

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	696
Land:	Sri Lanka
Kilde:	Amnesty International
Titel:	Follow up to the previous review
Udgivet:	juli 2022
Optaget på baggrundsmaterialet:	5. februar 2024

FOLLOW UP TO THE PREVIOUS REVIEW

1. Sri Lanka supported 117 out of 230 recommendations in the previous review, while noting 53 others.¹
2. Sri Lanka acceded to the Optional Protocol to the Convention Against Torture (Op-CAT) and designated the Human Rights Commission as the National Preventive Mechanism in 2017. It also enacted a law aimed at implementing the International Convention for the Protection of All Persons from Enforced Disappearance during the period of review. Little progress was made towards implementation of other supported recommendations.
3. Sri Lanka supported 11 recommendations² referring to implementation of the National Human Rights Action Plan (2017-2021), but there was very limited progress and the plan lapsed, with no mention of it being renewed.³
4. The death penalty remained in national law⁴ with the increased risk of it being carried out, especially in 2019 when the President signed the death warrants of at least four prisoners in death row.⁵
5. The bill of rights was not amended in the constitutional reform work,⁶ which instead reduced the strength of independent commissions. Same-sex relations remained criminalized under the Penal Code.⁷ The Prevention of Domestic Violence Act was not amended.⁸ The government also attempted to reform laws that regulate the work of non-governmental organizations.
6. The post-war restitution of land back to civilian owners made limited progress - large swathes of land remain occupied by the military without compensation paid to landowners.
7. Although Sri Lanka supported recommendations to make transitional justice mechanisms like the Office on Missing Persons (OMP) and the Office on Reparations operational and independent,⁹ these institutions are barely functioning. Politicized appointments and deliberate attempts by the Commissioners to close cases without providing answers regarding the circumstances which led to disappearances have led to mistrust among victim families.¹⁰ The Truth Commission and the judicial mechanism for accountability have not been established.¹¹
8. There was no accountability for human rights abuses during the war period¹² or for more recent violations such as threats against and intimidation of ethnic or religious minorities, human rights defenders and journalists, despite Sri Lanka's commitments to address accountability.¹³
9. Former Presidential Commissions of Inquiry reports were not made public.¹⁴ A new Commission of Inquiry on human rights and international humanitarian law violations was set up in 2021 to investigate allegations, however its findings have not been made public nor have they led to any prosecutions of those responsible. Another Commission appointed to investigate "political victimization" reversed limited accountability gains on some cases.¹⁵

THE NATIONAL HUMAN RIGHTS FRAMEWORK

National human rights mechanisms

10. The 20th amendment to the Constitution, passed in October 2020, undermined the independence of the judiciary and key independent institutions such as the Human Rights Commission of Sri Lanka (HRCSL), by removing important checks and balances afforded to appointments, effectively undermining the rule of law and access to justice.¹⁶
11. The President was no longer bound by recommendations of the Parliamentary Council and as such, appointments to independent commissions, the senior judiciary, the Attorney General, and the Inspector General of Police are effectively presidential appointments, undermining their independence. The Sub-Committee on Accreditation of the GANHRI recommended that the HRCSL (accredited as A-status in June 2018) be downgraded to B status due to these constitutional amendments.

Office on Missing Persons

12. Since the 20th constitutional amendment changed the appointment process,¹⁷ the OMP has been staffed with individuals who have raised alarm bells amongst victim groups.¹⁸ The lists of missing persons were deleted from the OMP's website, and the website has been taken down. Victims now fear that any correspondence with the OMP will lead to them being forced to accept a death certificate. Issuing interim relief and certificates of absence has also halted.

