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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

H.E. Anura Kumara Dissanayake
President of the Republic of Sri Lanka,
Presidential Secretariat,
Colombo 01

Your Excellency,

Observations and Recommendations on the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2025

We write to you with reference to the provisions of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2025, which were issued on 28 November 2025.

The Commission wishes to express its deep sorrow with respect to the national disaster that has arisen in Sri Lanka as a result of Cyclone Ditwah. We recognise the enormity of the cost to human life and property and acknowledge the difficult path to recovery that the Government of Sri Lanka has undertaken. We anticipate that our observations and recommendations conveyed in this letter would further aid the national effort in ensuring the recovery process takes place in a manner that respects, protects and promotes the fundamental rights of the people.

We write to Your Excellency in terms of the Commission's mandate under section 10(d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. The said provision empowers the Commission 'to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards'.

We observe that the said Regulations appear to draw from a template set of regulations used on several previous occasions by previous governments. Several provisions of the said Regulations are incompatible with the fundamental rights chapter of the Constitution of Sri Lanka and relevant international human rights norms and standards. In this context, we wish to bring the following provisions to Your Excellency's notice:

1. Regulation 8(1)

The said Regulation refers to the requisitioning of any building or premises 'necessary for relief work in connection with any natural disaster'. The Commission notes that the said Regulation is broad and includes residential premises. Such requisitions could have an unreasonable, unnecessary, and disproportionate impact on the right to shelter and housing, which is recognised under international human rights law, and could amount to the violation of **article 12(1)** of the Constitution.

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It is recommended that Regulation 8(1) be amended to either exclude residential premises, or to include a guarantee that alternative housing or accommodation be provided to affected persons.

2. Regulation 10

The said Regulation provides that the president or any other officer acting under his authority may '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 Commission notes that the terms 'any person' and 'any personal service' is extremely broad and could amount to forced labour and would amount to a violation of **article 12(1)** of the Constitution.

The Commission accordingly recommends the repeal of Regulation 10 in its entirety.

3. Regulation 12(5)

The said Regulation stipulates that a person convicted of an offence with respect to essential services would additionally be subject to a mandatory penalty whereby 'all property movable or immovable, of that person shall, by virtue of such conviction, be deemed to be forfeited to the Republic'.

The Commission notes that the offences contained in Regulation 12 are expansive in nature and could range from seriously obstructing essential services to causing minor delays in carrying out such services. The Commission also notes that the breadth of these offences can impede legitimate trade union activity protected under **articles 14(1)(c) and 14(1)(d)** of the Constitution. It observes that a mandatory penalty of this nature is unreasonable, unnecessary, and disproportionate, and would amount to a violation of **article 12(1)** of the Constitution. Furthermore, such penalties are likely to have a serious impact on persons who have no criminal liability, including children and other dependants of convicted persons, and could harm the best interests of the child.

It is recommended that Regulation 12 be amended to permit the relevant Court the discretion in terms of sentencing and imposing any additional penalties.

4. Regulations 16(1), 16(8), and 17(1)

Regulation 16 authorises any police officer, or any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force etc, to 'detain for purposes of such search, or arrest without warrant, any person who is committing or has committed or whom he has reasonable grounds for suspecting to be concerned in or to be committing, or to have committed, an offence under sections 354, 355, 356, 357, 358, 359, 360, 360A, 360B, 360C, and sections 364, 365, 365A and 365B, and sections 427 to 446 of the Penal Code (Chapter 19).

We note that among these offences are offences under sections 365 and 365A of the Penal Code, which relate to voluntary sexual acts between consenting adults. These offences have no bearing on public emergencies. In any event, the Commission has repeatedly pointed out in letters to various Ministers of Justice in November 2023, August 2024, and May 2025, that sections 365 and 365A need to be urgently repealed to ensure compatibility with Sri Lanka's international human rights obligations.

It is also noted that Regulation 16(8) does not refer to the Human Rights Commission of Sri Lanka.

We are deeply concerned that Regulation 17(1) mandates that a person guilty of an offence under such Regulation, including offences under sections 365 and 365A of the Penal Code, 'shall on conviction thereof before the High Court, be liable to **suffer death** or imprisonment of either description'. The Commission is of the view that mandatory death sentences should, especially, not be imposed under Emergency Regulations, for a variety of reasons, including the non-availability of legal and procedural safeguards applicable under ordinary law and guaranteed under **article 13** of the Constitution. In particular, Your Excellency's attention is drawn to the admissibility of confessions to a police officer under Regulation 41.

It is recommended that Regulation 16(1) be amended to remove references to sections 365, and 365A of the Penal Code.

It is also recommended that Regulation 16(8) be amended to ensure that the Human Rights Commission of Sri Lanka is notified of any arrest made under these Regulations within 24 hours of such arrest.

It is further recommended that any reference to the death sentence be deleted from Regulation 17(1).

