



USING LAW PROPERLY TO DEAL WITH COVID-19

This Policy Brief outlines the qualities of a model public health law and how the law ought to be used during a public health crisis. The goal is safety and protection equally for all and building public trust.

The importance of robust domestic laws that facilitate strong health systems is recognized by the World Health Organization (WHO). On the launch of its Covid-19 Law Labs, WHO said that “laws that are poorly designed, implemented, or enforced can harm marginalized populations, entrench stigma and discrimination, and hinder efforts to end the pandemic.”[1] Well-designed laws can help build strong health systems; evaluate and approve safe and effective drugs and vaccines; and enforce actions to create healthier and safer public spaces and workplaces. There is much we can do in Sri Lanka.

Public Health Laws govern the relationship between the public and health issues. Like all laws, the people of Sri Lanka have given power to the legislature to make laws, to the executive to administer the country using these laws and the judiciary to keep check on whether the powers are properly used for the benefit of the people.

THE CONTEXT OF A PUBLIC HEALTH CRISIS REQUIRES;

- Clear and regular messaging on prevention
- Clear and regular messaging on access to health information / services
- Clear and regular messaging on non-stigmatization. Those infected or suspected of infection are all patients, they should not be treated as criminals, alienated nor denied dignity or respect.
- Public support, which must be encouraged. Punitive approaches are harmful and are to be discouraged.
- Assessment of and addressing the people’s consequent socio-economic, mental health and other needs

[1] WHO, “New COVID-19 Law Lab to Provide Vital Legal Information and Support for the Global COVID-19 Response” (www.who.int, July 22, 2020) <<https://www.who.int/news-room/detail/22-07-2020-new-covid-19-law-lab-to-provide-vital-legal-information-and-support-for-the-global-covid-19-response>> accessed 2nd August, 2020.

LAW/S SPECIFIC TO PUBLIC HEALTH CRISES;



Must respond to the public health crisis context

Must enable government action
(ensure legality and legitimacy)

Any restriction on fundamental rights must be proportionate to the public health crisis and must not be permitted to become the “new normal”.

ROBUST LAWS RESPONDING TO PUBLIC HEALTH CRISIS OUGHT TO:

1

CONNECT

2

REPRESENT

3

COMMUNICATE

4

PROTECT

5

DEFINE THE NECESSARY EXCEPTIONS

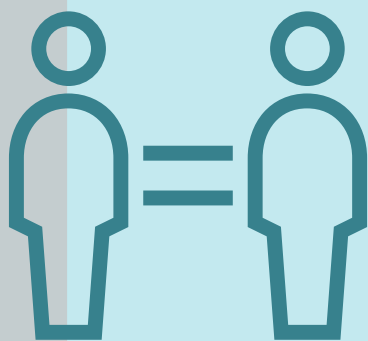
1 CONNECT scientific information to the contexts of the public

Each health crisis has its own unique scientific information. The scientific information may also be in the process of being discovered while the crisis is happening. This is why the role and responsibility of connecting scientific information to people falls on the government. Individuals with appropriate qualifications and experience must lead this process of connecting with the public. Information that is verified must be shared as early as possible and in language that is understood by lay persons.

Information must also be relevant to the contexts of the public, and experts in other fields - education sector, transport sector, labour sector, agriculture sector, plantation sector etc will be able to contribute specific knowledge on how sectors and people in those sectors can be affected, and what measures would be appropriate to keep people safe in every sector.



2 REPRESENT all citizens in decision making - gender, minorities, elderly, low income



Public health messages must reach all sections of the public. The consequences of public health measures such as reduced access to income, food, police stations, hospitals, transport, reproductive health services, etc., affect different groups of people differently. Some groups are more vulnerable and their interests must be looked after. This is why representative decision making is important. This ensures that all services reach all people. It also ensures that decisions taken will anticipate negative consequences on vulnerable groups. Overall, this improves trust between people and systems that administer their lives.

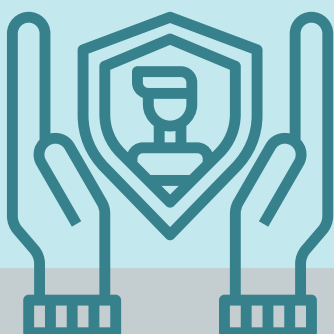
3 **COMMUNICATE** clearly to all - to inform people and listen to people

Laws must be publicly made and well disseminated. Plain language law is a modern trend that ensures laws are easy to understand and use by the public. Public health laws must be easy to access and easy to understand. Public health laws can also direct that government decisions and directions meant for the public be in plain language to ensure that people understand them. People should not be ambushed by laws and directions. This means that laws and directions must be available in all local languages and their content must be communicated in simple language.



