

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	713
Land:	Sri Lanka
Kilde:	Amnesty International
Titel:	Submission to the UN Human Rights Committee 137 th Session, 27 February – 24 March 2023
Udgivet:	2023
Optaget på baggrundsmaterialet:	5. februar 2024



SRI LANKA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
137TH SESSION, 27 FEBRUARY- 24 MARCH 2023

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First published in 2023

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 37/6398/2023

Original language: English

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CONTENTS

INTRODUCTION	5
CONSTITUTIONAL AND LEGAL FRAMEWORK; INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE AND FAIR TRIAL (ARTICLES 2 AND 14)	5
CONSTITUTIONAL AMENDMENTS, ATTORNEY GENERAL'S INDEPENDENCE AND INDEPENDENT COMMISSIONS	5
RECOMMENDATIONS	6
NON-DISCRIMINATION AND EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3, 25 AND 26)	6
MUSLIM MARRIAGE AND DIVORCE ACT	6
SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS	7
RECOMMENDATIONS	7
STATES OF EMERGENCY AND COUNTER-TERRORISM MEASURES (ARTICLES 2, 7, 9, 10, 14, 18, 19, 21 AND 26)	7
PREVENTION OF TERRORISM ACT (PTA)	7
STATES OF EMERGENCY	8
RECOMMENDATIONS	10
ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 2, 6, 7, 9, 14, 16, 18, 19 AND 26)	11
EMBLEMATIC CASES	11
PRESIDENTIAL PARDON	12
PRESIDENTIAL COMMISSION OF INQUIRY ON "POLITICAL VICTIMISATION"	12
REPRISALS AGAINST CRIMINAL INVESTIGATORS	13
UN HUMAN RIGHTS COUNCIL (UNHRC)	14
OFFICE ON MISSING PERSONS	14
RECOMMENDATIONS	14
RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AND LIBERTY AND SECURITY OF PERSON (ARTICLES 6, 7, 9 AND 14)	15
RECOGNITION OF THE RIGHT TO LIFE AND THE DEATH PENALTY	15
ALLEGATIONS OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT	16
RECOMMENDATIONS	17
INTERNALLY DISPLACED PERSONS, REFUGEES AND ASYLUM SEEKERS (ARTICLES 2, 7, 12, 13, 17 AND 26)	17
RECOMMENDATIONS	17
NON-DISCRIMINATION, PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL AND RELIGIOUS HATRED, FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEF, AND THE RIGHTS OF MINORITIES (ARTICLES 2, 18, 20, 26 AND 27)	18

TARGETED HARASSMENT	19
RECOMMENDATIONS	20
RIGHTS TO FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION (ARTS. 19, 21 AND 22)	20
FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY	21
FREEDOM OF ASSOCIATION	22
RECOMMENDATIONS	22

INTRODUCTION

This submission has been prepared in advance of the UN Human Rights Committee's sixth periodic review of Sri Lanka. In this submission Amnesty International sets out its concerns in relation to issues related to the constitutional framework, non-discrimination and equality between men and women, states of emergency and counter-terrorism measures, accountability for serious human rights violations and the right to an effective remedy, the right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person; internally displaced persons, refugees and asylum seekers; the prohibition of advocacy of national, racial and religious hatred, freedom of conscience and religious belief, and the rights of minorities; rights to freedom of expression, peaceful assembly and freedom of association. This is not an exhaustive account of our organization's human rights concerns in Sri Lanka.

CONSTITUTIONAL AND LEGAL FRAMEWORK; INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE AND FAIR TRIAL (ARTICLES 2 AND 14)

CONSTITUTIONAL AMENDMENTS, ATTORNEY GENERAL'S INDEPENDENCE AND INDEPENDENT COMMISSIONS

The 19th, 20th and the 21st constitutional amendments were passed by the legislature during the period under review.

