan and Iran are now languishing in limbo. The Sri Lankan government is not stepping in to provide them with security, shelter and basic necessities they need. More worryingly, there are fears that they will be forcibly deported to their countries from where they fled – a move that would violate the principle of *non-refoulement*, by putting them at risk of serious human rights violations and abuses. The Sri Lankan government has a responsibility to ensure their safety and access to basic necessities as well as relocation to safe houses until their applications are processed by the relevant refugee agencies. Amnesty International has called on the government of Sri Lanka to protect refugees and asylum seekers.<sup>15</sup>

## **ENSURE THE RESPONSE TO THE ATTACKS IS NECESSARY AND PROPORTIONATE**

As Sri Lanka investigates the perpetrators of this attack, it is essential that all measures taken, including restrictions placed on human rights, are limited strictly to exigencies of the situation. These measures must be necessary, proportional, time-bound, and directly related to the Easter Sunday attacks.

Amnesty International reminds the government of its commitment to repeal the Prevention of Terrorism Act in Resolution 30/1 and urges the government to respect this commitment and to fulfill it, resisting calls to retain this draconian piece of legislation. Any attempts to replace it with the draft Counter Terrorism Bill in its present form without serious amendments to bring it in line with international law, could further constitute a failure to meet international standards, putting rights at severe risk.<sup>16</sup> At this difficult time, we remind Sri Lanka of its international obligations, including the non-derogable provisions of the International Covenant on Civil and Political Rights such as the right to life and the absolute prohibition on torture. The emergency regulations that were passed last week are alarming in this context and must be repealed.

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<sup>12</sup> Sri Lanka is a party to the International Covenant on Civil and Political Rights, article 19 of which safeguards the right to freedom of expression and article 18 which protects religious freedoms.

<sup>13</sup> <https://www.theguardian.com/world/live/2019/apr/23/sri-lanka-bombings-attacks-live-news>

<sup>14</sup> [https://www.washingtonpost.com/world/asia\\_pacific/sri-lanka-muslims-refugees-fear-backlash-from-easter-attack/2019/04/25/f7e44e7c-6747-11e9-a698-2a8f808c9cfb\\_story.html](https://www.washingtonpost.com/world/asia_pacific/sri-lanka-muslims-refugees-fear-backlash-from-easter-attack/2019/04/25/f7e44e7c-6747-11e9-a698-2a8f808c9cfb_story.html); <https://www.reuters.com/article/us-sri-lanka-blasts-muslim-refugees/muslims-flee-christians-grieve-in-sri-lankan-town-torn-by-violence-idUSKCN1S108P>

<sup>15</sup> <https://www.amnesty.org/en/documents/asa37/0289/2019/en/>

<sup>16</sup> <https://www.amnesty.org/en/documents/asa37/9769/2019/en/>

## REPEAL THE DRACONIAN EMERGENCY REGULATIONS

Amnesty International notes that present laws in Sri Lanka, including the Public Security Ordinance No. 25 of 1947 as amended, provide ample powers to the government and law enforcement authorities to investigate and prosecute the alleged perpetrators of the Easter Sunday attacks and therefore brings into question the necessity of the Emergency Regulations passed on 24 April 2019. The following sections of the emergency regulations are of particular concern:

### DETENTION UPTO ONE YEAR

- Amnesty International is extremely alarmed by the contents of regulation 19 and regulation 20, which provide two separate regimes for arrest and detention of persons and seizure of property.
- Under regulation 19, a person may be detained for up to one year at the discretion of the Secretary of the Ministry of Defence. Regulation 21(1) states that detainees must be produced before a magistrate within a reasonable period of time, and no later than 30 days after the date of arrest, but that the magistrate cannot grant the detainee bail without the permission of the Attorney General.
- Such a detention order may be made as a preventative measure to prevent the person “from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services; or (b) from acting in any manner contrary to any of the provisions of sub-paragraph (a) or sub-paragraph (b) of paragraph (2) of regulation 44 or regulation 25 of these regulations”. Some of the offences in regulation 25 include offenses such as being part of an unlawful assembly, or “commits theft of any article in any premises which have been left vacant or unprotected or which have been damaged or destroyed”. Detention for up to one year under these regulations, on the basis of allegations such as being part of an unlawful assembly, where several safeguards for prisoners and fair trial rights are suspended, would not meet the criteria of necessity and proportionality under international human rights law.
- In addition, for arrests under regulation 19, there is no requirement under the regulations for people to be detained in a prison established under the Prisons Ordinance (regulation 19(3)). According to the regulation, prisoners “shall be detained in such place as may be authorized by the Inspector-General of Police”. Even where the prisoner is detained in a facility established under the Prisons Ordinance, under regulation 21(2) the Inspector-General of Police (IGP) can “direct that any provisions of the said Ordinance or any rules made thereunder which under the preceding provisions of this paragraph apply to such person, shall not apply or shall apply subject to such amendments or modifications as may be specified in such order”.<sup>17</sup> In practice this means that safeguards provided by the prisons ordinance on ensuring the health and safety of prisoners for example, may be suspended by the IGP by a direction.
- On the other hand, for those persons arrested under Regulation 20, they must be handed over to the nearest police station within 24 hours but there is no specific mention of the place of detention, whether in designated prisons under the Prisons Ordinance or in other places of detention so authorized by the IGP. Detention of persons within designated prisons is a measure that safeguards against the risk of torture in custody. The lack of clarity on places of detention, in combination with provisions in reg. 19 to permit detention in places authorized by the IGP, raises the risk of torture.
- If a person has been arrested under regulation 19, while the person has a right to object in writing to the President, or to an Advisory Committee appointed by the President, there is no judicial oversight for up to 30 days. This lack of any kind of judicial appeal is in clear contravention of the right to liberty, as protected by Article 9 of the ICCPR, and in addition could lead to detainees being subject to torture. Where the Secretary of the Ministry of Defence has certified that the detainee is, or has been, a member of a proscribed organization under regulation 75, then the appeals to the advisory committee and the president set out in regulation 19(4)-(8) will also not apply to such detainees. Regulation 19(10) further states that an order made under this regulation shall not be called into question *in any court, on any grounds whatsoever* (our emphasis). Bail can be granted by a Magistrate only with the prior written approval of the Attorney-general, which also calls into question the effectiveness of judicial review.
- While regulation 19 states clearly that no person may be detained under the provision for more than one year, reg. 21(2) states that where a person is detained under reg. 19 ‘in a place authorized by the Inspector-General of Police’, i.e. not in a designated prison, then such person can only be detained for a period of ninety days (90

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<sup>17</sup> Regulation 21(2)(a)

days) from the date of his arrest, and thereafter shall be released. The exception is if s/he has been produced before a court before the expiry of that period. Where the person is held in a designated prison, then the provisions of the Prisons Ordinance applies to the person, as though s/he were a civil prisoner- even in this case the section on rights of visits, correspondence and part IX (on visits and correspondence) of the Ordinance would not apply. This raises the question whether, for persons who are detained in places that are not designated prisons under the Ordinance, the protection of the provisions of the Prisons Ordinance will not apply to them; an alarming prospect of two regimes of detainees being produced under this regulation, for some of whom the protections under of a civil prisoner will not apply. Even for those to whom the Prisons Ordinance applies, the IGP may suspend/modify the application of the Ordinance by an order. To add to the ambiguity of these two regulations, it is unclear how reg. 21(2) juxtaposes with the express provisions of reg.19 which states clearly that no detainee under the regulation may be held for more than one year, giving the impression that detention upto one year is permitted.

