Public Health Emergencies
in Post-Covid Sri Lanka

POLICY BRIEF

The Law and Society Trust undertook a study to explore the impact of the Covid-19 pandemic and the economic crisis in 2022 on people's right to health. They made us aware of the need to revisit the social contract between citizens and the state, as well as among citizens themselves, so that we can collectively contribute in meaningful ways to secure human security, encompassing health, education, livelihoods, peaceful coexistence, and the right to good governance. There is a need for open dialogue and for ideas and strategies on how we can calibrate our human and financial resources to ensure that we all enjoy our basic human rights, including the right to health. This study has yielded insights into a charter on patients' rights, the management of public health emergencies, and the improved recognition and treatment of mental health issues.

LAW & SOCIETY TRUST
නීතිය හා සමාජ භාරය
சட்டம் மற்றும் சமூக நம்பிக்கை

info@lstlanka.org

PUBLIC HEALTH EMERGENCIES
in Post-Covid Sri Lanka

INTRODUCTION

The Covid pandemic was an unprecedented calamity. Within a few months, the virus spread to all the countries in the world, and devastated healthcare systems and economies everywhere. In its wake, social control tightened globally, compelling people to stay at home, wear masks, submit to testing and quarantine, and receive vaccinations. In the fallout, many people lost livelihoods and incomes, and faced difficulties in accessing food, routine healthcare, and other essential services. However, the global response was not uniform, and the diversity in the measures adopted by different countries reflected the variety of policy options available in balancing a pandemic response with the human rights of citizens.

Covid involved an unknown, deadly virus that was unparalleled in its ability to spread, and the panic and fear generated by the disease led people to demand strong responses from their governments, which in turn justified measures that impacted communities unevenly, especially along socioeconomic disparities. Most prominently, social isolation enforced through curfews and lockdowns had disparate impacts on households' sources of income, where some continued to enjoy uninterrupted access to essential goods (like food, medicines, and energy), while others were left starving, unwell, and desolate. These impacts are linked directly to the measures adopted by the State in response to the pandemic, which raises questions about the efficacy and fairness of emergency epidemic responses when weighed against their collateral impacts on a significant part of the population.

Now that the worst of the pandemic is behind us, reflecting on the measures adopted, the impacts they exerted on people, and possible avenues of acknowledging and remedying those impacts are vital. Future public health emergencies are bound to recur, and the Covid experience should serve as a learning opportunity for Sri Lankan society on how to manage them equitably. Segments of the population from poorer extremes of the socioeconomic spectrum should be guaranteed protection from measures adopted for the sake of an abstract and generalised "public interest" which is usually biased in favour of the wealthy or better-off parts of society.

In this context, the People's Commission on Pandemic Justice and the Right to Health have identified three major areas of focus for health sector reform. These are:

- Acknowledging human rights violations during the Covid crisis,
- Preparing for future public health emergencies in a rights-respecting and inclusive manner, and
- Integrating the right to health and social protection.

PUBLIC HEALTH EMERGENCIES
in Post-Covid Sri Lanka

ACKNOWLEDGING HUMAN RIGHTS VIOLATIONS DURING THE COVID CRISIS

The public consultations carried out by the People's Commission over the course of 2024 documented an array of human rights violations that occurred during the Covid period. Sri Lanka should not, as a country, move forward without acknowledging these violations, because they are etched in the memories of those who lived through them, and these unacknowledged memories contribute to the fissures in our society which become manifest in times of conflict. More importantly, as a society, Sri Lankans owe each other dignity, the deprivation of which should both outrage and humble all of us in equal measure. Neglecting to acknowledge the depth of the indignities inflicted on some of us by the rest of us, whether intentionally or not, will allow those indignities to fester, and afflict our health as a society in the years to come. The right to health is not only an individual right but also a collective one, and encompasses not only the curing of diseases but also wellbeing in its broader, more holistic sense, wherein it embraces **society's need and right to heal as a whole.** Indeed, it may be no coincidence that occurrences of human rights violations evoke the language of remedies, borrowed from healers, especially when it is said of rights that where there is a right, there is—always—a remedy.

