

DOCUMENTS

EMERGENCY- I

EMERGENCY DECLARED

Civil Rights Movement

The Civil Rights Movement (CRM) has just learned that over a week ago, on Tuesday 4 January 2005, emergency was declared (namely Part II of the Public Security Ordinance was brought into operation by Presidential proclamation) in 14 districts. The details are annexed. (This is not to be confused with the report of the declaration of a state of national disaster reported to have made by the President just after the catastrophe, which is not a legal term).

So far as CRM has been able to ascertain no publicity has been given to this in the media. It has certainly not been reported in the English daily press including the state-controlled Daily News.

Declaring emergency enables the President to make regulations bypassing Parliament. CRM is not aware what orders or regulations may have been made in pursuance of this Proclamation.

It is imperative that the people should know under what laws they are governed. CRM has time and time again over the years protested to governments of all political complexions at the inaccessibility of emergency regulations¹. Furthermore, unless such regulations are accessible to the public, their legal validity is doubtful. Although the unprecedented situation caused by the Tsunami disaster may explain and excuse failure to comply with certain norms, CRM is unable to see any reason why publicity cannot be given to the declaration of emergency and any steps taken thereafter.

While appreciating the crucial role and importance of security forces and police in relief and rehabilitation as well as the maintenance of law and

order in the present crisis, in which they must receive our fullest support, CRM is deeply conscious of the possibility of elements in these forces resorting to serious offences including extra-judicial killings. This has happened in the past when the security forces have had to meet a security concern, and should not be allowed to recur.

Maintenance of law and order must be a primary concern along with relief and rehabilitation. If the very forces of law and order are themselves seen to commit not just minor transgressions, but what are in fact major offences, then the very basis of this goal is undermined.

This information has come at a time when CRM is preparing a document on several aspects of the disaster relevant to the human rights of the people, which will be issued in due course. Meanwhile as a matter of urgency we ask the Government to:

- a) Ensure that all proclamations, orders and regulations under the Public Security Ordinance are published contemporaneously in all three language media:
- b) Ensure a strict check is kept on all shootings by the security forces. The use of firearms/bullets must be accounted for and reported to superiors and accounted for publicly. Details of any killings so far in the course of enforcement of law and order should be announced publicly:
- c) Ensure that any deaths now occurring are subjected to the normal inquest requirements. ■

EMERGENCY REGULATIONS

Our legal correspondent adds:

The way the government has sought to bring in emergency rule in the aftermath of the tsunami has been described in the two statements of the Civil Rights Movement (CRM) published in this issue of *Polity*. From newspaper reports it appears that the fresh declaration of emergency was approved by Parliament on 11 February 2005. This columnist understands that explanatory letters were sent by CRM to the Speaker and other leading parliamentarians explaining the position as regards the date from which the new Proclamation and any regulations made under it can take effect. Despite this, the newspaper reports, at any rate, do not indicate that any awareness of this was shown by parliamentarians. Final checking will have to be done once the Hansard report is available.

In any event, the legal position is clear. There was no emergency in force from 19 January 2005 till 11 February 2005 whatever the gazette notifications may suggest to the contrary.

The regulations gazetted on 3 February 2005, which at best can come into force only as from February 11th, are the same as the lapsed regulations of 6 January 2005, and contain many unacceptable provisions as pointed out by CRM.

Meanwhile it was reported that the Supreme Court was due to communicate its determination regarding the constitutionality of a Bill establishing "The National Council for Disaster Management". Furthermore, another Bill making special legal provisions for persons and property affected by the tsunami, using the "urgent in the public interest" procedure, was due to be presented for Cabinet approval shortly. The text of this Bill was not available at the time of going to press. ■

EMERGENCY- II

THE EMERGENCY HAS LAPSED

Civil Rights Movement

The emergency declared on 4 January 2005 has, in the view of the Civil Rights Movement (CRM), expired. It follows that the emergency regulations made under it are no longer in force, and any action taken under them since the expiry are invalid.

On 4 January 2005, the President gazetted a Proclamation bringing into operation Part II of the Public Security Ordinance (PSO) as from that date. This activation of Part II of the PSO is what is commonly referred to as a declaration of emergency. It enables the President to make emergency regulations that have legal force as soon as they are made. This action thus has the effect of vesting in the President the power to make regulations having the force of law, bypassing the normal legislative body, i.e. Parliament. Consequently there are important provisions, in both the Constitution and the PSO, providing for parliamentary approval and control of this assumption of law-making power by a President.

The Proclamation has to be communicated to Parliament forthwith, and is valid for a period of one month (at a time) and expires thereafter, provided Parliament approves such Proclamation within fourteen days of the provisions of Part II of the PSO (i.e. the declaration of emergency) coming into force. If the Proclamation is not so approved, then it expires at the end of fourteen days.

If at the date of the Proclamation, Parliament is separated by an adjournment that will not expire within ten days, the President is required to summon Parliament to meet, such meeting to take place within ten days of the Proclamation.

According to the Hansard report, Parliament met on 4 January 2005, and adjourned till the 8th of February 2005. There is no record of the Proclamation having been communicated to Parliament on 4 January 2005. In this context, the President was required to treat 4 January 2005 as a day on which Parliament was adjourned, and summon Parliament to meet within ten days of the Proclamation. As far as we are aware, the President did not summon Parliament to meet. In these circumstances, the Proclamation expired after 14

days, that is, after the 18th of January 2005, and any emergency regulations made thereunder cease to have legal force after 18 January 2005. This will not affect the past operation of any emergency regulations while the Proclamation was in force.

An important consequence follows the expiry of a Proclamation at the end of fourteen days due to Parliament not approving it. A further Proclamation made within 30 days of the expiry of the Proclamation cannot come into force until it is approved by Parliament. This in turn prevents the President from making any emergency regulations for one month without obtaining parliamentary approval for the Proclamation. This is logical, for if Parliament does not approve a declaration of emergency, it cannot be open to a President to assume emergency powers again straightaway by simply making a fresh declaration without the consent of Parliament.

On 6 January 2005, the President made a set of emergency regulations. These made provision inter alia as to essential services and requisition of property; conferred extensive powers of search and arrest; curtailed several fundamental rights; created new offences and prescribed enhanced punishments for existing ones; provided for automatic forfeiture of property; abolished evidentiary safeguards regarding confessions to police officers; and prescribed capital punishment or life imprisonment for several offences. The regulations were available to the public only on 25 January, exemplifying yet again a repeated complaint CRM has made over the years about the inaccessibility of emergency regulations. The substance of the regulations is being studied separately by CRM and is not gone into here.

What is of immediate concern is that we have an extraordinary, anomalous and unacceptable situation. The emergency regulations made on 6 January were available to the public only on 25 January. By that time they had already expired. But people, including presumably law-enforcement officers, were and remain under the impression that they are in full force. ■