Prevention of Terrorism Act (PTA)

13. The PTA remains in use.¹⁹ March 2022 amendments,²⁰ that included reducing the pre-charge detention period from 18 months to 12, failed to address critical gaps in the law which requires repeal or substantial amendment, to bring it in line with international law and standards.²¹ The Act allows for suspects to be held without charge for up to 12 months; the Minister of Defence to make orders restricting freedom of expression and association with no right of appeal in courts; provides special rules of evidence allowing for confessions to be admissible in court; and for the onus to be placed on a suspect to prove to a court that a statement was made under duress.
14. New PTA regulations, which allow for the referral of people suspected of an offence under the PTA or Emergency Regulations to a "rehabilitation" programme, have raised many human rights concerns, including the use of overly broad, subjective language to describe offences, and the concern that rehabilitation and detention under the regulations deprive suspects of due process, access to family and the ability to challenge their detention in court. Such violations would also place those arrested at risk of torture and other ill-treatment.²²

State of Emergency

15. In April, May and July 2022 the President declared a state of emergency in response to protests. Some of these proclamations were followed by emergency regulations²³ and country-wide curfews restricting peoples' freedom of movement and right to peaceful assembly along with a social media black-out that restricted freedom of expression. The restrictions imposed by the authorities on the rights to freedom of peaceful assembly, expression and movement were not strictly required by the exigencies of the situation.²⁴

THE HUMAN RIGHTS SITUATION ON THE GROUND

Economic and social rights

16. The rights to health, education, social security, adequate food, and an adequate standard of living²⁵ are severely impacted by the current economic crisis, brought on by a balance of payment crisis and a severe foreign exchange shortage. The crisis is compounded by Covid-19 lockdowns, pre-pandemic tax cuts, and loss of access to international capital markets. Essential medicines, food items, cooking gas and fuel are all in short supply without foreign exchange for imports.²⁶ Furthermore, a chemical fertilizer ban in April 2021 has affected domestic food production, making food shortages inevitable.
17. In June 2022, inflation stood at 58.9%.²⁷ The cost of food inflation stood at 75.8% which has made even available food stocks unaffordable for economically vulnerable groups.

Freedom of expression and peaceful assembly

18. Space for dissent has closed dramatically since the previous review, with police criminal investigators, human rights defenders, lawyers, opposition parliamentarians, trade unionists, student activists all targeted by the state in reprisal for their work. The government and government-affiliated groups have used smear campaigns, harassment and other forms of intimidation, raiding media outlets and questioning journalists, travel bans, transfers and arbitrary arrests to control freedom of expression and peaceful assembly.²⁸
19. In April 2018, writer Shakthika Sathkumara was arrested and charged under the ICCPR Act and the Penal Code for propagating hatred and incitement of racial or religious violence in a story he posted on his Facebook profile.²⁹ The case was eventually dropped.
20. Lawyer and minority rights activist Hejaaz Hizbullah, a vocal critic of the government's treatment of the marginalized Muslim community, was detained under the PTA without any evidence of wrongdoing for nearly two years until he was released on bail in February 2022. Authorities alleged that he aided and abetted the suicide bombers behind bombings in April 2019 (see below). Similarly, poet and teacher Ahnaf Jazeem was arrested in May 2020 and held for 19 months under the PTA without any evidence of wrongdoing. Authorities alleged that his poems and teachings could cause 'communal disharmony.' Both men had restricted access to legal counsel and their families and basic due process safeguards, and Ahnaf Jazeem was coerced to make false statements while under interrogation.
21. Against signs of a possible change in political leadership after local government elections in 2018, families of the forcibly disappeared, who engaged in peaceful protests over 1950 days, complained of intimidation by law enforcement officers through unannounced visits, intimidating phone calls, surveillance and taking of photographs during protests.³⁰ Additionally, the state security apparatus has begun approaching the judiciary to pre-emptively restrict the victims' freedom to protest.³¹
22. Country-wide protests erupted in March 2022 in the context of growing dissatisfaction with the government's mismanagement of the economy. Police officers have been accused of routinely using excessive force against largely peaceful protesters, including lethal force that left one dead and at least a dozen others injured in April 2022 in Rambukkana. Allegations of an abduction-style arrest of youth activist Anuruddha and ill-treatment of protesters while in custody have also been documented in Mirihana, along with accusations that police recorded statements without giving protesters access to legal representation.³²
23. On 9 May 2022, government-aligned groups attacked a peaceful protest site in front of the Presidential Secretariat in full view of law enforcement officers who did little to stop them. Members of anti-government groups retaliated to the attack by beating pro-government supporters and destroying buses believed to have transported them. They also targeted parliamentarians, damaging their vehicles and setting fire to their

homes, businesses, and party offices. The day after, the Defence Ministry issued a notice saying military personnel had been ordered to open fire at anyone looting public property or causing harm to others. At least 21 protesters had been arrested by 20 June.³³

