



Human Rights Commission of Sri Lanka

07/05/2019

H.E. Maithripala Sirisena
President of the Democratic Socialist Republic of Sri Lanka
Presidential Residence
Paget Place
Colombo 7.

Your Excellency,

Guidelines for Implementing Emergency Regulations

Given the terrifying events that came to pass this past 21st of April, your Excellency declared a state of emergency on 22nd April under the provisions of the Public Security Ordinance and adopted Emergency Regulations No. 1 of 2019.

Our Commission does not dispute that emergency regulations are needed at a time like this in order to provide protection to the public and to restore normalcy. Similarly, the Commission believes that if these regulations are implemented by relevant officers in a manner that safeguards everyone's rights and with cultural and religious sensitivity, security measures can be carried out successfully with the cooperation of every community.

Immediately after the state of emergency was lifted in 2011, regulations were adopted under the Prevention of Terrorism Act. By letter dated 2016.05.18 (Attachment 01) we presented to your Excellency a series of suggested guidelines to be followed when implementing those regulations (Attachment 01 – i). We are pleased to recall that you issued those guidelines as Presidential Guidelines, with some edits, to the relevant security authorities (Attachment 02).

Since those guidelines are directly applicable to the present Emergency Regulations as well, it would be of great assistance to further strengthen the security measures if your Excellency could reissue those

guidelines as applicable to the current Emergency Regulations. In addition to those guidelines we hereby send the suggested guidelines to be followed during search operations for your attention (Attachment 03).

We expect your Excellency's fullest cooperation in this regard.

Chairperson

Human Rights Commission of Sri Lanka

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HUMAN RIGHTS COMMISSION OF SRI LANKA

18.05.2016

H.E. Maithripala Sirisena
President of the Democratic Socialist Republic of Sri Lanka
Presidential Secretariat
Colombo 1.

Your Excellency,

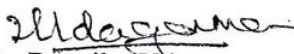
Directives Issued on Arrest and Detention under the Prevention of Terrorism Act

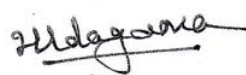
The Human Rights Commission, as per section 11 (d) of its mandate to monitor the welfare of persons detained either by a judicial order or otherwise, has formulated Directives to be followed by designated officials arresting persons under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 (PTA).

The aim of formulating these Directives is to ensure the fundamental rights of persons arrested or detained are respected and protected, and such persons are treated humanely. Further, sections 10 (c) and (d) of the Human Rights Commission Act No. 21 of 1996, entrust the Commission with the function of advising the government on adherence of national laws and policies to fundamental rights and international human rights standards. Accordingly, these Directives, which are based on the Directives on Arrest and Detention issued by previous Heads of State are also in line with binding international human rights standards, and hence would ensure the process of arrest and detention under the PTA adheres to international human rights standards.

We request you Excellency's intervention to ensure the relevant authorities adhere to the Directives.

We will be forwarding these Directives to the Hon. Prime Minister, the Hon. Minister of Law & Order, and the Chairperson of the National Police Commission. Copies will be sent to the Hon. Minister of Foreign Affairs, the Hon. Chair of the Constitutional Council and the Inspector General of Police.


Dr. Deepika Udagama
Chairperson
Human Rights Commission of Sri Lanka


Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka

Cc: Hon. Ruwan Wijewardene, State Minister of Defence
Eng. Karunasena Hettiarachchi, Secretary, Ministry of Defence



**DIRECTIVES ISSUED BY THE HUMAN RIGHTS
COMMISSION OF SRI LANKA**

**ON ARREST AND DETENTION UNDER THE
PREVENTION OF TERRORISM (TEMPORARY
PROVISIONS) ACT NO 48 of 1979**

18.05.2016

Human Rights Commission of Sri Lanka
No. 165, Kynsey Road,
Colombo 08.

Dr. N. D. Udagama
Chairperson

N. D. Udagama

**DIRECTIVES ISSUED BY THE HUMAN RIGHTS COMMISSION OF SRI LANKA
ON ARREST AND DETENTION UNDER THE PREVENTION OF TERRORISM (TEMPORARY
PROVISIONS) ACT NO 48 of 1979**

The Human Rights Commission of Sri Lanka (HRCSL) issues the following Directives to be followed by designated officials arresting persons under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 (PTA) to ensure the fundamental rights of persons arrested or detained are respected and protected, and such persons are treated humanely. The PTA should be construed narrowly and used in very specific circumstances, and should not be used to arrest persons for ordinary crimes.

The Directives are based on the Directives on Arrest and Detention issued by previous heads of state and binding international human rights law standards.