The 19th amendment passed in 2015, reduced the extraordinary powers given to the President under the 18th amendment and re-introduced Presidential term limits. It established a Constitutional Council that made binding recommendations to appointments to de-politicize the operation of independent commissions, including the National Human Rights Commission and the National Police Commission. The 20th amendment undid some of the gains of the 19th amendment through a Parliamentary Council which permitted key appointments to independent commissions to be made at the behest of the President. The amendment therefore removed important checks on appointments to institutions that could have acted as safeguard against abuse or as recourse for violations of human rights. The amendment also increased Presidential powers and presidential immunity. In Sri Lanka where there is no post-enactment review of laws, the 20th amendment reduced the window for pre-enactment judicial review from 14 days to 7 days.

Owing to concerns around selection and appointment of its commissioners in line with the Paris Principles, and due to not effectively engaging to address human rights violations,¹ in 2022, the Global Alliance of National Human Rights Institutions (GANHRI) downgraded Sri Lanka's National Human Rights Commission to 'B' status.²

¹ GANHRI Sub-Committee on Accreditation Report – October 2021, available at https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf

² Chart of the Status of National Institutions: Accredited by the Global Alliance of National Human Rights Institutions, Accreditation status as of 29 November 2002, available at <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>

The 21st amendment to the Constitution was passed in 2022. The amendment sought to make appointments to key independent commissions more independent through a new composition of the Constitutional Council. However, the composition of the Council that makes appointments remained non-independent and deeply partial to the ruling party in power.

Although consecutive governments³ since the last review have made overtures around a new Constitution, a draft has not been published at the time of this review. Nor has there been any further developments on a new Bill of Rights.

The office of the Attorney General remained politicized with the department carrying out two functions that at times are at conflict with each other: that of legal counsel to government as well as the public prosecutor. Many civil society organizations have lobbied for an independent prosecutor's office, one that may be able to hold state officials to account without any conflict of interest, however, there has been no movement on this from consecutive governments at the time of submission. The 20th amendment to the Constitution politicised the appointment of the Attorney General and independent commissions by ensuring that it was the President who had power to appoint and dismiss anyone in the role.⁴ Although the 21st amendment slightly reversed this, the appointments are still subject to recommendation of the Constitutional Council, which is dominated by persons appointed by the ruling party.

RECOMMENDATIONS

- De-politicize the appointment process to independent commissions and the Attorney General's office through an amendment to the Constitution;
- Set up an independent prosecutor's office;
- Ensure the independence of the Sri Lankan Human Rights Commission and enable the commission to effectively monitor and engage on human rights violations;
- Establish detailed and objective criteria for appointment into Constitutional Council, including integrity, independence, impartiality and competence. Ensure that the procedures for appointment into the Constitutional Council protect against the executive's undue or unwarranted interference in judicial matters.

NON-DISCRIMINATION AND EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3, 25 AND 26)

MUSLIM MARRIAGE AND DIVORCE ACT

At the time of submission, provisions under the 1951 Muslim Marriage and Divorce Act (MMDA) that discriminated against women and girls remained unchanged despite continued pressure from civil society on consecutive governments to amend the law. The Act permits the marriage of girls as young as 12 years; only permits men to be Qazi judges; permits polygamy for men; and does not allow women to demonstrate their consent, by signing at the registration of a marriage.

³ Full text of the statement made by President Ranil Wickremesinghe presenting his policy statement at the ceremonial opening of the Third Session of the Ninth Parliament, 3 August 2022, available at <https://www.presidentsoffice.gov.lk/index.php/2022/08/03/full-text-of-the-statement-made-by-president-ranil-wickremesinghe-presenting-his-policy-statement-at-the-ceremonial-opening-of-the-third-session-of-the-ninth-parliament-3-august-2022-2/>

⁴ 20th Amendment to the Constitution

SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS

Sri Lanka's Penal Code criminalises consensual same-sex activity under Section 365 and 365A. Additionally, Section 399 prohibits "cheating by impersonation," which is often used to target and harass people from the LGBTI community based on their real or perceived sexual orientation or gender identity. Furthermore, the archaic Vagrants Ordinance has also been weaponized to harass against LGBTI people.