Excessive use of force

24. Incidents of deaths in police custody and police brutality were widely reported³⁴ in the period under review, with no criminal liability or accountability for law enforcement or other government officers in such cases. The police were also accused of using excessive force to quell anti-government protests in response to the economic crisis, including indiscriminately using tear gas and water cannons, as well as firing at peaceful protesters where one individual was killed in April 2022 while at least a dozen more were injured. At least one child was shot at during the incident in Rambukkana. The Army has, in at least two incidents, fired warning shots in the air in response to unrest at fuel stations where people have been lining up in the hope of purchasing fuel for days.³⁵
25. Amnesty International recorded instances where security officers fired multiple rounds of tear-gas against protesters during the round of anti-government protests.³⁶ On 9 July 2022, security forces opened fire on protesters attempting to breach the entrance of the Presidential residence.³⁷

Rights of minorities

26. The situation of minorities has deteriorated, with anti-Muslim discrimination fast forming a part of state policy.³⁸ Muslims who died of Covid-19 were forcibly cremated against their religious beliefs until the government changed its policy ahead of a UNHRC session.³⁹ The cabinet approved a proposal to ban the *niqab*.⁴⁰ Prior to that, in March 2018, a week after a similar attack in the eastern coastal district of Ampara, a mob set alight homes, shops and a mosque belonging to the local Muslim community in Digana, in central Sri Lanka. Close to 2000 Muslims were arrested using the PTA and Emergency Regulations in the 2019 attacks' aftermath.⁴¹
27. Investigations into a series of bombings by a local Islamic group on 21 April 2019 that killed more than 250 people revealed that the security apparatus failed to prevent the attacks despite actionable intelligence. Christians targeted by the bombings failed to achieve justice.
28. The Tamil community continued to be harassed in the highly militarized Northern province, where they were repeatedly prevented from memorialising their loved ones forcibly disappeared or killed during the 26-year-long war which ended in 2009. Post-war land restitution halted.

Transitional justice

29. The support for most commitments made by the Sri Lankan government at the UN Human Rights Council in 2015⁴² were withdrawn by 2020. The two institutions established, the OMP and the Office on Reparations, remain in skeletal form without the faith and trust of victims. Under the leadership of the controversial former Supreme Court judge Upali Abeyratne, the OMP opened a new office in the North and announced plans to "verify" the 21,374 cases collated by its former members. By the end of the 2021, the OMP's official caseload stood at 14,988, with no clear explanation for its having dropped more than 6,000 missing persons cases.⁴³

30. Accountability for war-time serious violations of human rights and humanitarian law was not pursued, and in some cases which implicated members of the military or government supporters, the suspects were either acquitted, the cases were withdrawn by the Attorney General, or a convicted perpetrator received a Presidential pardon. These include the enforced disappearance of Prageeth Ekmaligoda, the assassination of Joseph Pararajasingham in 2005; the charges against Wasantha Karannagoda in the disappearance of 11 Tamils in 2008 and 2009;⁴⁴ and the 2020 pardon of a perpetrator in the Mirusuvil massacre case.⁴⁵

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Sri Lanka to:

National human rights mechanisms

31. De-politicise the appointment process for independent institutions, including the Human Rights Commission of Sri Lanka and the Attorney General's Office with a view to making them independent, effective and reliable redress mechanisms for victims of human rights abuses in Sri Lanka.

Transitional justice

32. Urgently and genuinely take account of the demands of families of the disappeared, who have sought answers for more than a decade.
33. Ensure the Office on Missing Persons prioritizes, respects and facilitates the families' rights to truth, justice and reparations without exerting pressure on them to close the cases on their missing relatives.
34. Take seriously Sri Lanka's international obligations to protect and create an enabling environment for the families of the disappeared to enjoy their rights to free expression, association, peaceful assembly, and liberty and security of persons.
35. Ensure the effective and independent operations of the Office on Missing Persons and the Office on Reparations, paying due regard to the demands and needs of those affected.
36. Take all steps including by amending the domestic legal framework to enable the prosecution of perpetrators for alleged violations of international human rights law and humanitarian law.
37. Ensure all civilian-owned land is returned to its rightful owners.