5. Regulation 18(a)

The said Regulation makes it an offence to 'endeavour to cause disaffection among persons who are public officers...and 'engaged in the performance of essential services'. The Commission notes that the term 'disaffection' is overbroad and can potentially capture legitimate political speech directed at public officers. It is incumbent on the government to respect and tolerate criticism of public officers and those engaged in the performance of essential services even during times of public emergency. The Commission is deeply concerned that certain public statements are reported to have been made by government officials that the Emergency Regulations would be deployed against those who criticise Your Excellency or the government. The Commission notes that the freedom of speech and expression guaranteed by **article 14(1)(a)** of the Constitution includes the right to criticise public officials during times of public emergency, and such criticism should not be interpreted as a form of 'disaffection'.

The Commission recommends the amendment of the said Regulation to remove all references to the term 'disaffection' in the said Regulation.

6. Regulation 19

The said Regulation prohibits 'affix[ing] in any place visible to the public or distribut[ing] among the public any posters, handbills or leaflets, the contents of which are prejudicial to public security, public order or the maintenance of supplies and services essential to the life of the community'. It is observed that what is 'prejudicial' to legitimate interests such as 'public security', 'public order', and maintenance of essential supplies and services is subject to broad and subjective interpretation.

The Commission notes that this blanket and subjective prohibition amounts to an unreasonable, unnecessary, and disproportionate restriction on the freedom of speech and expression guaranteed by **article 14(1)(a)** of the Constitution.

The Commission accordingly recommends the repeal of Regulation 19 in its entirety.

7. Regulation 20

The said Regulation prohibits communicating, publishing, generating, or disseminating ‘any rumour or false statement’, which is likely to cause ‘public alarm’ or ‘public disorder’. The means of communication include ‘by word of mouth or by any written, electronic, digital or other means whatsoever, including through any media, information and communication technology, automated system or artificial intelligence system’.

The Commission notes that the words ‘public alarm’ is obscure and ambiguous, and could result in unreasonable, unnecessary, and disproportionate restrictions on speech, the accuracy of which is contested. The Commission is concerned that truth and falsehoods are not easy to establish, particularly in times of public emergencies, and the government should refrain from attempting to control, through criminal sanctions, the flow of information purely on the basis of accuracy. Instead, only false information that incites violence, and where such violence is imminent, ought to be restricted via criminal sanctions. Such incitement is already criminalised under section 3 of the International Covenant on Civil and Political Rights Act, No. 56 of 2007 and requires no further prohibition.

The Commission accordingly recommends the repeal of Regulation 20 in its entirety.

8. Regulations 31-36

These Regulations grant expansive investigative powers to police officers including to conduct searches, access places, and view documents. Regulation 36(1) provides that such powers may also be exercised by officers of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force who is authorised to do so by the Commander of the Sri Lanka Army, the Commander of the Sri Lanka Navy, or the Commander of the Sri Lanka Air Force respectively.

The Commission is of the view that the Regulations do not provide adequate checks and balances with respect to these expansive powers. Bearing in mind the number of complaints before the Commission relating to custodial and encounter deaths, torture or cruel, inhuman, or degrading treatment, and arbitrary arrest and detentions, where the alleged violators are officers of Sri Lanka Police, the Commission expresses serious concern with respect to granting such expansive powers to police officers. It reiterates the urgent need to ensure comprehensive institutional reform of law enforcement authorities prior to entrusting expansive legal powers to such authorities.

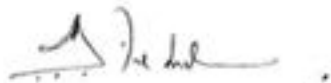
Given that a natural disaster does not pose threats to public security or public order that are comparable to other types of public emergencies, it is recommended that the ordinary law of criminal procedure be applied with respect to the investigation of any offences under the said Regulations. In particular, the Commission recommends the implementation of our General Guidelines and Recommendations No. 1 of 2025 to Sri Lanka Police on Preventing Custodial and Encounter Deaths.

Regulation 41

The said Regulation deals with admissibility of statements. The Commission notes with concern that Regulation 41(4) is particularly problematic, as it provides that sections 25 and 26 of the Evidence Ordinance, No. 14 of 1895 'shall not apply in the case of any offence under any emergency regulation'. These sections in the Ordinance ensure that no confessions made to a police officer or while in the custody of a police officer shall be proved against a person accused of any offence. The sections introduce salutary safeguards against the procurement of confessions through torture or other ill treatment. The specific exclusion of the applicability of sections 25 and 26 is likely to result in the violation of **article 11** of the Constitution, which guarantees the freedom from torture and cruel, inhuman, or degrading treatment or punishment.

The Commission recommends the repeal of Regulation 41 and the application of the ordinary law of criminal procedure to all offences under the Regulations.

In conclusion, we recommend that Your Excellency takes steps to repeal or amend the above provisions of the said Regulations to bring the said Regulations in line with the Constitution of Sri Lanka, and relevant international human rights norms and standards. We wish to clarify that in the context of the urgency of the current circumstances, the list of Regulations that we have highlighted is not exhaustive. It is recommended that a comprehensive overhaul of the template set of regulations that are used during public emergencies be undertaken in consultation with relevant experts. Such a process can ensure that, if emergency regulations are required to be issued due to a public emergency, such regulations are fully compliant with the Constitution of Sri Lanka, and relevant international human rights norms and standards.



Justice L T B Dehideniya,
Chairman,
Human Rights Commission of Sri Lanka.

Justice L.T.B.Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

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