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Sri Lanka: Changes to the emergency regulations and the Prevention of Terrorism Act (August-September 2011)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Emergency regulations

Zeenews.com, the online news source for the Mumbai-based media company Zee News, states that "[e]mergency laws were first imposed in 1983 when Tamil rebels escalated their violent campaign for an independent state for the island's ethnic Tamil minority" (Zeenews.com 1 Sept. 2011a). Several sources mention that the emergency regulations have been in effect for approximately 30 years (PTI 1 Sept. 2011; *Asian Tribune* 25 Aug. 2011; *The Economist* 3 Sept. 2011). *The Economist* indicates that the emergency regulations have been "on-and-off" throughout these years (ibid.). Other news sources indicate that the regulations were renewed monthly, with only "brief breaks," since they were first imposed (*Asian Tribune* 25 Aug. 2011; Zeenews.com 1 Sept. 2011a). Before being lifted in August 2011 (Reuters 31 Aug. 2011), the emergency regulations had been in force since the assassination, in August 2005, of foreign minister Lakshman Kadirgaman (ibid.; *The Economist* 3 Sept. 2011).

The emergency regulations "gave security forces sweeping powers of arrest" (Zeenews.com 1 Sept. 2011a; *Asian Tribune* 25 Aug. 2011) and also of detention (ibid.; US 8 Apr. 2011, Sec. 1b). Amnesty International also mentions, in their 2010 International Report, that the emergency regulations were used by the Sri Lankan security forces "to arrest and detain many thousands of Tamils suspected of LTTE links" (2010, 302).

End of emergency regulations

Lakbima News, a Sri Lankan news site operating out of Colombo, reports that on 25 August 2011, the President of Sri Lanka proposed to parliament that "the emergency" not be extended, and on 30 August 2011, the state of emergency "lapsed" (11 Sept. 2011). The Press Trust of India (PTI), an Indian news agency, reports that the state of emergency ended on 31 August 2011 (PTI 1 Sept. 2011).

However, Sri Lanka's attorney general informed the press that, although the emergency regulations had been removed, there would be "no change" in the situation of the "suspects" detained under the emergency regulations and

that the detainees would not be released (Zeenews.com 1 Sept. 2011b). News.LK, Sri Lanka's official government news portal, reports the Attorney General as saying that "the removal of emergency regulations will not result in the release of some 6,000 persons detained under the emergency regulations and their release or prosecution is to be decided case by case" (Sri Lanka 1 Sept. 2011). Zeenews.com noted that at the same time the Attorney General was making his announcement, the Justice Minister was telling state media that "about 1,200 alleged Tamil Tiger rebels will soon be released with the end of emergency rule" (Zeenews.com 1 Sept. 2011b). Further information on the release of the detainees could not be found among the sources consulted by the Research Directorate.

Public Security Ordinance

The *Daily Mirror*, a Colombo-based newspaper, reports that on 7 September 2011, a week after the emergency regulations were lifted, the Sri Lankan government "issued a new proclamation under the Public Security Ordinance allowing for the deployment of the army, navy and air force in addition to the police for the maintenance of law and order in all districts of the country" (*Daily Mirror* 8 Sept. 2011). An article on the emergency regulations by a Sri Lankan constitutional and human rights lawyer in *Groundviews*, a citizen journalism website located at the Centre for Policy Alternatives in Colombo, similarly says that on 6 September 2011, "the President reintroduced an Order made under section 12 of the PSO [Public Security Ordinance] calling out all the members of the Armed Forces for the maintenance of public order in all 25 Districts" (Weliamuna 16 Sept. 2011). The Parliament's deputy speaker Chandima Weerakkody explained that the now-lifted "emergency regulations were imposed under ... Chapter I and II of the Public Securities Ordinance, but the new proclamation was being made under a different section of the same law" (*Daily Mirror* 8 Sept. 2011).

In his *Groundviews* article, the constitutional and human rights lawyer argues that "the President has withdrawn the Emergency Proclamation but has made measures to keep the 'emergency legal regime' going" (Weliamuna 16 Sept. 2011). He adds that despite the termination of the state of emergency, the government has "failed to restore all rights and freedoms and also failed to remove the emergency measures" that had been put in place during the emergency (*ibid.*).

Prevention of Terrorism Act

The International Crisis Group notes that the provisions of the *Prevention of Terrorism Act* (PTA), which came into effect temporarily in 1979 and was made permanent in 1982, are in force "regardless of whether there is a declared emergency" (30 June 2009, 8). Media sources also report that the PTA is still in effect (Al Jazeera 1 Sept. 2011; *ColomboPage* 1 Sept. 2011).

ColomboPage, an online gateway to information on Sri Lanka that is based in Indiana, writes that Sri Lanka's Marxist party Janatha Vimukthi Peramuna (JVP) complained that the government "misled people by saying it has withdrawn the emergency regulations" (1 Sept. 2011). The JVP Propaganda Secretary observed that under the PTA, the police and the military have the power to "search houses without court warrants" (*ColomboPage* 1 Sept. 2011). He added that the police and the military can "extract confessions from any individual ... and detain him without any trial in a court of law for a long period"

(ibid.). Reuters also notes that the PTA "allows warrantless arrests and searches" (31 Aug. 2011). The Colombo-based *Lanka Truth* reports that there are those within Sri Lankan society who are protesting the continuation of the PTA (1 Sept. 2011).