While it is crucial to recognise that not all occurrences of human rights violations find either malice or some other invidious intent as their source, some of the measures, especially those continuing in the face of expert advice against them, appeared to be malicious. Other human rights violations occurred due to the hasty, unplanned, or overzealous implementation of state directives made with the narrow aim of restricting the spread of the virus with insufficient consideration for their collateral impacts. While many officials worked tirelessly through an unprecedented global crisis, others exploited the gaps in the system to their advantage leading to an erosion of trust in the health system itself. At a very minimum, the period exposed the yawning gaps in the preparedness of our institutions to respond to a public health crisis and this includes the failure to recalibrate direction in the face of fresh information as it emerged.

Public institutions must be designed and strengthened to withstand precisely that form of pressure, which requires a subtle, nuanced respect for everyone's right to live in dignity. In Sri Lanka's case, such institutions did not exist. A public health emergency of such scale was unanticipated and inapt officials, arcane ordinances, and brutish political power were cobbled together to produce the best response possible in the shortest span of time. Sri Lanka has a long history of overusing the Public Security Ordinance and for many years was governed under emergency provisions and even routine regulations unrelated to any emergency were promulgated under this ordinance. Thus, when public health emergencies are treated in the same way as wars and other sociopolitical emergencies, the responses invariably call for speedy deployments, implemented by brute force.

PUBLIC HEALTH EMERGENCIES
in Post-Covid Sri Lanka

Needless to say, but as the work of the People's Commission bears out, to many Sri Lankans who lived to tell the tale, the best response was not good enough—even if, statistically, Sri Lanka did better than most countries one may care to compare it to, in terms of, if nothing else, the number of people who died. When compared, however, to the number of people who suffered indignity silently in isolation, not due to any failure or wrongdoing of their own, but as a direct consequence of the policies adopted by the State, the claim that Sri Lanka is a Covid success story becomes more ambiguous and harder to believe. That number will perhaps never be known.

This Policy Brief is restricted to the occurrences of human rights violations disclosed by the accounts provided by those who participated in the consultations held by the People's Commission. They are not exhaustive of what transpired during the Covid crisis. However, they indicate the intricacy of the people's relationship with the country's health system, and illuminates the respect, caution and lateral thinking demanded of public authorities, including political leaders, when varying public policies and delivery of services by reason of a public health emergency, even when it is unprecedented in scope.

While it would be impractical to suggest that such violations, despite their seriousness, could be remedied individually, the nature and scale of human rights violations are such, that the fact of their occurrence cannot be ignored. As such, any remedy for such violations should be commensurate to the injuries inflicted, but also within the bounds of what is most useful for all Sri Lankans collectively, and what is possible and appropriate for all Sri Lankans collectively, on the path to recovery and healing.

RECOMMENDATIONS

- Investigate. The State should establish an appropriate and inclusive fact-finding mechanism of a scope commensurate to the scale of the human rights violations that occurred during the Covid crisis to identify the ways in which human rights were violated because of the various policies adopted by the State in response to the pandemic. Such a mechanism should be politically independent, unbiased, adequately resourced, and composed of the multidisciplinary expertise necessary to carry out its mission.

- Acknowledge. The State should publicly disclose the findings of the fact-finding mechanism, acknowledge the human rights violations disclosed in its findings without further prevarication and in good faith, and explain the gaps in laws, policies and institutional arrangements (including resource management and mobilisation) that led to such violations.

- Apologise. Any process of acknowledging human rights violations during the Covid crisis should culminate in a comprehensive, unequivocal apology to the public. The victims/survivors of rights-violative policies should be

commemorated through the declaration of an official period of remembrance, during which the State should lead the public in remembering and reflecting on the causes and effects of such policies, and how Sri Lankan society would heal from those experiences and move forward.

- Guarantee non-recurrence. The State should, in the process of acknowledging and apologising for Covid-time human rights violations, outline the reforms to be effectuated to prevent their recurrence in a future public health emergency, providing specific, measurable outcomes with timelines to ensure they are followed through.

- Monitor and evaluate. Following the initial public apology, the State should ensure the future commemorations of the period of remembrance are used as an opportunity to monitor, evaluate, and report to the public on the progress made in realising the promises made to the public on non-recurrence.