In a landmark decision of *Rosanna Flamer-Caldera v Sri Lanka*, in 2022, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) found that the Section 365A of the Penal Code violates the right to non-discrimination under the CEDAW and called on the Sri Lankan authorities to decriminalise consensual same-sex activity between women. In August 2022, a Private Member's bill to amend the penal code with the aim of protecting the rights of the LGBTI community was submitted to the President. There was no government buy-in on this at the time the submission was made. It should be noted that aspects of this Bill were criticized, particularly what some civil society groups referred to as a "whitewash the Government's repression" against dissenting voices, and the fact that it did not call for a complete repeal of S.365.

RECOMMENDATIONS

- Amend the MMDA to ensure that its provisions do not discriminate against women and girls;
- Bring in a minimum age of marriage that makes no exemptions in personal laws;
- Repeal sections 365, 365A and 399 from the Penal Code that perpetuate discrimination against people because of their real or perceived sexual orientation or gender identity;
- Repeal the Vagrants Ordinance which is being used to discriminate against people, including on the basis of one's real or perceived sexual orientation or gender identity;
- Amend existing laws and ensure future legislation do not discriminate against people because of their real or perceived sexual orientation or gender identity;
- Ensure that LGBTI people are given equal protection before the law, are not harassed, extorted or abused by police because of their real or perceived sexual orientation or gender identity and any violation is swiftly investigated and prosecuted.

STATES OF EMERGENCY AND COUNTER-TERRORISM MEASURES (ARTICLES 2, 7, 9, 10, 14, 18, 19, 21 AND 26)

PREVENTION OF TERRORISM ACT (PTA)

The Prevention of Terrorism Act (PTA) remains in force at the time of submission, despite assurances by consecutive governments to further amend the Act⁵ or repeal it.⁶ In 2022 the Sri Lankan legislature passed amendments to the Act, which did not address the most pressing issues around the Act, including the overbroad definition of what constitutes an offence of 'terrorism'; permitting confessions as evidence which has often led to torture or other ill-treatment, against which there are insufficient safeguards; and permitting

⁵ Economy Next, *Sri Lanka agrees to further changes to terror law to save GSP plus ahead of UNHRC*, 12 February 2022, <https://economynext.com/sri-lanka-agrees-to-further-changes-to-terror-law-to-save-gsp-plus-ahead-of-unhrc-90448/>

⁶ The Island, *Cabinet approves draft Bill to repeal PTA: PM*, 9 October 2022, <https://island.lk/cabinet-approves-draft-bill-to-repeal-pta-pm/>

arbitrary arrests and prolonged detention⁷. The government announced that it would replace the PTA with a 'National Security Act'.⁸ UN experts have laid out the benchmarks⁹ to ensure the law is compliant with international law obligations.

In the aftermath of the Easter Sunday attacks in April 2019, as many as 1,800 Muslims were arrested using the PTA and the Emergency Regulations.¹⁰ According to information obtained through a Right to Information request in 2021 by a former Human Rights Commissioner,¹¹ a total of 125 persons are in remand custody for PTA offences (44 in connection to the LTTE, 81 in connection to the Easter Sunday attacks), and 2 persons are in detention with a Section 9 Detention Order (1 in connection to the LTTE, 1 in connection to the Easter Sunday attacks). Information requested from the Attorney General's office similarly by the former commissioner in 2021¹² indicates that 68 trials and indictments are in progress for PTA offences (34 connected to the LTTE, 34 connected to the Easter Sunday attacks), and 213 files are under review by the Attorney General for PTA offences (37 connected to the LTTE, 176 connected to the Easter Sunday attacks).

Amnesty International followed the cases of Ahnaf Jazeem¹³; Hejaaz Hizbullah¹⁴; Divaniya Mukunthan¹⁵; and Mohamed Imran- all minorities targeted by the PTA¹⁶

In the wake of mass protests against the government's handling of the economy, student leaders who took to the streets in protest were arrested and detained by Sri Lankan authorities using the PTA. Wasantha Mudalige, Convener of Inter University Students' Federation, and Galwewa Siridhamma Thero, Convener of Inter University Bhikku Federation were arrested in August 2022 for baseless anti-terror charges.¹⁷ While Siridhamma Thero was given bail, Wasantha Mudalige remains in detention for more than 150 days¹⁸ at the time of submission. These cases demonstrate how consecutive governments abuse provisions in the law to curtail and suppress dissent, including freedom of expression and peaceful assembly.