Prevention of Terrorism Act (PTA)

38. Repeal the Prevention of Terrorism Act and, pending repeal, immediately establish a moratorium on its use.
39. Immediately review the detention of those held under the Prevention of Terrorism Act, including of Muslims detained after the 2019 bombings, ensure adequate access to fair bail hearings, and immediately release all those not facing internationally recognizable charges.
40. Ensure the right to a fair trial, including pre-trial rights of those accused under the Prevention of Terrorism Act such as regular access to legal counsel on a confidential basis and to family members at regular intervals.

41. Facilitate access to effective remedies and reparations to those whose human rights have been violated due to the use of the Prevention of Terrorism Act.

State of emergency

42. Stop unduly restricting people's freedom of movement and peaceful assembly and the use of social media blackouts that restrict freedom of expression under the pretext of a state of emergency.
43. Revoke Emergency Regulations that provide sweeping powers to law enforcement officers.

Economic and social rights

44. Urgently fund and expand social security systems and ensure that the right to an adequate standard of living is protected for all, including marginalized groups.
45. Design proposals to provide 'emergency relief' during the economic crisis so they are adequately financed, enable all persons to access an adequate standard of living, and request international cooperation and assistance for this purpose if necessary.
46. Develop mechanisms by which people can effectively participate in and contribute to discussions about budgets and public expenditure, before decisions to reduce public expenditure on economic and social rights are made in times of economic crisis.
47. Explore alternative options for accessing the maximum available resources to fulfil human rights obligations, including for example, through effectively addressing tax evasion and tax fraud, and implementing progressive tax measures.

Freedom of expression and peaceful assembly

48. End the targeting and prosecution of dissenters critical of government or actors aligned with the government and release anyone held arbitrarily for peacefully protesting or otherwise expressing their views.
49. Ensure law enforcement authorities strictly consider the necessity and proportionality of restrictions when applying for court orders, for example by implementing appropriate training programmes.

Rights of minorities

50. Ensure prompt, impartial and effective investigations into incidents of attacks against minority communities and hold suspected perpetrators to account.
51. Reject policies and proposals that violate the rights of minority communities, including forced cremations and the proposed ban on the *niqab*.

Excessive use of force

52. Ensure law enforcement authorities use of force in response to protests is used as a last resort, proportionate and necessary, and that any officials suspected of using unlawful force are brought to justice.

¹ UN Human Rights Council Report of the Human Rights Council on its thirty-seventh session, UN Doc. A/HRC/37/2, 14 June 2018, para. 994

² A/HRC/37/17, recommendations 116.147 [UK], 116.150 [Malaysia], 116.18 [Myanmar], 116.19 [Pakistan], 116.20 [Philippines], 116.21 [Singapore], 116.22 [Sudan], 116.23 [Thailand], 116.24 [Venezuela], 116.26 [Cuba], 116.27 [Belarus],

³ A/HRC/37/17, recommendations 116.18 [Myanmar], 116.19 [Pakistan], 116.20 [Philippines], 116.21 [Singapore], 11.22 [Sudan], 116.25 [Azerbaijan], and 116.27 [Belarus]

⁴ A/HRC/37/17, recommendations that supported considering to abolish the death penalty included 116.53 [Italy], 116.54 [Timor-Leste]. Others whose recommendations were noted: 117.31 [Slovakia], 116.32 [Holy See], 117.28 [Australia], 117.29 [Norway] and 117.33 [Namibia]

⁵ Amnesty International, *Halt preparations to resume executions*, 2 April 2019, <https://www.amnesty.org/en/documents/asa37/0075/2019/en/>

⁶ A/HRC/37/17, recommendation 116.13 [South Africa]

⁷ A/HRC/37/17, recommendations 117.25 [Honduras], 117.20 [Netherlands], 117.21 [Brazil], 117.22 [Canada], 117.23 [Sweden] and 117.24 [Uruguay]