- Ensure impartial State responsibility. Any process of acknowledging and remedying Covid-time human rights violations should be politically neutral and be centred on the State accepting responsibility as the State itself, regardless of the identity of the political parties and leaders in power, either at the time of the crisis or during the process of remediation.

PREPARING FOR FUTURE PUBLIC HEALTH EMERGENCIES

As stated before, public health emergencies are bound to recur, and the Covid experience should be treated as a learning opportunity that exposed the gaps in the health policy and institutional arrangements that led to imbalanced responses which resulted in human rights violations. Accordingly, reforming the policy, legislative and institutional frameworks in preparation for a future public health emergency is a matter of great urgency, i.e., to be deployed before another one strikes.

Through the work of the People's Commission, four areas of particular concern are identified to be in need of urgent reforms. They are:

- Ensuring any future emergency response is inclusive and participatory,
- Ensuring the scientific accuracy, necessity, and appropriateness of such responses,
- Guaranteeing judicial safeguards against State excesses, and, relatedly,
- Establishing a clear legislative framework for public health emergencies as early as possible before the next emergency occurs.

The overarching theme for all emergency preparedness reforms, points to the need for strong institutional arrangements stipulating the governance structure and normative standards to apply in the event of a future public health emergency.

PUBLIC HEALTH EMERGENCIES
in Post-Covid Sri Lanka

ESTABLISHING A CLEAR LEGISLATIVE FRAMEWORK FOR PUBLIC HEALTH EMERGENCIES

A clear governance structure is needed in the event of a future public health emergency. By the time the Covid crisis was fully fledged in Sri Lanka, Parliament stood dissolved and governance was through ad hoc mechanisms such as the 'National Operation Centre for Prevention of COVID-19 Outbreak' headed by the Army Commander, as well as other Presidential Taskforces. Conflicts and differences between the approaches preferred by political, military, and medical leaders were reported (as well as rumoured), leading to confusion and uncertainty among the public. Many measures adopted by such bodies were also vulnerable to scrutiny from a formalistic legal sense as well as from the standpoint of moral legitimacy, but they were enabled by the lack of contemporary health emergency laws. As such, to avoid recurrences in future crises, it is vitally important to enact the relevant legislative framework outlining the governance structure to prevail in a public health emergency as soon as possible.

RECOMMENDATIONS

- **Enact public health emergency legislation -** Provide for the institutional arrangement to prevail in such an emergency, ensuring that the ultimate responsibility of decision-making is vested with elected leaders who are politically accountable. This may be the Cabinet as a whole, or some derivation of the Cabinet with provisions for how its composition should be determined and varied as the emergency evolves.

- **Incorporate scientific expertise and stakeholder participation -** Though political leadership is paramount, it must be firmly supported by two dedicated auxiliary bodies: one composed of medical and scientific experts to ground decision-making in the best available evidence, and another body continuously engaging with affected stakeholders and minority groups to ensure their diverse perspectives, especially those from vulnerable populations, are communicated to the political leadership and are included in their decision-making, as appropriate. This tripartite structure would enhance public trust and compliance, as well as ensure that emergency responses are both scientifically sound and socially equitable.

- **Ensure public health emergencies laws are treated distinctly from any other State of Emergency -** Any law governing public health emergencies should stem from the recognition that ordinary emergency laws, such as the Public Security Ordinance in force in Sri Lanka, are inadequate and, indeed, inappropriate in dealing with epidemics and/or other public health emergencies. As such, public health emergencies should be deemed distinct from any other kind of emergency and only a specific

public health emergency law should be applicable in such an event. Such a law should define the substantive criteria and the relevant procedure (which is subject to recommendations by relevant medical/health experts) to be followed in declaring and justifying a public health emergency, during the pendency of which, the following institutions and normative standards become active, as the very minimum.

- **Ensure public health emergency law covers the full lifecycle of a public health emergency -** Addressing public health emergencies involves taking measures in prevention, preparation, response, and recovery (PPRR), and any public health emergency law should encompass all four of these areas. Particularly, guaranteeing that all public servants will be held legally accountable to their actions during the 'recovery' stage of any public health emergency is essential for deterring human rights violations by individual actors during such emergencies.