4 **PROTECT** fundamental rights

During times of crisis the likelihood of violating fundamental rights is high. This is because people both as private citizens as well as public sector workers experience out of the ordinary situations and react outside the ordinary frameworks. Fear, panic and loss of control may lead to the government or employers adopting desperate measures and making attempts at excessive control or arbitrary action. The fundamental rights guaranteed in the Constitution remain the basic framework regardless of the extraordinary situation. It is the assurance that people will at no time be subject to torture or humiliating treatment, denied their freedom of thought, will always be treated equally, not be arbitrarily arrested and detained, and will be able to express themselves, practice their religion and will have the right to information. Protecting fundamental rights is important to ensure that people do not suffer in their own country at the hands of their own government.



Violations have long- term individual impacts and will break down trust between people and the system of administration in the country.

5

DEFINE NECESSARY EXCEPTIONS - Clearly set out when force or compulsion is necessary and what government action is proportionate

Extraordinary situations will necessitate extraordinary power. For example, detaining a person if he or she has not committed a criminal offence is against the law. In a pandemic situation the power to quarantine permits an extraordinary power of restraining a person who may possibly infect others. When a government seeks to use extraordinary powers, it must demonstrate that the power is legally valid, it is necessary and it is proportionate. This ensures that government action does not get carried away resulting in the arbitrary use of this power. Laws that govern extraordinary situations can provide guidance, criteria and limits to ensure that powers are not abused. This guidance, establishing criteria and limits help government officers understand how to use their power and the public to understand what to expect and why it is necessary to temporarily limit some of their rights. This understanding is important for people not to feel aggrieved by their own government.



EXISTING LEGAL FRAMEWORK RELEVANT TO PANDEMICS

The two most relevant of the existing pieces of legislation are the Quarantine and Prevention of Diseases Ordinance of 1897 and the Disaster Management Act of 2005.

	Quarantine and Prevention of Diseases Ordinance of 1897	Sri Lanka Disaster Management Act No. 13 of 2005
The legal framework	<p>Object of this law is to prevent spread of contagious and infectious diseases. It permits the relevant Minister to make regulations on a wide range of subjects,</p> <ul style="list-style-type: none">• maintenance of sanitary conditions of various items and places,• quarantine of individuals and items with the purpose of preventing the spread of infectious disease. Multiple regulations have been made on a wide range of such subjects previously.	<p>Object of this law is to implement a designed collaborative and representative government apparatus to respond to natural or man-made disasters including an epidemic. It establishes (a) the National Disaster Management Council, and (b) the Disaster Management Centre.</p> <p>The law provides for</p> <ul style="list-style-type: none">• declaration of a state of disaster (by proclamation approved by Parliament)• Initiate programmes relating to prevention and mitigation of disaster and provide relief• facilitate and support local and community self-reliance• collaborations with non-governmental organizations
Legal measures taken under this law between March - August '20.	<p>On 20th March 2020 the Health Minister gazetted novel coronavirus as a quarantinable disease and made it compulsory to place those identified as suspected or infected with the virus in quarantine. [2]</p> <p>On 25th March 2020 the Health Minister amended previous regulations to among other things establish the 'proper authority' for various geographical locations, including the Director General of Health Services as the 'proper authority' for the whole of Sri Lanka.[3] On 11th April 2020, the Health Minister directed that bodies of those who have died of COVID-19 shall be cremated.[4]</p> <p>No COVID-19 specific scheme of regulations were enacted.</p>	<p>None.</p> <p>[2] Gazette (Extraordinary) dated 20th March 2020 [No.2167/18] [3] Gazette (Extraordinary) dated 20th March 2020 [No.2167/18] [4] Gazette (Extraordinary) dated 25th March 2020 [No. 2168/6]</p>

Non-public health laws, are only to be used when public order cannot ordinarily be contained by the police and is breached or such breach is imminent. However, these laws, with a strong focus on policing and security, are in themselves not appropriate when responding to a crisis involving public health and well-being.

Penal Code of 1883

Framework of Law

Chapter 14 of the Penal Code refers to offences affecting public health and safety.

Section 261 of the Penal Code states:

A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A public nuisance is not excused on the ground that it causes some convenience or advantage.

Section 262 of the Penal Code states:

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Public Security Ordinance of 1947

Provides for the President, by Proclamation by Gazette to declare the existence or imminence of a state of public emergency, in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community.

Unless approved by Parliament such Proclamation is only valid for one month.

The President MAY

- make emergency regulations in the interests of public security and the preservation of public order;
- declare curfew for the maintenance of public order, by Order published in the Gazette.
- Declare services to be essential services by Order published in the gazette where such services are considered necessary in the public interest and essential to the life of the community.

SRI LANKA SPECIFIC RECOMMENDATIONS

These recommendations are made by assessing the legal and policy measures employed since March 2020 till September 2020. These recommendations also reflect an adaptation of the model public health law framework discussed at the beginning of this paper.

1 MAKE AND USE APPROPRIATE LAWS

Sri Lanka's Quarantine Ordinance is broadly worded (a feature of colonial legislation). If it is to be used in responding to the current pandemic it must be updated and amended to **ensure representation**, particularly of vulnerable sectors, in decision making. For example creating an Advisory Council to inform the decisions of the Minister of Health and ensure that such a Council has representation of women, low income households, daily wage earners, elderly persons representing interests of elderly, disabled persons representing interests of disabled persons, worker representatives from the labour sector, worker representatives from the plantation sector, education sector, agriculture sector etc.