- The right of the person to legal counsel and to communicate with his family is also at the discretion of the IGP- where s/he deems it expedient to do so, the IGP may “permit visits to, and the correspondence of, such person in such manner and at such time and place, as the Inspector-General of Police may from time to time direct”. Under the present ordinary criminal law, legal counsel have the right to represent clients at the police station, subsequent to rules made under the Police Ordinance in 2012- Police (Appearances of Attorneys-at-Law at Police Stations) Rules, 2012. The right to counsel is a crucial protection not only so as to facilitate the accused’s right to a fair trial, but also as a safeguard against torture. Provisions that limit access to legal counsel are a retrograde step for Sri Lanka, and a clear violation of international law and standards.<sup>18</sup>
- There are some safeguards, however, which are acknowledged. When an arrest is made under Regulation 20, arrests can be made by any members of police or armed forces, and where such an arrest is made, there is a requirement for the arrest to be reported to the Superintendent of Police or the commanding officer (as relevant) within 24 hours<sup>19</sup> and the person to be handed over to the police within 24 hours.<sup>20</sup> Under regulation 20(9) there is a requirement to inform relatives in writing of the fact of arrest, and if that is not possible, the information book at the police station must be updated to note the fact of arrest. On the other hand, the lack of judicial oversight at this stage may nullify these safeguards since the detainee continues to be in custody without access to a court of law for up to 30 days. Those who surrender to the police, however, have the right to be produced before a magistrate “forthwith” under regulation 22(2). For those arrested under Regulation 19, the safeguards under regulation 20 have not been expressly provided for, such as the right to an acknowledgement of arrest (reg.20(9)) and the right to be searched by a female officer, if the detainee is a female.
- Sri Lanka has a history of torture in custody, especially of those arrested under the Prevention of Terrorism Act.<sup>21</sup> The regulations, in their present form, violate the rights of detainees, including the right to a fair trial in terms of the ICCPR, and may be subject to abuse. Sri Lanka has clear obligations in international human rights law and standards to address conditions that enable torture and other cruel and degrading treatment or punishment.<sup>22</sup> Amnesty International urges the government to repeal the Emergency Regulations and rely on the ample provisions already available in the Penal Code and other ordinary laws of Sri Lanka, for arrest and detention of those suspected of carrying out criminal offenses. In May 2016, Juan Mendez, UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, after his visit to Sri Lanka noted that, “In cases where there is a real or perceived threat to national security there is a corresponding increase in acts of torture and ill-treatment during detention and interrogation in Terrorism Investigation Division (TID) facilities”.<sup>23</sup> Amnesty International is deeply concerned that the present regulations may be subject to abuse in this context.

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<sup>18</sup> ICCPR Article 14 , Human Rights Committee General Comment 32; para 34: “Article 14: Right to equality before courts and tribunals and to a fair trial.”

<sup>19</sup> Regulation 20(8) of the regulations

<sup>20</sup> Regulation 20(2) of the regulations

<sup>21</sup> Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, 23 July 2018, [https://www.ohchr.org/Documents/Countries/LK/Sri\\_LankaReportJuly2018.PDF](https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF) at p.8

<sup>22</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2

<sup>23</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943>

## BROAD DEFINITION OF TERRORISM

- The definition of “terrorism” in regulation two of the regulations contains offences that are already criminalized under the Penal Code of Sri Lanka. By including offences such as “robbery”, “extortion” or “theft of state property” for example, as terrorist offences, crimes that are already covered under ordinary criminal law become “terrorism offences” if they are committed with the intention of ‘intimidating a population’, “wrongfully or unlawfully compelling the government of Sri Lanka, or any other government, or an international organization, to do or to abstain from doing any act”, ‘preventing such government from functioning’ or ‘causing harm to the territorial integrity or sovereignty of Sri Lanka or any other sovereign country’.<sup>24</sup> The list of offences, which includes the vague and overbroad regulation of “or any other act”, could very well be extended to apply to legitimate peaceful protests. The only exception is where the act is carried out “in good faith in the lawful exercise of a fundamental right or in pursuance of, or to give effect to a lawful order given to him, in accordance with or give effect to a judicial order, shall not amount to terrorism under this regulation.” This broad definition includes a risk that legitimate peaceful protest critiquing government action or inaction on a given issue, may be construed as an act of terrorism, and in other instances that charges will be brought under counter-terrorism powers that should properly be addressed by other criminal powers.