STATES OF EMERGENCY

States of emergency were declared on numerous occasions during the period under review. The President declared a state of emergency following a series of bombings on 21 April 2019 (also known as the Easter Sunday attacks) and passed Emergency Regulations¹⁹ giving sweeping powers to law enforcement officers to carry out arrests. Of particular concern to Amnesty International²⁰ were provisions for prolonged detention of "suspects" up to one year; overbroad definition of the offence of "terrorism"; broad powers of requisition; restrictions on

⁷ Amnesty International, *Commentary on the Prevention of Terrorism Act Amendment Bill*, 18 March 2022, <https://www.amnesty.org/en/documents/asa37/5372/2022/en/>

⁸ The Morning, *PTA replacement National Security Bill draft to Wijeyadasa*, 11 January 2023, <https://www.themorning.lk/articles/INjzVSaIXaHmWtIWIS>

⁹ OHCHR, *UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law*, 2 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>

¹⁰ Amnesty International, *Old ghosts in new garb: Sri Lanka's return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

¹¹ Tweet by Ambika Satkunanathan available at <https://twitter.com/ambikasat/status/1589831742181249024?s=20&t=BYnllKB5SZQusOi6yehFpA>

¹² Tweet by Ambika Satkunanathan available at <https://twitter.com/ambikasat/status/1611560938360156168?s=20&t=BYnllKB5SZQusOi6yehFpA>

¹³ Amnesty International, *Letter to the Human Rights Commission of Sri Lanka on Ahnaf Jazeem*, 1 July 2021, <https://www.amnesty.org/en/documents/asa37/4355/2021/en/>

¹⁴ Amnesty International, *Authorities must review all 'terrorism' cases after granting bail to Hejaaz Hizbullah*, 7 February 2022, <https://www.amnesty.org/en/latest/news/2022/02/sri-lanka-must-review-terrorism-cases-after-hejaaz-hizbullah-granted-bail/>

¹⁵ Amnesty International, *End the use of and repeal the draconian PTA*, 18 February 2022, <https://www.amnesty.org/en/documents/asa37/5241/2022/en/>

¹⁶ Amnesty International, *End the use of and repeal the draconian PTA*, 18 February 2022, <https://www.amnesty.org/en/documents/asa37/5241/2022/en/>

¹⁷ Amnesty International, *Drop terror charges against student leaders detained for 90 days*, 16 November 2022, <https://www.amnesty.org/en/latest/news/2022/11/sri-lanka-drop-terror-charges-against-student-leaders-detained-for-90-days/>

¹⁸ Amnesty International, *End Arbitrary Detention of Student Activist*, 16 January 2023, <https://www.amnesty.org/en/documents/asa37/6353/2023/en/>

¹⁹ Emergency Regulations available at http://documents.gov.lk/files/egz/2019/4/2120-05_E.pdf and http://documents.gov.lk/files/egz/2019/4/2121-01_E.pdf

²⁰ Amnesty International, *Respect human rights in the aftermath of Easter Attacks*, 4 May 2019, <https://www.amnesty.org/en/documents/asa37/0297/2019/en/>

access to public spaces; over-broad set of offences; disproportionate restrictions on freedom of expression and media freedom; admissibility of statements made in custody without adequate safeguards against torture; and dangerously broad ability to restrict freedom of movement; Police powers under the regulations; penalties that include death penalty; power to proscribe an organization. The regulations particularly targeted the minority Muslim community as it banned face coverings, essentially outlawing face veils and burqas.²¹ "No person shall wear in any public place any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person,"²² the regulations stated. These regulations were in place for four months.²³

States of emergency were declared on at least three occasions in April, May and July 2022, on some occasions to suppressing dissent and protests against the government's handling of the economy. Emergency regulations published alongside the states of emergency gave sweeping powers to the authorities to arrest and detain people without due process or judicial oversight.