I. The arrest process

1. No person shall be arrested or detained under the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law and proper procedure, and by a person who is authorized by law to make such an arrest or order such detention.
2. At or about the time of the arrest:
 - i. the person making the arrest should identify himself/herself by name and rank and show identification to the person being arrested or a relative or friend of such person;
 - ii. every person arrested shall be informed of the reason for the arrest;
 - iii. the person making the arrest or detention shall issue to the spouse, parents, or relations, an arrest receipt acknowledging the fact of arrest. The name and rank of the arresting officer, the time and date of arrest, and the place at which the person will be detained shall also be specified. The receipt shall be attested by the person to whom the receipt is issued, and be counter signed by the arrestee, whose name, address, identity card no and reason for arrest shall also be stated in the receipt. The receipt shall be issued in the language that the arrested person ordinarily uses.
 - iv. where it is not possible to issue an arrest receipt, the arresting officer, if a police officer, shall make an entry in the Information Book detailing reasons why it was not possible to issue the receipt.
 - v. The arrested or detained person shall be allowed to communicate with a family member, relative or friend to inform of his whereabouts if person is arrested when not in presence of family or relatives.
3. Arrested persons should be transported in vehicles clearly identifiable as official.


Dr. N. D. Udagama
Chairperson

**DIRECTIVES ISSUED BY THE HUMAN RIGHTS COMMISSION OF SRI LANKA
ON ARREST AND DETENTION UNDER THE PREVENTION OF TERRORISM (TEMPORARY
PROVISIONS) ACT NO 48 of 1979**

4. If any property such as vehicles, i.e. property other than that on the person, is seized during the arrest, the family or relatives of the arrestee should be given a receipt acknowledging such seizure at the time of seizure or 24 hours thereafter. The receipt should contain description of the property that enables it to be clearly identifiable.
5. Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy.
6. The dignity of the person arrested should be protected at all times.
7. As a rule, use of force is prohibited while effecting arrest. In case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
8. Torture, cruel and inhuman and degrading treatment or punishment is an offence and prohibited at all times.

II. Process to be followed after the arrest

9. When the arrested person is brought to the police station, s/he should, if s/he makes a request in this regard, be given prompt medical assistance. Where the police officer finds that the arrested person is in a condition where s/he is unable to make such request but is in need of medical help, s/he should promptly arrange for the same. This must also be recorded contemporaneously in a register along with any major or minor visible injuries on his/her body.
10. The arrested person should be produced before a Judicial Medical Officer as soon as possible, and no later than 48 hours after arrest.
11. Arrested persons should be held only at gazetted authorized detention centres.
12. The arrestee shall be permitted to meet his/her lawyer during interrogation. The rights afforded to all Attorneys at Law to represent their clients at police stations as per the guidelines issued by the Inspector General of Police shall be applicable to Attorney-at-Law representing clients who are arrested or detained under the PTA.
13. The statement of a person arrested or detained should be recorded in the language of that person's choice. A person who desires to make a statement in his or her own handwriting should be permitted to do so.
14. Adequate provision for basic amenities like food, proper ventilation, light, bedding, sanitation facilities, mosquito net or coil, should be made available in all lockups, which would not make detention itself a torture and humiliation. Detention should be

**DIRECTIVES ISSUED BY THE HUMAN RIGHTS COMMISSION OF SRI LANKA
ON ARREST AND DETENTION UNDER THE PREVENTION OF TERRORISM
(TEMPORARY PROVISIONS) ACT NO 48 of 1979**

in keeping with the established fundamental right enshrined by Article 13(5) of the Constitution that an accused is presumed to be innocent till he is proved to be guilty.

15. Police and military personnel must be explicitly informed that anyone who commits human rights violations against any person (including any act of violence such as sexual harassment, sexual abuse and rape) will be promptly brought to justice, and if convicted will face penalties commensurate with the seriousness of the crime in accordance with the law.
16. Any detainee who alleges that s/he has been raped or sexually abused must be given an immediate medical examination, and if a female be preferably by a female Judicial Medical Officer, or if a female Judicial Medical Officer is not available, then at least in the presence of female personnel.