## BROAD POWERS OF REQUISITION

- The ability to requisition private property and to order private citizens to do work or carry out any service on behalf of the state is also alarming. Under regulation 8, if it is alleged that a building has been used for an offence under the regulations or under the PTA, “the Superintendent of Police of the area shall take possession of such building or premises and shall evict any person found therein or ordinarily resident therein and secure such premises from access to any unauthorized persons”. An appeal to the High Court would also not immediately return the building to its owner – the regulation specifies that returns in this case can only take place two weeks after an application is made to the High Court. The broad discretion to seize buildings and private property therefore appears disproportionate to the task of preventing the offence of “terrorism” taking place. Similarly, any vehicle in Sri Lanka may be requisitioned by the President under regulation 9 if it is ‘necessary or expedient’ to do so in the ‘interests of national security’, preserving public order or ‘maintaining supplies and services essential to the life of the community’.
- Regulation 10, which provides for the requisitioning of services of any person, is also overly broad and may impinge on personal liberty. The regulation permits the President “to require, any person to do any work or render any personal service in aid, or in connection with, national security or the maintenance of essential services”. The penalty for non-compliance is that all property of such a person may be forfeited to the state. In addition, any alienation of property by that person *after the coming into effect of this regulation*, shall be deemed null and void, which can have severe consequences on an individual’s right to refuse to carry out such work or service.
- Amnesty International is concerned that these broad powers of requisition do not meet the threshold of what may be necessary and proportionate, and therefore may it violate human rights protected by international human rights law, and, more particularly, the International Covenant on Civil and Political Rights (ICCPR).

## ACCESS TO PUBLIC SPACES

- The regulations specifically provide broad discretionary powers to the “competent authority” to “prevent the entry of unauthorized persons into any area, place or premises wholly or mainly occupied or used for the maintenance of essential services,”. The opinion of the competent authority is not subject to necessary and proportionate criteria in order to safeguard “national security, public order, public health or morals or the rights and freedoms of others”<sup>25</sup>. This could lead to the legitimate exercise of the right to peaceful assembly outside or in the vicinity of such premises being prevented under the regulations.
- In addition, the President may, under regulation 13, “prohibit the holding of public processions or public meetings, or of such public processions or meetings as may be specified in that order in any area in Sri Lanka” for a period of time that he specifies. Further, under regulation 13(2), he may give directions prohibiting the holding of a public procession or meeting if in his opinion it is likely “to cause a disturbance of public order or

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<sup>24</sup> Regulation 2, Emergency regulations

<sup>25</sup> Article 12(3), International Covenant on Civil and Political Rights (ICCPR)

promote disaffection”. While public order is a basis on which the right to freedom of expression may be restricted in terms of the ICCPR<sup>26</sup>, the term “promote disaffection” is not defined in international law and is vague and may be subject to abuse. Amnesty International is concerned that this provision may be used to violate the legitimate exercise of the rights to freedom of expression and peaceful assembly.<sup>27</sup>

## **DISPROPORTIONATE RESTRICTIONS ON FREEDOM OF EXPRESSION AND MEDIA FREEDOM**

- Amnesty International is concerned that regulation 15 could be abused to violate the right to freedom of expression, especially newspaper journalism. In terms of this regulation, if a publication transmits matters which are “prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and service essential to the life of the community or of matters inciting or encouraging persons to mutiny, riot or civil commotion, or to commit breach of any law for the time being in force”, then broad powers to censure such publications have been given to the competent authority.
- In terms of this regulation, newspapers that publish “news reports, editorials, articles, letters to the editors, cartoons and comments” must be submitted or exhibited to the competent authority before publication. This alarming regulation is followed by heavy penalties for non-compliance. Penalties include a ban on further publication of a newspaper and the seizure of the printing press. Requiring a newspaper to submit or exhibit news articles to “a competent authority” before publication is censorship and a restriction of journalists’ right to freedom of expression.