ENSURING FUTURE EMERGENCY MEASURES ARE INCLUSIVE AND PARTICIPATORY

The need for a tripartite institutional arrangement triangulating political leadership, scientific expertise, and stakeholder participation was mentioned above. Ensuring that all measures to prepare for and respond to health emergencies are inclusive and equitable is vital in preventing policy excesses that result in human rights violations. This may be achieved by establishing a dedicated body to ensure the proactive and methodical inclusion of disadvantaged and disproportionately impacted groups throughout all phases of prevention, preparedness, response, and recovery (PPRR). Such a body would help identify and engage relevant stakeholders early, eliminate barriers to participation, and ensure that communication is accessible to all, thereby safeguarding against the marginalisation of vulnerable populations during crises. The independence of such a body from political and administrative influence is essential in maintaining trust and transparency, while formal powers to share stakeholder input with the public directly, and to refer disproportionate or otherwise unfair impacts of measures to judicial bodies would enhance accountability.

RECOMMENDATIONS

- **Establish engagement -** Design and establish a body comprising of persons with sufficient and relevant multidisciplinary expertise to ensure participation by all Sri Lankans, especially those from disadvantaged and disproportionately impacted groups and peoples, in the design and implementation of all prevention, preparation, response, and recovery (PPRR) measures;

- **Ensure inclusion** - The body should be tasked with developing formal processes to identify disadvantaged and

disproportionately impacted groups and peoples as categories, organisations, and individuals. Such processes should include both pre-emergency and in-emergency measures, so as to ensure no such group or people are left behind, either before or during an emergency. At the pre-emergency (i.e., preparatory) stage, the body should carry out its own process of identification, as well as issue a public call to any group or people to come forward and become involved with the work of the body on their own volition.

- **Ensure access –** The body should ensure the existence of adequate means of communication between it and the stakeholders it identifies, in modes that are appropriate respectively to each category of stakeholder. In preparation of a public health emergency, the body should work towards the removal of obstacles to participation and communication for each category of stakeholder, thus ensuring universal accessibility. Any emergency response measure that hinders access by any group or people to the body should be deemed illegal, prima facie.

- **Ensure independence** – The body tasked with facilitating stakeholder participation should be independent and separate from political leadership as well as the public administration. The body should be vested with the power to make public any information it receives from stakeholders, and to refer such information to appropriate judicial bodies.

- **Explore synergies** – Collaboration with institutions like the Human Rights Commission of Sri Lanka (HRCSL) would strengthen the body's mandate and impact, ensuring that emergency governance is grounded in both rights-based and context-specific approaches.

- **Allocate resources** – Adequate resources are essential for a body as that proposed here, since the availability of resources would determine its efficacy in the identification, communication, and inclusion of disadvantaged groups.

ENSURING THE SCIENTIFIC ACCURACY, NECESSITY, AND APPROPRIATENESS OF MEASURES

By embedding mechanisms for continuous input from medical, epidemiological, and public health experts, the State can adapt swiftly to evolving threats, uphold transparency, and foster public compliance. Requiring that policy measures stem from scientific necessity, grounded in consensus-based expert advice, is essential in preventing human rights violations resulting from State excesses. The Sri Lankan experience with forced cremation is a prime example, although in other areas of Covid policy, too, such as the determination of when to reopen national borders, or whom to prioritise in inoculation, saw the sidelining of expert advice, with detrimental consequences to sections of the public. At the same time,

even in the examples mentioned above, expert opinion appeared to vary, with some experts exploiting their status to justify certain policy measures such as forced cremation that were eventually discredited. Accordingly, it is essential to ensure that the State derives the expert guidance necessary in responding to a public health emergency from an institution which is specifically established for that purpose. Experts tasked with that responsibility should be held answerable to the opinions they provide, individually and collectively, especially if such opinions are found to be in blatant contradiction with the scientific knowledge prevailing at the time they were expressed.