The President declared a state of emergency and imposed a curfew in April 2022, following a protest outside the President's residence on 31 March against the escalating economic crisis in the country that was depriving residents of basic necessities, including essential medicines, food, cooking gas and electricity.²⁴ The protest was largely peaceful before the police began using tear gas and water cannons to disperse protestors, and it escalated quickly with a bus being set on fire. Dozens of people were injured including journalists. Many of the protestors have been assaulted and subjected to torture or other ill treatment in police custody. The protestors also complained that police had recorded their statements without giving them access to lawyers.²⁵ More than 600 were later arrested for defying the curfew while a social media block was put in place ostensibly to "maintain calm."²⁶

Following the President's proclamation of a State of Emergency on 6 May along with a country-wide curfew from 9-12 May, backdated emergency regulations²⁷ were published overnight on 9 May. They gave sweeping powers to the police and the armed forces to search and make arrests of "suspects" without due process safeguards. The Emergency Regulations lacked due process safeguards, such as the right to be informed of the reason for arrest, and the issuance of an arrest receipt at the time of arrest informing family where they would be detained – features of many of Sri Lanka's emergency laws. Access to legal counsel was subject to conditions. The offences were broad and could be used to bar trade union strike actions, give powers to the President to shut down public processions, restrict access to public spaces, restrict the right to freedom of expression including the right to information, freedom of movement and peaceful assembly.²⁸ Further, the Regulations provided powers to use armed force against anyone who does not comply with orders. The Regulations came with hefty penalties including life imprisonment for ordinary penal offences. There is also no access to bail for offences under the Regulations, except under "exceptional circumstances." Persons authorized by the commanders of the armed forces were empowered by the Regulations to remove suspects from detention for a period of seven days at a time.²⁹

On 9 May, protestors peacefully demonstrating in front of the Presidential Secretariat were violently attacked by pro-government supporters after being allegedly incited to violence by top party leaders at the Prime Minister's official residence. The police stood largely as bystanders to the violence, doing little to effectively

²¹ Emergency Regulation 32, http://www.documents.gov.lk/files/egz/2019/4/2121-01_E.pdf

²² Emergency Regulation 32, http://www.documents.gov.lk/files/egz/2019/4/2121-01_E.pdf

²³ Reuters, *Sri Lanka withdraws emergency law imposed after Easter attacks*, 23 August 2019, <https://www.reuters.com/article/us-sri-lanka-emergency-idUSKCN1VD1GF>

²⁴ Amnesty International, *Authorities must respect peoples' right to protest*, 1 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/sri-lanka-authorities-must-respect-peoples-right-to-protest/>

²⁵ Amnesty International, *Authorities must respect peoples' right to protest*, 1 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/sri-lanka-authorities-must-respect-peoples-right-to-protest/>

²⁶ Amnesty International, *Protesters in Sri Lanka defy curfew, police fire tear gas at students*, 3 April 2022, <https://www.reuters.com/world/asia-pacific/social-media-platforms-blocked-sri-lanka-2022-04-03/>

²⁷ Emergency Regulations available here http://documents.gov.lk/files/egz/2022/5/2278-23_E.pdf

²⁸ Amnesty International, *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/>

²⁹ Amnesty International, *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/>

protect the peaceful protesters and their protest site.³⁰ Elements of anti-government groups retaliated to the attack on 9 May by attacking pro-government supporters. This escalated into targeting of parliamentarians with damage to their property. According to authorities, nine people died.³¹ On 10 May, the Defence Ministry issued a notice saying the Armed forces have been ordered to open fire at anyone looting public property or causing harm to others.³²

On 17 July the acting President declared a state of emergency and issued new Emergency Regulations.³³ Like before, the emergency regulations gave sweeping powers to the police and the armed forces to search and make arrests of 'suspects' without due process safeguards. It levied hefty penalties including life imprisonment for ordinary penal offences like causing 'mischief'. Detainees could be kept in custody for up to seventy-two hours without being produced before a Magistrate and guaranteed access to lawyers. This prolonged period in custody without timely judicial oversight or the ability to challenge their detention heightened the risk for detainees to be subjected to torture or other ill-treatment.³⁴

UN Special Procedures condemned the extensive, prolonged and repeated use of state of emergency measures since 2 April 2022.³⁵ Sri Lanka's emergency laws have been used time and time again as a tool to particularly target minority Tamils and Muslims.