## **DANGEROUSLY BROAD ABILITY TO RESTRICT FREEDOM OF MOVEMENT**

- Regulation 18 provides for extremely broad powers to prevent movement of persons and to take into custody passports, travel documents and even vague powers such as “prohibiting or restricting the possession or use by that person of any specified articles”. These powers may be exercised by the Secretary to the Ministry of Defence, with few restrictions. If, in the opinion of the secretary, a person must be prevented from committing an offence specified in the regulation such as becoming a member of an unlawful assembly for example, s/he can order that the person must notify his movements to a given authority, or even prohibit the person from leaving or entering a residence or order him to hand over his passport or other travel documents. The actions that can be prevented are offenses listed in regulation 25, reg. 44(2) (a) or (b), or reg. 75. The offenses listed in these provisions range from unlawful assembly, to theft of any article in an abandoned property, to compelling someone to depart from employment in the case of essential services. The wide range of offenses to which these powers to restrict movement apply, is a cause of concern, since the powers depend on the opinion of the Secretary to the Ministry of Defense.
- Regulation 18 also appears to disproportionately target journalists or those who influence public opinion, with reference to restrictions on persons “in respect of his employment or business, in respect of his association or communication with other persons and in respect of his activities in relation to the dissemination of news or the propagation of opinions”. Under this regulation, people can be arbitrarily placed under house arrest.
- Regulation 33 includes the criminalization of information in extremely vague terms, including “any matter likely, directly or indirectly to create communal tension”. This provision could be abused to restrict the right to freedom of expression in both the mainstream media and social media.
- The possession of “subversive literature” is also criminalized by regulation 37. There is no clear definition of what is meant by “subversive literature” and reference to material that “arouse, encourage or promote feelings or hatred or contempt to the Government” could include materials that refer to legitimate criticism of the government by civil society. Further, this provision refers to materials which call for the “overthrow of the government” without the proviso seen in previous regulations of “except by legitimate means”. Therefore, advocating for a change of government by lawful means for example could amount to a violation of this provision. The burden of proving that the person had lawful authority or reasonable excuse to possess such literature, lies on the person so accused.

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<sup>26</sup> Article 19 (2), ICCPR

<sup>27</sup> Sri Lanka is a party to the International Covenant on Civil and Political Rights, article 19 of which safeguards the right to freedom of expression and article 21 of which protects the right to freedom of peaceful assembly.

## OVER-BROAD SET OF OFFENSES

- The regulations in regulation 25 set out a series of offences, some of which do not appear to have direct relevance to the offences which this regulation appears to aim to prevent. For example, unlawful assembly, or theft, or destruction of abandoned property. These offences further carry the death penalty, in violation of the restriction set out under international law to limit the use of this punishment, pending its full abolition, to the “most serious crimes”, meaning intentional killing.
- In addition, regulation 43 makes it an offence in terms of these regulations to intimidate a person, not just physically but even economically. Intimidate is a to “cause in the mind of a person a reasonable apprehension of injury”; and injury is defined to include ‘injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong’.
- In terms of regulation 45, being in possession of or printing a death threat or “which is reasonably capable of being construed as a threat of death or bodily harm to any other person” or even by threat of death or bodily harm to “to resign from any office held by such other person in such political party or trade union or to resign from any office held by such other person or to join any political party”, would be an offence which carries the death penalty. The death penalty for this offence is mandatory, in violation of international law and standards.
- In addition, in terms of regulation 44, anyone who strikes or joins an organized action in an essential service, not only faces termination of employment, but also forfeiture of their property. According to regulation 44(6), if a person is convicted of an offence under this regulation “(a) all property, movable or immovable, of that person shall by virtue of such conviction be deemed to be forfeited to the Republic; and (b) any alienation or other disposal of such property effected by such property of effected by such person after the date of the coming into force of these regulations shall be deemed to have been and to be null and void.”
- Amnesty International urges the government of Sri Lanka to repeal the Emergency Regulations. Many of the crimes in the regulations are already criminal offences under the ordinary criminal law, and therefore do not warrant special emergency regulations for their proscription.