⁸ A/HRC/37/17, recommendation 116.149 [Maldives]

⁹ A/HRC/37/17, recommendations 116.77 [South Africa], 116.80 [Belgium], 116.87 [Ireland] and 116.88 [Germany]

¹⁰ Amnesty International, *Still no answers: An update on the rights of victims of enforced disappearances in Sri Lanka*, 1 March 2022, <https://www.amnesty.org/en/documents/asa37/5278/2022/en/>

¹¹ A/HRC/37/17, recommendations 116.77 [South Africa], 116.80 [Belgium], 116.87 [Ireland] and 116.88 [Germany]

¹² A/HRC/37/17, recommendations 116.70 [France], 117.36 [Estonia] and 116.86 [Brazil]

¹³ A/HRC/37/17, recommendations 116.94 [Holy See], 116.103 [Netherlands], 116.42 [Namibia] and 116.43 [Australia]

¹⁴ A/HRC/37/17, recommendation 116.65 [Switzerland]

¹⁵ Centre for Policy Alternatives, *Initial Concerns with the Report of the Commission of Inquiry to Investigate Allegations of Political Victimization and Subsequent Action*, 12 March 2021, <https://www.cpalanka.org/initial-concerns-with-the-report-of-the-commission-of-inquiry-to-investigate-allegations-of-political-victimization-and-subsequent-action/>

¹⁶ The 19th amendment to the Constitution which was in operation at the time of the previous review, attempted to de-politicise independent commissions such as the Human Rights Commission of Sri Lanka (HRCSL). The Constitutional Council, made up of members of government, opposition as well as civil society, nominated members to independent commissions and the President was bound by those recommendations.

¹⁷ Commissioners were previously appointed through the Constitutional Council (under the 19th amendment to the Constitution). Among other things, Commissioners were able to consolidate a list of complaints of missing persons, launch a website, and make recommendations on interim relief.

¹⁸ For instance, Retired Supreme Court judge Upali Abeyratne served as the Chairman to the Presidential Commission of Inquiry on Political Victimization, when the Commission attempted to interfere in the prosecution of state actors accused of enforced disappearances, but was appointed as a Commissioner on the OMP. Notably, one of the new Commissioners resigned citing inadequate resources to act independently.

¹⁹ A/HRC/37/17, recommendations 117.45 [Australia], 117.27 [Canada] were noted (not supported).

²⁰ Prevention of Terrorism Act Amendment Act available at: http://documents.gov.lk/files/act/2022/3/12-2022_E.pdf

²¹ Amnesty International, *Commentary on the Prevention of Terrorism Act Amendment Bill*, 18 March 2022, <https://www.amnesty.org/en/documents/asa37/5372/2022/en/>

²² Amnesty International, *Increased marginalization, discrimination and targeting of Sri Lanka's Muslim community*, 19 March 2021, <https://www.amnesty.org/en/documents/asa37/3866/2021/en/>

²³ Amnesty International, *Sri Lanka: New Emergency regulations and shooting orders threaten human rights*, 11 May 2022, <https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/> and Amnesty International, *Emergency regulations must not lead to further crackdown on human rights*, 20 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/sri-lanka-emergency-regulations-must-not-lead-to-further-crackdown-on-human-rights/>

²⁴ Amnesty International, *From bad to worse: Rights under attack during Sri Lanka's economic crisis*, 6 May 2022, <https://www.amnesty.org/en/documents/asa37/5564/2022/en/>

²⁵ Sri Lanka has ratified the International Covenant on Economic, Social and Cultural Rights, and has an obligation both individually and through international assistance and cooperation, to guarantee economic and social rights.