RECOMMENDATIONS

- Guarantee the protection of the human rights of all PTA detainees including guarantees of due process and a fair trial, and protection from arbitrary arrest, detention, torture or other ill-treatment;
- Immediately review the detention of those still held under the PTA, ensuring adequate access to fair bail hearings, and immediate release for all those not facing internationally recognizable charges;
- Ensure that all PTA detainees have regular access to legal counsel on a confidential basis and to family members and friends at regular intervals;
- Ensure the right to a fair trial, including pretrial rights, of those accused under the PTA;
- Repeal the PTA and issue an immediate moratorium on its use, and ensure that any new counter-terrorism laws are in line with international laws and standards;
- Facilitate access to effective remedies and reparations to those whose human rights have been violated due to the use of the PTA;
- Ensure that restrictions on human rights facilitated by Emergency Regulations are legal, necessary and proportionate. Emergency Regulations must not be used as a tool to suppress the freedom of expression and peaceful assembly.

³⁰ Amnesty International, *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/>

³¹ Amnesty International, *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/>

³² Amnesty International, *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/>

³³ Amnesty International, *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/>

³⁴ 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/>

³⁵ OHCHR, *UN human rights experts condemn repeated use of emergency measures to crackdown on protests*, 8 August 2022, <https://www.ohchr.org/en/press-releases/2022/08/sri-lanka-un-human-rights-experts-condemn-repeated-use-emergency-measures>

ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS AND THE RIGHT TO AN EFFECTIVE REMEDY (ARTICLES 2, 6, 7, 9, 14, 16, 18, 19 AND 26)

EMBLEMATIC CASES

The period under review saw a few advances in court cases of emblematic human rights cases especially from 2015 onward. However, by the time of submission, many of those advances were overturned.

Prageeth Eknaligoda: In 2018, an amendment to the Judicature Act set up a permanent high court trial-at-bar. The court took up the case of Prageeth Eknaligoda, journalist and cartoonist who was forcibly disappeared in January 2010. Nine army personnel were indicted in 2019³⁶ and the case began at the permanent high court. Key witnesses either recanted their testimony or failed to show up to proceedings, which the Attorney General department prosecutors put down to witness intimidation,³⁷ following a Presidential Commission of Inquiry summoning witnesses from the case in a motion that could amount to sub judice.³⁸ The nine suspects were given bail in 2022³⁹ and the case is lagging behind.

'Navy 11'⁴⁰: The Sri Lankan Navy is alleged to have been behind the forcible disappearance of the "Navy 11". The case has faced many obstacles in the Sri Lankan courts. In August 2018 the Criminal Investigation Department (CID) of the Police arrested Lt. Commander Chandana Prasad Hettiarachchi, alias "Navy Sampath", as the main suspect. The CID accused then Chief of Defence Staff Admiral Ravindra Wijegunaratne of shielding one of the main suspects, and the court also ordered his arrest. In February 2019, former Commander of the Sri Lanka Navy, Admiral Wasantha Karannagoda, was named as the 14th suspect in the case. Following the appointment of the Presidential Commission of Inquiry into "political victimization," in August 2021, the Attorney General's department decided not to proceed with charges against Wasantha Karannagoda, over his alleged role in the abduction of 11 Tamil youth in 2008 and 2009.

'Trinco 5'⁴¹: On January 2, 2006, Ragihar Manoharan and four other Sri Lankan Tamil students, known as the 'Trinco 5' students, were killed by security forces in the city of Trincomalee, in north-eastern Sri Lanka. The Government claimed that the youth were killed in a grenade attack, but medical reports showed that the youth were shot at close range. A criminal case was filed against 13 Special Task Force (STF) members suspected of executing the five youth. On 3 July 2019, the suspects were acquitted reportedly due to "lack of evidence". In July 2019, the Attorney General (AG) directed police to recommence investigations. According to media, the AG directed the police to carry out a comprehensive investigation to trace the whereabouts of the witnesses, however no further progress has been made into the case so far.

