

BRIEF NOTE & COMMENTARY

Presidential Task Force for Archaeological Heritage Management in the Eastern Province

The President of Sri Lanka established the 'Presidential Task Force for Archaeological Heritage Management in the Eastern Province' by Gazette Extra Ordinary 2178/17 dated 2nd June 2020.

Under what law is the President authorized to create a 'Presidential Task Force'?

There is no law that specifically empowers the President to create a 'Presidential Task Force'. The Gazette states that it is using powers under Article 33 of the Constitution. Article 33 of the Constitution sets out the powers of the President, and expressly states that the President can do the following:

- i. Ensure the Constitution is respected and upheld,
- ii. Promote national reconciliation and integration,
- iii. Facilitate the proper functioning of the Constitutional Council and independent institutions,
- iv. Advise the Election Commission and ensure the creation of proper conditions for the conduct of free and fair elections,
- v. Make the Statement of Government Policy in Parliament,
- vi. Preside at ceremonial sittings of Parliament,
- vii. Summon, prorogue and dissolve Parliament,
- viii. Receive, recognize and appoint Ambassadors, High Commissioner etc.
- ix. Appoint President's Counsel,
- x. Keep the Public Seal of the Republic,
- xi. Declare war and peace,
- xii. To do all such acts and things not inconsistent with the Constitution.

Even in Article 33 of our Constitution there is **no specific power** to establish a Presidential Task Force. In contrast for example, the President is empowered by the Special Presidential Commissions of Inquiry Law, No. 07 of 1978 to create Special Presidential Commissions of Inquiry. However, no such special law exists for a 'Presidential Task Force'.

One can only assume that President is relying on the broad language in Article 33.2(h) about doing all such acts that are consistent with the Constitution.

The reasons given for the 'Presidential Task Force' in the Gazette

- i. To preserve the historical heritage of Sri Lanka for future generations.
- ii. Sri Lanka has a proud history and archaeological history is a source of uniqueness.
- iii. Heritage is becoming degraded due to natural and man-made action.
- iv. Sri Lanka has signed various Conventions both nationally and internationally to protect such heritage.

Powers of the Task Force

The Gazette describes the powers of the Task Force to;

- i. **Identify sites of archaeological importance** in the Eastern Province.
- ii. **Implement appropriate programmes** to manage archaeological heritage by conserving and restoring.
- iii. **Identify the extent of land** that should be allocated for such archaeological sites and **take measures to allocate them** properly and legally.
- iv. Preserve the cultural value of sites of archaeological importance and **promote the uniqueness of Sri Lanka**, both locally and internationally, and **make recommendations** for the promotion of such heritages.

Additionally, the Gazette states:

- v. The Task Force can investigate and issue directions.
- vi. Submit reports from time to time.
- vii. May issue instructions or requests to all Government officers and other persons.

To ensure compliance with the instructions or requests of the Task Force, the Gazette also states:

- a) All government officers and other persons must comply with such instructions.
- b) Government officers and others are to provide all possible assistance and provide all information; and
- c) That all cases of delay or default on the part of any Public official or officer of any Ministry, Government Department, State Corporation or other similar institution, be reported to the President himself.

Composition of the Task Force

1. The Chairman of the Task Force is the Secretary to the Ministry of Defense who is a Retired Major General. In effect the Task Force which is bound to engage in many civilian disputes is headed by a person with primarily military training.
2. Representation by religious groups consists of two Buddhist Monks and all other members appearing to be of Sinhala Buddhists ethnic religious background. No other religion is represented.

3. Other members include the Land Commissioner, Director General of Archaeology, Land Commissioner of the Eastern Province, the Surveyor General, and a Senior DIG of Police.
4. The Chairman of the Derana media network with perceived partiality to political interests is also a member.

Commentary

1. The Task Force has some of the same functions as the Department of Archaeology. Adopting a dual administrative approach fails to address issues within institutions which have full responsibility over the subject. It is a waste of public funds, duplicates work and introduces political bias into the development of archaeology in Sri Lanka. The danger of militarizing subjects such as archeology is that it deteriorates the professionalism and devalues the competency of existing state institutions.
2. The Task Force being an *ad hoc* body, functioning without any parliamentary oversight and having no representation of Sri Lankans affected by its decisions, will potentially create suspicion and ill will amongst those affected by its decisions. Its actions will likely not be consultative, be arbitrary, and if forceful or violent cause grievances to, and victimization of, individuals and communities.
3. There is no representation of women or ethnic and religious minorities on the Task Force. **The composition of the Task Force does not lend legitimacy, inspire trust or contribute to reconciliation** (in fact it does the opposite,) between communities of people already facing severe hardships and instances of intimidation by the military in the Eastern Province.
4. There are land issues in the Eastern Province that are highly contested along ethnic and religious lines. There are also communities that have coexisted for several years. It is an area that has grappled with issues of population distribution, highly discriminatory resource allocation along political, ethnic and religious lines, and prolonged delays in addressing grievances including dire socio-economic impacts. **Prioritizing an archaeology preservation programme while ignoring the complexity of the human issues and historic grievances pertaining to Eastern lands, whilst deliberately dismissing the lived realities and actual interests of all people living in the targeted areas, will further add to their hardships and deter their development.**
5. The composition of the Task Force implies a prioritizing of Sinhala Buddhist interests to the detriment of minority interests. There is no language about co-existence and respect for others in the Gazette. It is likely that minority communities will potentially be affected given the composition of this Task Force which **may also result in renewed**

anger and resentment of the Sinhala majority and create new conflicts. It may deepen mistrust and polarization between resident communities.

6. The inclusion of the military and law enforcement officials in the Task Force conveys a message that this Task Force has at its disposal both institutions legitimately mandated to use armed violence if their discretion deems necessary.

Conclusion

In conclusion, the creation of a Presidential Task Force is an unwarranted use of executive power which overrides democratic institutions. Any shortcomings or challenges faced by State institutions must be met by creating enabling conditions for public institutions and not making them redundant. The misuse of archaeology-based justifications to evict people and create landlessness affecting all communities is a familiar trend in Sri Lanka. PARL has documented many such instances. Especially during this election campaign period, gaining political advantage by causing unrest and intimidating minority communities must be resisted by all Sri Lankans. Land governance and administration must be fair and just.

Recommendations

PARL recalls the recommendations made towards a Peoples' Land Police published after wide consultation across the country:

Recommendation 7.1 Minority communities must not be alienated from land they have historically used. Citing spurious archaeological evidence or reasons related to the protection of wildlife and forest cover to displace these communities must be stopped.

Recommendation 7.2 Governments must take immediate measures to cease the abuse of archaeology and history to strengthen exclusivist claims over land, which destabilises ethnic and religious pluralism. The manipulation of archaeology and history in ways that pose a threat to the social, cultural and political existence of minority communities living in a given area should be discouraged.

This note is developed by Peoples' Alliance for Right to Land (PARL) and the commentary on the abovementioned Gazette is based on information available as at 22nd June 2020.