III. Special measures related to the arrest of women and persons under 18 years

17. Women police officers should be present where the person being arrested is a woman or a person under 18 years of age. The arrest of women and girls between sunset and sunrise should be avoided.
18. When a woman or person under 18 years of age is arrested or detained a person of their choice should be allowed to accompany such child or woman to the place of questioning.
19. Searches of women and girls should only be made by other women with strict regard to their dignity and bodily integrity. Any search that requires the woman or girl to undress should be conducted out of sight of men.
20. Arresting officers should ensure pregnant women are not subjected to harassment. If a pregnant woman is searched, arrested or detained the armed forces and the police should take her special needs into account and ensure her health and well being are not jeopardized in any way.
21. Female detainees must be held separately from male detainees, and must not share bathing or toilet facilities (in accordance with UN Standard Minimum Rules for the Treatment of Prisoners, rule 8(a)).
22. In line with UN Standard Minimum Rule 53, female security personnel should be present during the interrogation of women detainees. There should be no contact between male guards and female prisoners without the presence of a female guard.
23. If the arrested person is the sole carer of children, the children should not be left alone after the arrest. They should be left in the care of an appropriate adult. Immediately following arrest the arrested person should be allowed and supported to make childcare arrangements for the children in their care.

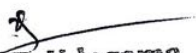
**DIRECTIVES ISSUED BY THE HUMAN RIGHTS COMMISSION OF SRI LANKA
ON ARREST AND DETENTION UNDER THE PREVENTION OF TERRORISM (TEMPORARY
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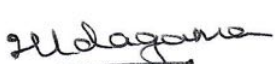
24. The imprisonment of a mother and child together must never be used to inflict torture or ill-treatment on either by causing physical or mental suffering. If a child is separated from its mother, the mother should be immediately notified and kept continuously informed of the child's whereabouts. She should be given reasonable access to the child.

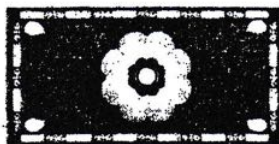
IV. The mandate of the Human Rights Commission

25. Officials of the Human Rights Commission of Sri Lanka (HRCSL) or any person authorized by it should be permitted access to the person arrested or detained under the PTA and should be permitted to enter at any time any place of detention, police station or any other place at which such person is detained in custody or confined as per section 28 (2) of the Human Rights Commission of Sri Lanka Act no 21 of 1996.
26. As per section 28 (1) of the HRCSL Act when a person is arrested or detained under the PTA it shall be the duty of the person making the arrest or order of detention, forthwith or not later than 48 hours from the time of the arrest or detention, to inform the HRCSL of such arrest or detention and the place at which the person is being held in custody or detention.
27. Where a person so held in custody is transferred to another place of detention or released, as per section 28 (1) of the HRCSL Act it shall be the duty of the person making the order for such release or transfer to inform the Commission of such release or transfer and the location of the new place of detention within 48 hours.

** These directive should be equally applicable to any situation of a declared state of public emergency.


Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka


Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka



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 श्री लंका प्रजापति
 President of Sri Lanka

DIRECTIONS ISSUED BY HIS EXCELLENCY THE PRESIDENT, COMMANDER-IN-CHIEF OF THE ARMED FORCES AND MINISTER OF DEFENCE

I, Maithripala Sirisena, President, Commander-in-Chief of the Armed Forces and the Minister of Defence being of the opinion that it is necessary to issue directions to the Heads of the Armed Forces and the Police to enable the Human Rights Commission of Sri Lanka (hereinafter referred to as the HRCSL) to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected and such persons are treated humanely, do hereby direct, the Heads of the Armed Forces and of the Police as follows:

1. Every member of the Armed Forces and of the Police Department shall assist and facilitate the HRCSL and any person authorized by the HRCSL in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.
2. No person shall be arrested or detained under any Emergency Regulations or the Prevention of Terrorism (PTA) Act No. 48 of 1979 except in accordance with the law and proper procedure and by a person who is authorised by law to make such arrest or order such detention.
3. At or about the time of the arrest or if it is not possible in the circumstances, immediately thereafter as circumstances permit:
 - (i) the person making the arrest or detention shall identify himself to the person arrested or any relative or friend of such person upon inquiry being made, by name and rank and show identification;
 - (ii) every person arrested or detained shall be informed of the reasons for the arrest;



H. D. Jayasinghe

Dr. N. D. Udugama

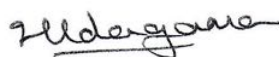
- (iii) the person making the arrest or detention shall issue, to the spouse, father, mother or any other close relation as the case may be a document in such form as specified by the Secretary of the Minister in charge of the subject of Defence in the case of Armed Forces and the Secretary of the Minister in charge of the subject of Law and Order in the case of the Police Department, acknowledging the fact of arrest and providing reasons for the arrest. The Secretaries of Defence and Law and Order are requested to consult and develop a uniform document for this purpose. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained shall also be specified. It shall be the duty of the holder of such document to return the same to, or produce the same before the appropriate authority when the person so arrested or detained is released from custody. This document shall be issued in the language that the arrested person ordinarily uses:

Provided that, where any person is taken into custody and if it is not possible to issue a document as set out above, it shall be the duty of the arresting officer, if such officer is a Police officer, to make an entry in the Information Book giving reasons as to why it is not possible to so issue a document, and it shall be the duty of the arresting officer, if such officer is a member of the Armed Forces to report the reasons why it is not possible to issue a document to the officer in charge of the police station whose duty it shall be to make an entry of such fact along with the reasons therefor in the Information Book:

- (iv) the person arrested shall be afforded reasonable means of communicating with a family member, relative or friend to enable his whereabouts being known if a person is arrested when not in the presence of family or relatives;
- (v) The arrested persons shall be transported in vehicles clearly identified as official;
- (vi) If any property such as vehicles, i.e. property other than on the person is seized during the arrest, the family or relatives of the arrested persons should be given a document in such form as specified by the Secretary of the Minister in charge of the subject of Defence in the case of the Armed Forces and the Secretary of the Minister in charge of Law and Order in the case of the Police Department, acknowledging such seizure at the time of seizure or 24 hours thereafter. The document should contain a description of the property that enables it to be clearly identifiable:

N. D. Udagama

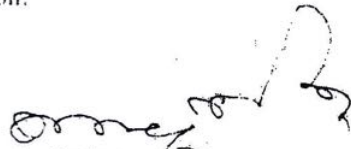
- (vii) Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy;
- (viii) When a child under 12 years or a woman is sought to be arrested or detained, a person of their choice should be allowed to accompany such child or woman to the place of questioning. The arrest of women and girls between sunset and sunrise should be avoided. As far as possible, any such child or woman so sought to be arrested or detained, should be placed in the custody of a Women's Unit of the Armed Forces/Police Department or in the custody of another woman military officer/Police officer;
- (ix) Searches of women and girls should only be made by other women with strict regard to their dignity and bodily integrity. Any search that requires the woman or girl to undress should be conducted out of sight of men and other persons.
- (x) Arresting officers should ensure that pregnant women are not subject to harassment. If a pregnant woman is searched, arrested or detained the Armed Forces/Police Department should take her special needs into account and ensure her health and wellbeing is not jeopardised in any way.
- (xi) Female detainees must be held separately from male detainees and as far as possible must not share bathing or toilet facilities.
- (xii) If the arrested person is the sole carer of children, the children should not be left alone after the arrest. They should be left in the care of an appropriate adult. Immediately following arrest the arrested person should be allowed and supported to make childcare arrangements for children in their care.
- (xiii) A statement of a person arrested or detained should be recorded in the language of that person's choice who should, thereafter, be asked to sign the statement. A person who desires to make a statement in his or her own handwriting should be permitted to do so.
- (xiv) As a rule, use of force is prohibited while effecting arrest. In case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the persons being arrested are avoided. If such injuries occur immediate medical attention should be provided;



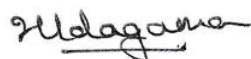
- (xv) Prompt medical attention should be provided to the arrested person if a request for such assistance is made or if the arrested person is in a condition in which s/he is unable to make such a request but is in need of medical help. This must also be recorded contemporaneously in a register along with any major or minor visible injuries on his/her body;
- (xvi) The arrested person should be produced before a Judicial Medical Officer (JMO) as soon as possible, and not later than 48 hours after arrest;
- (xvii) Arrested person should be held only at gazette authorised detention centres;
- (xviii) The arrested person shall be permitted to meet his/her lawyer during interrogation. The rights afforded to all Attorneys at Law to represent their clients at police stations as per guidelines issued by the Inspector General of Police shall be applicable to Attorney-at-Law representing clients who are arrested or detained under the PTA;
- (xix) Adequate provision for basic amenities should be made available in all places of detention which would not make detention itself a torture and humiliation. Detention should be in keeping with the established fundamental rights enshrined by Article 13(5) of the Constitution that an accused person is presumed to be innocent till he is proved to be guilty.
- (xx) All acts of human rights violations against any person in (including any act of violence such as sexual harassment, sexual abuse, rape) will be promptly brought to justice, and if convicted will be dealt with in accordance with the law.
- (xxi) Any detainee who alleges s/he has been raped or sexually abused must be given an immediate medical examination, and if a female be preferably by a female JMO, or if a female JMO is not available then at least in the presence of female personnel.
- (xxii) The dignity of the person arrested should be protected at all times;
- (xxiii) Torture, cruel and inhuman and degrading treatment or punishment is an offence and prohibited at all times;