- ²⁶ Amnesty International, *From bad to worse: Rights under attack during Sri Lanka's economic crisis*, 6 May 2022, <https://www.amnesty.org/en/documents/asa37/5564/2022/en/>
- ²⁷ Central Bank of Sri Lanka, *NCPI based headline inflation recorded at 58.9% on year-on-year basis in June 2022*, <https://www.cbsl.gov.lk/en/news/inflation-in-june-2022-ncpi>
- ²⁸ Amnesty International, *Old Ghosts in New Garb: Sri Lanka's return to fear*, 17 February 2021, www.amnesty.org/en/documents/asa37/3659/2021/en/,
- ²⁹ Amnesty International, Urgent Action, *Sri Lanka: Writer faces up to 10 years jail for story: Shakthika Sathkumara* 29 July 2019, <https://www.amnesty.org/en/documents/asa37/0800/2019/en/>
- ³⁰ Amnesty International, *Old Ghosts in New Garb: Sri Lanka's return to fear*, 17 February 2021, www.amnesty.org/en/documents/asa37/3659/2021/en/,
- ³¹ Amnesty International, *Still no answers: An update on the rights of victims of enforced disappearances in Sri Lanka*, 1 March 2022, <https://www.amnesty.org/en/documents/asa37/5278/2022/en/>
- ³² Amnesty International, *From bad to worse: Rights under attack during Sri Lanka's economic crisis*, 6 May 2022, <https://www.amnesty.org/en/documents/asa37/5564/2022/en/>
- ³³ Colombo Page, *Police arrest 21 protesters blocking the entrance to Presidential Secretariat and Finance Ministry*, 20 June 2022, http://www.colombopage.com/archive_22A/Jun20_1655709938CH.php
- ³⁴ Amnesty International, *Annual Report: Sri Lanka 2021*, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/sri-lanka/report-sri-lanka/>
- ³⁵ Colombo Gazette, *Army opens fire in the air at Meegahathenna fuel station*, 19 June 2022, <https://colombogazette.com/2022/06/19/army-opens-fire-in-the-air-at-meegahathenna-fuel-station/> and The Guardian, *Sri Lankan troops open fire to contain unrest over fuel shortages*, 19 June 2022, https://www.theguardian.com/world/2022/jun/19/sri-lankan-troops-open-fire-to-contain-unrest-over-fuel-shortages?CMP=share_btn_tw
- ³⁶ Amnesty International, *Authorities must refrain from use of military to police protests*, 14 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/sri-lanka-authorities-must-refrain-from-use-of-military-to-police-protests/>
- ³⁷ Newswire, *Video footage of security forces shooting moments before protesters entered the President's house yesterday*, 10 July 2022, <https://www.newswire.lk/2022/07/10/video-footage-of-security-forces-shooting-moments-before-protesters-entered-the-presidents-house-yesterday/>
- ³⁸ Amnesty International, *From burning houses to burning bodies: Anti-Muslim violence, discrimination and harassment in Sri Lanka*, 18 October 2021, <https://www.amnesty.org/en/documents/asa37/4863/2021/en/>
- ³⁹ Amnesty International, *From burning houses to burning bodies: Anti-Muslim violence, discrimination and harassment in Sri Lanka*, 18 October 2021, <https://www.amnesty.org/en/documents/asa37/4863/2021/en/>
- ⁴⁰ Amnesty International, *From burning houses to burning bodies: Anti-Muslim violence, discrimination and harassment in Sri Lanka*, 18 October 2021, <https://www.amnesty.org/en/documents/asa37/4863/2021/en/>
- ⁴¹ Amnesty International, *Old Ghosts in New Garb: Sri Lanka's return to fear*, 17 February 2021, www.amnesty.org/en/documents/asa37/3659/2021/en/
- ⁴² UNHRC resolution A/HRC/RES/30/1, Promoting reconciliation, accountability and human rights in Sri Lanka
- ⁴³ Amnesty International, *Still no answers: An update on the rights of victims of enforced disappearances in Sri Lanka*, 1 March 2022, <https://www.amnesty.org/en/documents/asa37/5278/2022/en/>
- ⁴⁴ Amnesty International, *Old Ghosts in New Garb: Sri Lanka's return to fear*, 17 February 2021, www.amnesty.org/en/documents/asa37/3659/2021/en/
- ⁴⁵ Amnesty International, *Amid pandemic, Sri Lanka pardons soldier convicted of massacre*, 30 April 2020, <https://www.amnesty.org/en/documents/asa37/2247/2020/en/>