## PENALTIES INCLUDE DEATH PENALTY

- Amnesty International is deeply concerned that the emergency regulations prescribes the death penalty for a variety of offences including being a member of an unlawful assembly, theft of property or doing any act which causes destruction of property. Sri Lanka has not executed any person for more than four decades. Introducing the death penalty for crimes under these regulations should be repealed immediately. Some of these offences are not directly related to “terrorism”, even as it is broadly defined in this regulation, and include non-lethal offences which do not meet the threshold of the “most serious crimes” under international law. In addition, the regulation contains disproportionate punishments such as five to 10 years’ imprisonment, for promoting, advising, supporting, or assisting a proscribed organization. What acts would amount to “showing support” is also vague and may be subject to abuse.
- Regulation 40 also sets out the death penalty for offences such as the possession of firearms, or for as little as possession of “any inflammable, corrosive or volatile substance”. This definition could apply to wide variety of substances, and prescribing the death penalty for the offence would not meet requirements on the use of this punishment as set out under international law and standards.

## POLICE POWERS UNDER THE REGULATIONS

- The regulations permit the military and any other person authorized by the President to exercise police powers under regulation 56.
- The consequences of regulation 56 can be seen when one considers regulation 58. Under this, “any police officer of a rank not below that of Deputy Inspector General of Police or any other officer or person authorized by in that behalf”, may take possession of, bury or cremate **any dead body** (our emphasis). A police officer can also determine who is permitted to be present at the disposal of a dead body; being present without permission also constitutes an offence under the regulations. The only safeguard to abuse of regulation 58(1), is in regulation 58(2) where such possession, burial or cremation must comply with other provisions of the regulations, and must also comply with “any other written law relating to the inquest of death or to burial or cremation”. Regulation 58(3) also states that where if a death has occurred in custody, the Deputy Inspector General in charge or the Commanding Officer in the case if the military, must report the facts relating to the death to the IGP or the

nearest Deputy IGP. Regulation 59 sets out a procedure for investigation of such deaths, and reg. 60 for a magistrate to direct the relevant medical authorities to conduct a post mortem and then direct for the body to be buried or cremated. This latter post mortem is where, under reg. 57, a police officer or member of the armed forces 'causes the death of any person' and the Magistrate receives a report of such facts from the IGP.

- Even in the case of burial of those who have died in custody, the Deputy Inspector General of Police has wide-ranging powers not only to determine on what conditions to hand over the body to relatives but also to determine whether "in the interest of national security or for the maintenance or preservation of public order, authorize the taking possession of and effecting the burial or cremation of the dead body in accordance with such steps as he may deem necessary in the circumstances"

## **ADMISSABILITY OF STATEMENTS MADE IN CUSTODY**

- In addition, in terms of regulation 67, a statement made to a police officer not below the rank of an Assistant Superintendent of Police may be used against an accused in a trial. The regulation states "...a statement made by such a person whether or not it amounts to a confession and whether or not such person was in the custody of a police officer at the time the statement was made and whether or not such statement was made in the immediate presence of a Magistrate may be proved against such person...". This opens up the possibility for such statements to be extracted under torture or other cruel and degrading treatment, even though the regulation later provides that such a statement must be made to an officer above the rank of an Assistant Superintendent of Police (ASP).
- The burden of disproving the statement also appears to lie with the accused- such a statement 'may be proved against such person'. Amnesty International is concerned that this regulation may be subject to abuse and may result in statements extracted under torture being admitted before a court of law. This is compounded by the power given to the authorities to prevent a detainee from accessing their legal counsel. The regulation leads to serious concerns for the guarantee of a right to a fair trial.
- Regulation 67 also specifically suspends the application of safeguards contained in sections 25, 26 and 30 of the Evidence Ordinance to statements made by accused to police under these regulations (regulation 67(4)). These sections in the Evidence Ordinance prevent statements made to a police officer being proved against the accused, unless it is made in the presence of a magistrate. By suspending their application, the regulations essentially allow police powers to be abused, and extraction of confessions under torture may take place. Such statements can also be used against other persons, for joint offenses, if the statement is materially corroborated by other evidence.<sup>28</sup>
- The applicability of section 110 of the Criminal Procedure Code<sup>29</sup> to such evidence specified under reg. 67 has also been suspended in the regulations.<sup>30</sup> Section 110 carries several safeguards; when a witness is examined by a police officer or inquirer, that the statement be recorded in writing in full, that it be shown or read out to the person, or if s/he does not understand the language in which it is written, that it be interpreted to him. Under these regulations a statement may be proved against a person, notwithstanding the safeguards in section 110 of the Criminal Procedure Code not having been guaranteed.<sup>31</sup>
- Junior officers in the armed forces and police are also empowered with broad powers to order persons to remove themselves from the vicinity of a "public road, railway, public park, public recreation ground or other public ground, seashore, or in or about, or in the vicinity of, the premises of any public building or Government Department". By giving the discretion to junior officers, the regulations risk violation of the right to peaceful assembly. Refusal to comply with such an order under section 71 could result in the person being removed using force, arrested or confined.
- Furthermore, any police officer or officer authorized by the commanders of the armed forces can question persons who are arrested under these regulations. For this purpose, they are permitted to take the person into temporary custody, for up to seven days, which poses a grave risk of torture in custody, where persons may be