³⁶ Daily Mirror, *Prageeth Eknaligoda case: Nine army officials indicted*, 27 November 2019, https://www.dailymirror.lk/breaking_news/Prageeth-Eknaligoda-case-Nine-army-officials-indicted/108-178597

³⁷ Newsfirst, *Eknaligoda Disappearance: Army Intel personnel granted bail; Witness remanded*, 17 June 2022, <https://www.newsfirst.lk/2022/06/17/eknaligoda-disappearance-army-intel-personnel-granted-bail-witness-remanded/> and Colombo Page, *Court orders investigation into the threats on the witness in the Prageeth Eknaligoda case*, 11 July 2022, http://www.colombopage.com/archive_22B/Jul11_1657561804CH.php

³⁸ Tweet by Amnesty International South Asia available at

https://twitter.com/amnestysasia/status/1461290596681732096?s=20&t=EwwhPMGkUol-f_p4YaGNyw

³⁹ Newsfirst, *Eknaligoda Disappearance: Army Intel personnel granted bail; Witness remanded*, 17 June 2022, <https://www.newsfirst.lk/2022/06/17/eknaligoda-disappearance-army-intel-personnel-granted-bail-witness-remanded/>

⁴⁰ Amnesty International, *Authorities falter on accountability in 'Navy 11' case*, 4 August 2021, <https://www.amnesty.org/en/latest/news/2021/08/sri-lanka-authorities-falter-on-accountability-in-navy-11-case/>

⁴¹ Amnesty International, *Justice for the Trinco 5*, 9 August 2019, <https://www.amnesty.org/en/documents/asa37/0862/2019/en/>

Joseph Pararajasingham⁴²: Joseph Pararajasingam MP was shot dead while attending mass at St Mary's Church, Batticaloa on Christmas eve in 2005. One of the five persons suspected of criminal responsibility for the murder was MP Sivanesathurai Chandrakanthan (alias Pillayan), the leader of Tamil Makkal Viduthalai Pulikal (TMVP). The Criminal Investigations Department arrested Chandrakanthan in connection with the murder in 2015. MP Sivanesathurai Chandrakanthan was acquitted in the case pertaining to the murder of former TNA MP Joseph Pararajasingham after the AG's Department informed the Batticaloa High Court that it will not proceed with the case against MP Chandrakanthan over the Pararajasingham murder case in January 2021.

Lasantha Wickremetunge: Since the last review, the CID restarted its investigation in 2015 into the 2009 murder of the Sunday Leader editor, Lasantha Wickremetunge. Although the case remains technically open, there has been no progress in finding those accountable since criminal investigators involved in the case suffered reprisals for their work.⁴³ In 2019, Lasantha's daughter Ahimsa Wickremetunge brought a civil suit against Gotabaya Rajapaksa in US Federal Courts alleging that Rajapaksa was responsible for the torture and killing of her father through command responsibility.⁴⁴ In 2022, the Panel of Judges of the Permanent Peoples' Tribunal pronounced their judgment finding Sri Lanka guilty of human rights violations related to the murder of Lasantha Wickremetunge.⁴⁵

Many other emblematic cases including the 60,000-100,000 cases of alleged disappearances since the late 1980s, the 2006 killing of 17 staff members of the French aid agency Action Contre La Faim (ACF) in Muttur, the Welikada prison incident in 2012 where 27 inmates were allegedly executed, the murder of Tamil politician Nadarajah Raviraj in 2006: all remain stagnant with no willingness displayed by the domestic criminal justice system to hold those responsible to account.

PRESIDENTIAL PARDON

In June 2015 the Colombo High Court sentenced army officer Sergeant. Sunil Rathnayaka to death for the murder of eight Tamil Internally Displaced People (IDPs) in December 2000 after a 13-year trial.⁴⁶ Sergeant Rathnayaka appealed the conviction, and the Supreme Court of Sri Lanka affirmed the conviction in May 2019. In October 2019, then President hopeful Gotabaya Rajapaksa pledged that once in power, he would acquit and release 'war heroes' being held on 'baseless' charges.⁴⁷ In March 2020, President Rajapaksa granted a Presidential pardon to Sergeant Rathnayaka, reversing one of the rare instances where military perpetrators of serious human rights violations and crimes under international law were successfully prosecuted.⁴⁸ The organization considers the presidential pardon in breach of Sri Lanka's obligations under international human rights law and, at some point in the future, it should be set aside.