New regulations under the PTA

Al Jazeera, an international news source based in Doha, Qatar, reported on 1 September 2011 that "Sri Lanka has lifted its wartime emergency powers and introduced new regulations" under the PTA that became effective on 31 August 2011, after the expiration of the emergency law at midnight on 30 August 2011 (1 Sept. 2011). *Lanka Truth* indicates that the new regulations, which fall under Section 27 of the Act, came into force on 1 September 2011 (1 Sept. 2011). Associated Press (AP) reports the Attorney General as saying that the four new PTA regulations are effective on a "temporary basis," and that they will be presented to lawmakers to make them permanent (1 Sept. 2011). *Lakbima News* states that the new PTA regulations "allow the government to do things that a lifting of the emergency stopped them from doing" (11 Sept. 2011). According to the Attorney General, the new regulations "have become mandatory in view of the government decision to lift the state of emergency" (PTI 1 Sept. 2011).

Al Jazeera notes that the new PTA regulations allow the government to "keep captured separatist fighters in detention" (1 Sept. 2011). It also reports the Attorney General as saying that the regulations will "ensure that a ban imposed on the defeated Liberation Tigers of Tamil Eelam (LTTE) and a front organisation [will] continue indefinitely" (Al Jazeera 1 Sept. 2011). According to *ColomboPage*, the new PTA regulations

cover the continuous proscription of the [LTTE] and its front organization Tamil Rehabilitation Organization (TRO), detention of the LTTE suspects and rehabilitation of the LTTE cadres who surrendered. (31 Aug. 2011)

The PTI reports the Attorney General as also stating that the four new regulations fall under Section 27 of the PTA and "allow the continuous proscription" of the LTTE and TRO (1 Sept. 2011). The regulations also "cover the detention of the LTTE suspects and rehabilitation of the LTTE cadres who surrendered" (ibid.). The PTI explains that the new regulations "provide legal cover to deal with the LTTE" (1 Sept. 2011). *The Economist* also reports that the new regulations "enable the president or the secretary of defence ... to pass regulations 'as it is deemed necessary'" (3 Sept. 2011). For the complete English text of the four regulations, see the attachments to this Response.

According to *Lakbima News*, the Government Press printed the four sets of PTA regulations on 6 and 7 September 2011 and backdated them to 29 August 2011, "presumably to cater to the weeklong period of illegality during which these laws were missing" (11 Sept. 2011). Legally, says the reporter, it was "not okay" for the government to continue doing what the lifting of the state of the emergency prohibited them from doing (*Lakbima News* 11 Sept. 2011). In correspondence with the Research Directorate, the constitutional and human rights lawyer also noted that the new PTA regulations, though dated 29 August 2011, were only made publicly available in the official gazette on 7 September 2011 (Lawyer 20 Sept. 2011). However, the lawyer pointed out that "a court might have difficulty in pronouncing that the regulations are invalid for such a ground" (ibid.).

Similarly, the *Daily Mirror* reports that the JVP and the Tamil National Alliance (TNA) parties, "which agitated for the lifting of the state of emergency," charged that "the government had failed to issue the gazette notification on these regulations ... and as such the detention of the LTTE suspects and the continuation of the ... [High Security Zones] were illegal (3 Sept. 2011). The two parties allege that

[a] legal lacuna exists with the lapsing of the state of emergency ... as the government had failed to print the gazette notification giving the new regulations imposed under the [PTA] This had led to a question of legality over the detention of some 5,000 LTTE suspects and the existence of the High Security Zones. (*Daily Mirror* 3 Sept. 2011)

However, reports the *Daily Mirror*, former attorney general Mohan Peiris, who retired on 30 August 2011 and who drafted the new regulations, stated that "the regulations were in force from the time they were announced by the government," even if there was "a delay in the printing of these regulations" (3 Sept. 2011). The *Daily Mirror* also reports that the TNA is planning to challenge the new regulations in court and quotes a TNA MP as stating, in response to Peiris' comment, that it is a "'basic fact'" that "any law would be in force only after it was published" (4 Sept. 2011).

New security act

ColomboPage reports that the Sri Lankan government will replace the emergency regulations and the PTA with another piece of legislation, which is to be called the "Act for Safeguarding the Motherland" (11 Sept. 2011). According to the newspaper's political sources, the new act will be "simpler and concentrated" on "the modern needs of national integrity, defence, social security and prevention of terrorism" (*ColomboPage* 11 Sept. 2011). *ColomboPage* also indicates that opposition political parties reacted by saying that the government is "attempting to suppress people's rights through new laws" (ibid.). The constitutional and human rights lawyer indicated that there is no accurate information regarding new legislation; however, the government did indicate that "they are contemplating the introduction of a comprehensive anti-terrorist legislation" (Lawyer 20 Sept. 2011). Further information on the Act for Safeguarding the Motherland could not be found among the sources consulted within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Attachments

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