As a consequence of the broad wording, regulations can be made on a broad range of measures. It is necessary that COVID-19 specific regulations are made to empower the measures that need to be taken, otherwise the measures taken will lack legality.

When Regulations are made, they must:

Connect (be based on scientific information),

Communicate (provide for public communication that both informs and listens to the public,

Protect (emphasize to public officials the need to protect people and their fundamental rights) and

Define necessary exceptions (for example define who can decide on movement restrictions and for how long).



2

PROVIDE REDRESS MECHANISMS

2.1 ENSURE ACCESS TO COURTS:

This is important for reasons of securing safety, financial maintenance, and also protecting one's rights. It is important that even during an emergency situation – in fact, especially during an emergency situation – that Courts continue to function, engage with the public, and take the necessary steps to ensure continuance of access and safety measures (e.g. conducting remote court hearings, which seems to have taken place in some limited instances). Public messaging and accepting of concerns and complaints must be part of the public communications strategy.



In light of the inevitable difficulties that litigants are likely to face in filing legal challenges during a public health crisis, technical rules, such as time bars to filing certain applications, must be explicitly relaxed. In the Sri Lankan context, this is especially important for fundamental rights applications which have a time bar of one month. Fundamental rights and writ applications, if timely redress is obtained, serves as an important check on government action. It is particularly effective in securing rights of minorities and vulnerable communities.

3

ADOPT RESPONSIVE AND RESPONSIBLE POLICIES

3.1 ADOPT AN EVOLVING SOCIO ECONOMIC REDRESS POLICY:

The economic impact includes the need for food assistance, rental assistance, suitable hygiene facilities appropriate for the context (particularly for those without proper housing), reproductive and health services and labour related protections. The public health legal framework must recognize this fact and connect and collaborate with other state institutions to address specific needs as they develop. The law must ensure that responses are both timely and evidence based. It is also important that the relevant law and mechanisms prioritize individuals and communities economically vulnerable even prior to the health crisis, such as workers employed in Sri Lanka's tea estates, and thus placed in an even more vulnerable position.



3.2 DO NOT ADOPT A SECURITY APPROACH:

Public health responses require public health officials to direct and be the public face of government responses. The police are the primary enforcement agency in civilian relations. Engaging the military in civilian enforcement must be a last resort response and even then, it must be for limited and necessary activities. Depending significantly on an enforcement strategy to respond to a public health emergency, particularly a military involved enforcement there is real danger of short term and long-term consequences. In the short term it could result in non-reporting of disease and in the long term it may contribute to the erosion of public trust.

3.3 USE OF MEDIA AND RESPECT FOR PRIVACY AS TOOLS TO STRENGTHEN SOCIAL RELATIONS:

The guidelines issued by the Health Ministry during COVID19 are as follows:

- Only report verified and accurate information on COVID-19
- Do not mention race or religion of persons infected with COVID-19 or of those who die of it
- Identify those infected with COVID-19 as patients and not as carriers/transmitters of the disease
- Base reporting on technical and scientific basis, and not on personal views of different persons
- Do not publish photographs or show videos of those infected with COVID-19 without their permission
- When showing video footage of sensitive nature taken at funerals of those who died due to COVID-19, it is best to blur the videos
- Do not report in a manner that causes hatred among people
- Report on COVID-19 in a positive manner so as to build cooperation and support among people in dealing with the disease

It is recommended that guidelines along these lines be applicable to media reporting during any public health crisis. State media must model best practice and counter news items that are not constructive.



3.4 IMPLEMENT AN EFFECTIVE PUBLIC COMMUNICATION POLICY:

Effective communication between the state and the people is important. It is recommended that:

- The relevant laws, regulations and guidelines in clear, simple language be widely publicized in all local languages via all major media outlets and social media.
- Public Dialogue Mechanisms must be set in place to facilitate feedback and complaints from members of the public to communicate grievances and concerns to government officials. This is a civilian function and must necessarily be led by civilian administrators capable of communicating compassionately in all local languages and must not engage military personnel.
- Local government officials must receive education, training and guidelines in order to both disseminate information, and also receive and respond to feedback of members of the public. Localizing responses within a given framework is an important step for effective dissemination of information and effective engagement with people.
- The Government must ensure that an appropriate public health authority release regular, updated information relating to the factual status of the public health situation at hand (E.g.: infection rates, quarantined areas, movement restrictions, etc.). Availability of reliable government information will help discredit inaccurate, and in some cases inflammatory disinformation, including information that deliberately targets particular minority communities, or other vulnerable groups or individuals.
- Misinformation and public criticism must be handled by:
 - responding with correct information or corrective measures publicly
 - creating public grievance mechanisms and
 - Public criticism should not be addressed with hostility but regarded as a way of understanding the experiences of the public that creates an opportunity to redress grievances.



DEFEND
DIGNITY 

RELIGIOUS LIBERTY &
SOCIAL JUSTICE COMMISSION