N. D. Udagama

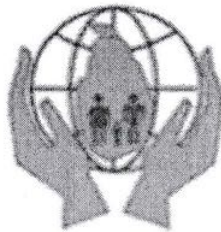
4. The members of the HRCSL or any person authorised by it should be permitted to access the person arrested or detained under the Prevention of Terrorism Act No. 48 of 1979 or under a Regulations made under the Public Security Ordinance (Chapter 40), and should be permitted to enter at any time any place of detention, police station or any other place in which such person is detained in custody or confined.
5. Every officer who make an arrest or order of detention as the case may be, shall forthwith, and in any case not later than forty-eight hours (48 hours) from the time of such arrest or detention, inform the HRCSL or any person specially authorised by the HRCSL of such arrest or detention as the case may be, and the place at which the person so arrested or detained is being held in custody or detention.


Maithripala Sirisena

President, Commander-in-Chief of the Armed Forces &
Minister of Defence



Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka



DIRECTIVES ON CONDUCTING SEARCHES

Preservation of privacy and dignity

- 1) Officers shall at all times respect and protect human dignity while conducting searches of a person, premises or vehicles.
- 2) Officers should always identify themselves and when searching private property should show identification.
- 3) Officers conducting searches should be cordial and avoid the use of any derogatory or threatening language. In particular, questions/comments should not be made with reference to religious beliefs or attire.
- 4) In the event an individual is wearing clothing or accessories that conceal the person's face/identity and there is need to search that person, and if such person appears to be a woman and no female officer is readily available in the location, the officer in charge should request the person to wait while a female officer is requested to come to the location to conduct the search. If a female officer is not available, then the officer should request, authorize and instruct any suitable person who is a female to perform the search.
- 5) Personal searches, searches of vehicles and premises, and the interception of correspondence and communications shall be done keeping in mind:
 - The search must be done within the applicable legal framework
 - No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence; and
 - No one shall be subjected to attacks on his or her honour or reputation.

Dr. N. D. Udagama

Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka

Maintaining confidentiality

- 6) Confidentiality and care in the handling of sensitive information are to be exercised at all times to ensure that the presumption of innocence is upheld and persons who are subject to searches are not subject to vilification, harassment or threats as a result of it. In this regard:
- a. Persons other than police officers or other officers empowered by the law to conduct searches should not be allowed to accompany them when conducting searches of persons or premises.
 - b. Photographs or videos of persons or premises being searched should not be released to the public unless there is a clearly demonstrable reason to do so in the public interest.
 - c. Police and other officers empowered by the law to conduct searches should not share information, including photographs and videos of persons searched, to unauthorized persons.

Duty of care regarding property

- 7) When conducting searches of premises all care should be taken to prevent willful or careless action that causes damage to the property.

Vulnerable persons

- 8) Particular attention should be paid to the needs of those who have mental illnesses or autism who may find it difficult to communicate or understand a search. Hence, all efforts should be made to explain the process to such persons and ensure they are not subjected to mental anguish or exacerbate their medical condition. Care should be taken of the needs of persons with disabilities, the elderly and children.

Searching places of religious worship

- 9) Police and other officers empowered by the law entering a sacred site/place of religious worship should wherever possible inform the traditional owners/trustees or local elders. If possible, traditional owners/trustees should accompany such officers-onto the site, and local protocols should be followed, such as female officers attending sacred women's sites, and male officers attending sacred men's sites. Consideration should also be given to the removal of weapons. However, operational safety requirements should prevail.

N. D. Udagama

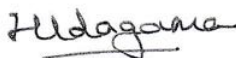
- 10) The sacred objects of any place of worship, such as the altar, holy table or idol should be treated with respect.
- 11) If a member of the clergy is the subject of a security related investigation, the authorized officers should inform the head monk or nun of their temple, church or mosque about the investigation.

The use of firearms in conducting searches

- 12) Firearms are to be used only in:
- Self-defence or defence of others against imminent threat of death or serious injury;
 - To prevent a particularly serious crime that involves a grave threat to life;
 - To arrest or prevent the escape of a person posing a threat and who is resisting efforts to stop the threat; or
 - In every case, only when less extreme measures are insufficient

ADDITIONAL GUIDELINES ON ARREST AND DETENTION

- 13) When a child, i.e. a person under 18 years, is sought to be arrested, detained or interrogated, a person of his/her choice should be allowed to accompany such child to the place of questioning.
- 14) The detention of a mother and child together must never be used to inflict torture or ill-treatment on either by causing physical or mental suffering.
- 15) If a child is separated from the mother, the mother should be immediately notified and kept continuously informed of the child's whereabouts. She should be given reasonable access to the child.



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