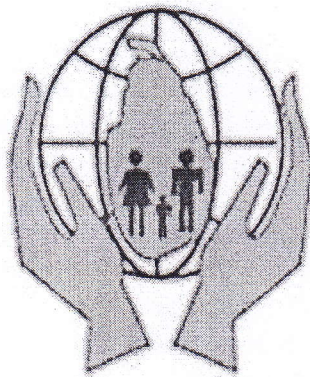


HUMAN RIGHTS COMMISSION OF SRI LANKA



SUBMISSION TO THE SUB-COMMITTEE ON LAW & ORDER

BY

**THE HUMAN RIGHTS COMMISSION OF SRI LANKA
AUGUST 2016**

Dr. N. D. Udagama
Chairperson

Human Rights Commission of Sri Lanka

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The Human Rights Commission of Sri Lanka is of the belief the main purpose of a public security regime is to protect the people, and hence must be crafted in a manner that serves the best interests of the people. In this regard, the Commission brings to the Sub-Committee's attention the principles governing national security set out in Article 198 of the Constitution of South Africa which states that:

- a. National security must reflect the resolve of the people, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.
- b. National security must be pursued in compliance with the law, including international law.
- c. National security is subject to the authority of Parliament and the national executive.

The Commission sets out below its recommendations on the public security regime to the Sub-Committee on Law & Order in line with its mandate stipulated in the Human Rights Commission Act No 21 of 1996.

The Commission reiterates that while public security is essential, the public security regime should be in line with Sri Lanka's human rights obligations, in particular Article 4 of the International Covenant on Civil and Political Rights (ICCPR). The recommendations are based on the jurisprudence of the UN Human Rights Committee, the Paris Minimum Standards of Human Rights Norms in a State of Emergency, and the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR.

I. Declaration and extension of a state of emergency

- A state of emergency should be declared only when the 'life of the nation is threatened' - which is an 'exceptional situation of crisis or public danger, actual or imminent'. According to the UN Human Rights Committee and the Siracusa Principles, 'exceptional threat' should be construed subject to the following factors:
 - o The emergency must be actual or at least imminent – it cannot be of a preventive nature.
 - o The emergency should be of a magnitude so as to affect the whole country not just part of it.
 - o The very existence of the nation has to be threatened - this could be to the physical integrity of the population, territorial integrity, or to the functioning of state structures.

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- The crisis or danger must be exceptional in that normal measures for the maintenance of public safety are inadequate. Hence, the declaration of emergency should be considered as last resort.
- Emergency should be a temporary measure.

II. Judicial review

- Judicial review of a declaration of a state of emergency, emergency regulations and orders, must be guaranteed. This would include power and jurisdiction to:
 - Determine the constitutional validity of the declaration of a state of emergency;
 - Determine whether or not emergency legislation is in conformity with the constitution;
 - Determine whether or not the exercise of emergency power is in conformity with the constitution and emergency legislation;
 - Ensure there is no encroachment by emergency regulations and orders upon non-derogable rights, and that measures derogating from derogable rights are in compliance with the rule of proportionality;
 - Declare null and void any emergency measure (legislative or executive) or any act of application of any emergency measures, which does not satisfy the above-mentioned tests.
- If a state of emergency continues for more than six consecutive months, Parliament must approve its further extension by a special majority.

III. Derogation

- The Commission endorses the provisions in the Draft Charter of Rights (2009) on derogation of rights during periods of emergency. Accordingly:
 - Measures prescribed by law derogating from the exercise and operation of the fundamental rights should be only to the extent strictly required by the exigencies of the situation and necessary in a democratic society.
 - The derogation should be in proportion to and consistent with the state's other international legal obligations
 - The derogation must not involve discrimination, i.e. it must not adversely impact a particular group or community (eg: women, a particular ethnic or religious group).

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- As per the Draft Charter of Rights (2009) the following rights are non-derogable:
 - Right to life
 - Right to human dignity
 - Security of the person
 - Freedom from torture
 - Freedom from slavery and servitude
 - Retroactive penal sanctions
 - Right to be recognised as a person before the law
 - Freedom of thought, conscience and religion
 - Freedom to hold opinions
 - Family rights
 - Rights of the child
 - Freedom from exploitation
 - From the right recognised by article 13 (7) of the Draft Bill of Rights unless legal provision is made requiring-
 - (i) the Magistrate of the area in which such arrest was made to be notified of the arrest; and
 - (ii) the person arrested to be produced before any Magistrate, within such time as is reasonable in all the circumstances of the case.

IV. Amendment of Public Security Ordinance

The Commission also recommends the review of the Public Security Ordinance for purposes of reforming the legislative regime applicable to public security.