RECOMMENDATIONS

- **Provide for the procedure to constitute the body of experts.** The public health emergency law should provide for the procedure to constitute an expert advisory body in the event of a public health emergency. Ideally, members of the body should be elected by peers within their field, provided they are vetted for their qualifications prior to their candidacy by an appropriate authority, such as, for example, the Director-General of Health Services or the governing body of their relevant professional association or college. The size of the body and the diversity of expertise within the body may be contingent on the availability of such experts. However, the proposed law should specify a procedure that is flexible enough to respond to these eventualities, while also ensuring that it is sufficiently and diversely populated to reflect an adequate consensus of relevant expertise.

- **Ensure all health emergency measures emanate from, or are referred to, the body of experts.** Health emergency measures would invariably derive their legitimacy from a variety of considerations. However, at least where such measures are restrictive of human rights but are yet claimed to be necessary for medical reasons, such necessity should be affirmed by the body of experts specifically constituted for that purpose. While science may not be the sole consideration in determining the legality of an emergency measure, it should be the minimum criterion to be considered when imposing any rights-restricting measures.

- **Ensure balance between public health administrators and experts.** Balancing the authority of public health administrators with the expert views of a dedicated medical advisory body is essential to ensure that emergency responses are both operationally effective and scientifically sound. While administrators are responsible for implementing timely and coordinated actions, their decisions must be guided by the latest medical evidence and expert analysis. This balance helps prevent overreach, ensures accountability, and builds public confidence that measures

taken are not only efficient but also medically justified and proportionate to the threat.

- **Ensure independence.** The body tasked with providing expert advice to the political arm should be independent and separate from political leadership as well as the public administration. The body should be vested with the power to make any information it deems appropriate public, subject to appropriately defined standards of care.

- **Explore synergies.** Collaboration with the body tasked with facilitating stakeholder participation could ensure synergy between the scientific dictates of a health emergency response with the socioeconomic dictates that determine the proportionality of the response vis-à-vis the overall welfare and wellbeing of the public.

GUARANTEEING JUDICIAL SAFEGUARDS AGAINST STATE EXCESSES

Judicial safeguards are vital in protecting human rights during public health emergencies, when executive power often expands rapidly and risks exceeding constitutional limits. The Supreme Court must retain clear authority to review and, where necessary, curtail emergency measures to ensure they remain lawful, proportionate, and non-discriminatory. By maintaining access to justice, facilitating the inclusion of expert and stakeholder input, and ensuring the judiciary is adequately trained and resourced, judicial safeguards help uphold accountability and prevent the erosion of fundamental rights under the guise of crisis response.

RECOMMENDATIONS

- **Recognise explicitly the jurisdiction of the Supreme Court to review health emergency measures** for consistency with the fundamental rights obligations provided in the Constitution, and the public health emergency legislation.

- **Recognise the Supreme Court's inherent power in determining its own procedures** during the onset of a public health emergency, so as to ensure unhindered access to justice for affected individuals, groups, and peoples, while also ensuring the Court can avail itself of all relevant information, including expert advice, directly and orally where appropriate, useful, or necessary.

- **Explicitly restrict judicial deference to the executive** by recognising the Court's fundamental role and duty in safeguarding the rights of individuals, minorities, and the public from the excesses of the State during a public health emergency.

- **Confer upon the Supreme Court the power to restrict the operation of any emergency measures,** either fully or partially, in terms of their geographical,

demographic, temporal scope, among others

- **Empower the Supreme Court to anticipate and manage its emergency-related caseload** by either consolidating cases or assigning them to lower courts where necessary through extraordinary measures where necessary, especially where the promptness of the judicial determination is of the essence of the dispute.

- **Define the role the body tasked with facilitating stakeholder participation may play in invoking the Court's jurisdiction,** as well as assisting the Court in resolving any complaint or petition arising from the operation of an emergency-related measure.

- **Invest in capacity-building and training of judges,** lawyers, and other related institutions in the role judicial guarantees should play in ensuring public health emergency measures are equitable and rights-respecting.