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<sup>28</sup> Regulation 67(2)

<sup>29</sup> Code of Criminal Procedure, No, 15 of 1979, section 110

<sup>30</sup> Regulation 67(5)

<sup>31</sup> Regulation 67(5)

taken out of the establishment where they are held, into the temporary custody of an officer, for the purposes of questioning.<sup>32</sup>

## **POWER TO PROSCRIBE AN ORGANIZATION**

- The powers of the President have also been widened to allow proscription of an organization in a manner that could be abused. Not only can the president ban an organization if it violates any of the list of offenses in regulation 25 or regulation 42(2)b, but also if, in his opinion, there is a danger of action by that organization or its members to “purposes prejudicial to national security, the maintenance of public order or the maintenance of essential services”. The wide powers thus granted may result in restrictions on legitimate exercise of the right to freedom of expression, the right to strike, the right to peaceful assembly and peaceful protest for example.

There is a propensity for draconian emergency measures such as these to become normalized in domestic legal systems, as became the case with the Prevention of Terrorism (Temporary Provisions) Act 1978, which is still in force. Given the serious concerns outlined above on the content of the emergency regulations, Amnesty International calls on the government of Sri Lanka to repeal the emergency regulations immediately.

A summary of our concerns vis-à-vis the regulations are as follows:-

- Detention of persons under regulations 19, 20 and 21 are of serious concern. The safeguards to protect persons from torture in custody are inadequate in the current provisions, and these should be repealed in order to meet minimum obligations under international law. The regulations, in their present form, violate the rights of detainees, including the right to a fair trial in terms of the ICCPR, and may be subject to abuse.
- The regulations have a broad definition of terrorism that results in a risk that legitimate peaceful protest critiquing government action or inaction on a given issue, may be construed as an act of terrorism, and in other instances that charges will be brought under counter-terrorism powers that should properly be addressed by other criminal powers.
- The regulations provide for broad powers of requisition that do not meet the threshold of what may be necessary and proportionate, and therefore may it violate human rights protected by international human rights law, including the International Covenant on Civil and Political Rights (ICCPR).
- The regulations have broad powers to restrict access to public spaces, which may be used to violate the legitimate exercise of the rights to freedom of expression and peaceful assembly.
- The regulations contain disproportionate restrictions of media freedom and there is a risk that regulation 15 could be abused to violate the right to freedom of expression, especially newspaper journalism.
- Dangerously broad powers to restrict movement also appear to target journalists and have a disproportionate effect on those who influence public opinion.
- The set of offenses in the provisions are also extremely broad, set out in a series of regulations. The death penalty has been prescribed for several of these offenses, and is mandatory for at least one offense.
- Police powers under the regulations are also a cause for concern, with powers extending to taking possession of, burying or even cremating a dead body. There are concerns as to the dangerously broad nature of these powers.
- The regulations provide for statements made in custody, whether or not they are a confession, to be proved against an accused. The burden of proof appears to lie on the accused and the suspension of safeguards in the ordinary law raises concerns that confessions extracted under torture or other cruel and degrading treatment may be admitted in trials against those charged under the regulations.
- The powers of the President to proscribe organizations is also wide enough to permit proscriptions that may result in restrictions on legitimate exercise of human rights, such as the right to freedom of expression, the right to strike and the right to freedom of peaceful assembly.

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<sup>32</sup> Regulation 72