INTEGRATING THE RIGHT TO HEALTH WITH SOCIAL PROTECTION

In emergencies such as the Covid pandemic, the State faces enormous challenges in mobilizing available resources towards the emergency response. The brunt of that challenge is felt by the poorer segments of the population, who rely overwhelmingly on tax-funded health services to meet their routine healthcare needs. Though Sri Lanka's system of tax-funded universal health coverage outperforms most of its peers, out-of-pocket private health services also play a significant role in catering to the population's healthcare needs. In the context of the public health system taking on, to the exclusion of their private counterparts, the leadership in preventing and treating Covid, the resulting strain on public health resources redrew the dividing line between tax-funded and out-of-pocket health services, much to the detriment of those who could not afford the latter.

According to the findings of the People's Commission, the treatment of patients with chronic, non-communicable diseases (NCDs) were deprioritised during the Covid period. NCD treatment represents a significant portion of tax-funded health expenditure in Sri Lanka, and would naturally suffer from any reallocation of resources brought about by an emergency. Patients of serious, chronic illnesses being sidelined for the sake of dealing with Covid effectively narrowed the scope of the right to health to focusing predominantly on treating and preventing Covid, thereby undermining the wellbeing and dignity of non-Covid patients. On the other hand, the pandemic period also saw inequities in how Sri Lankans accessed even Covid-related health goods and services. From the price of masks and antigen and PCR tests, to quarantine centres, and the brands of vaccines available, many Sri Lankans received divergent standards of care based on their ability to pay, if not on their social status more generally.

PUBLIC HEALTH EMERGENCIES
in Post-Covid Sri Lanka

Accordingly, it is clear that a public health emergency throws pre-existing social inequities into sharp relief. Preparing for future public health emergencies therefore entails appreciating and planning for the existing disparities in a way that delivers, in the event of a crisis, the fairest possible outcomes for the poorest segments of the population. Sri Lanka's system of social protection, which is currently slated to undergo intense reform, has an important role to play in achieving this balance. A key requirement is the fundamental shift from the current focus on targeted cash transfers to a more holistic approach in which national health expenditure is viewed as an integral part of the country's overall social protection strategy. As part of this holistic approach, the social protection system should routinely monitor the country's health expenditure needs and the respective sources and composition of those expenditures. Specifically, it should scrutinise how and in which areas of treatment they are shared across the public-private divide, and how this information shall be utilised in reallocating public health resources during an emergency in a manner that manages the impact on poorer patients relying solely on tax-funded healthcare. As a baseline, whenever a public health emergency gives rise to the need for reallocating/mobilising existing resources, the State should do so in a manner that ensures no patient in need of critical health services would be denied such services as far as possible, and that any alteration in hitherto available services and/or standards of care will only stem from an official policy to that effect which has been formally communicated to all patients affected by such a policy.

RECOMMENDATIONS

- **Digitalize and incorporate health information management systems to the ongoing efforts to develop a digitalized national social protection system.** While the State has already recognized the relevance of digitalization in delivering a stronger social protection system, health information systems from the primary healthcare level and upwards, should be integrated to this process, so that the relevant health information (prevalence of various diseases, their regional disaggregation, the demand for medical supplies and equipment, accurate estimates of expenditures and procurement forecasts, etc.) forms part and parcel of the national social protection planning process.

- **Ensure that the social protection system keeps track of public health expenditures as an element of social spending,** especially the costs of providing NCD/ chronic patients with tax-funded health services.

- **Ensure that adequate resources are allocated for public health expenditure** in ordinary times in a manner that reflects the healthcare needs of the population by adopting appropriate health financing mechanisms, like earmarking health expenditure in the national budget, statutorily requiring expenditure estimates to be anchored in available

epidemiological/health administration data, enhancing the accuracy of that data, and providing strict procedures for deviating from those requirements when preparing national/provincial budgets.

- **Ensure annual expenditure estimates for primary healthcare institutions follow a formal, uniform structure (with an appropriate degree of flexibility to account for regional disparities in healthcare needs)**, to minimise regional inequalities in the distribution of public health resources.

- **Enhance the role of local governments in ensuring that their respective primary healthcare institutions are allocated resources in line with their expenditure estimates.**

- **The proposed public health emergency law should provide for the formal process through which resources/budgets are to be reallocated/mobilised,** at the national/provincial levels as well as at the level of individual health care institutions where applicable, so as to ensure that any denial of service or lowering of pre-existing standards of care shall only be in line with an official policy to that effect, and that all such policies are communicated to patients formally.