PRESIDENTIAL COMMISSION OF INQUIRY ON "POLITICAL VICTIMISATION"

In January 2020 President Gotabaya Rajapaksa appointed a Presidential Commission of Inquiry "to inquire into and obtain information in respect of the alleged political victimization during the period commencing 8th

⁴² Amnesty International, *Collapse of Joseph Pararajasingham murder case a failure of justice*, 13 January 2021, <https://www.amnesty.org/en/latest/news/2021/01/sri-lanka-collapse-of-joseph-pararajasingham-murder-case-a-failure-of-justice-2/>

⁴³ Tweet by Amnesty International South Asia available at <https://twitter.com/amnestysasia/status/1611898652460711937?s=20&t=L1xJre3P8ch3A-sozoyoeQ>

⁴⁴ Centre for Justice and Accountability, FAQs: Wickremetunge v. Rajapaksa, April 2019, <https://cja.org/wp-content/uploads/2019/04/FAQs-Sri-Lanka.pdf>

⁴⁵ Daily FT, *People's tribunal finds Sri Lankan state guilty of Lasantha Wickremetunge's murder*, 21 September 2022, <https://www.ft.lk/news/People-s-tribunal-finds-Sri-Lankan-state-guilty-of-Lasantha-Wickremetunge-s-murder/56-740090>

⁴⁶ Amnesty International, *Justice reversed for victims of the Mirusuvil massacre*, 26 March 2020, <https://www.amnesty.org/en/latest/news/2020/03/justice-reversed-for-victims-of-the-mirusuvil-massacre-from-sri-lanka/>

⁴⁷ Sunday Observer, *Gota's pledge to release suspects: Fresh hell for victims?*, 13 October 2019, <http://www.sundayobserver.lk/2019/10/13/news/gota%E2%80%99s-pledge-release-suspects-fresh-hell-victims>

⁴⁸ Amnesty International, *Amid pandemic, Sri Lanka pardons soldier convicted of massacre*, 30 April 2020, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3722472020ENGLISH.pdf>

January 2015 and ending 16th November 2019.”⁴⁹ The President claimed that the former government’s pursuit of legal action against public officials was politically motivated and that this process has had negative effects on the performance of public officers, employees of public corporations and members of the armed forces and police services. Since then, the Commission intervened in cases that were pending before courts. The Commission’s actions so far have attempted to unduly interfere in ongoing court proceedings where military members are implicated as suspects. Media has reported that many officials standing trial in cases of human rights violations have complained of being politically targeted before the Commission. A resolution to implement the recommendations of the Commission was tabled in parliament in April 2021.⁵⁰

REPRISALS AGAINST CRIMINAL INVESTIGATORS⁵¹

In the days following the 2019 presidential elections, the director of the CID, Shani Abeysekera, was demoted by the National Police Commission. Abeysekera oversaw the investigations into several key emblematic human rights cases. The government accused Abeysekera of carrying out a political agenda.⁵²

In July 2020, the Colombo Crimes Division (CCD) arrested Abeysekera over allegations made by a Police Sub-Inspector that Abeysekera had fabricated evidence in a case involving the former Deputy Inspector General of Police. However, the Police Sub-Inspector later claimed before a magistrates’ court that officers of the CCD had threatened to arrest him unless he made a false statement implicating Abeysekera in fabricating evidence. In 2022, Abeysekera made chilling revelations implicating links between the Easter Sunday bombers and several state intelligence agencies.⁵³ At the time of submission, Abeysekera fears for his safety, and has requested protection for the threats he is facing.⁵⁴

Also, in 2019, following the presidential election, Nishantha Silva, a police officer from the CID who led investigations into several high-profile criminal and human rights cases, fled the country out of fear of reprisals.⁵⁵ Nishantha Silva was investigating key human rights cases.

Following the departure of Nishantha Silva, authorities placed a travel ban on 704 CID officers. The list was sent to the Immigration and Emigration Office at Colombo International Airport for their scrutiny of people attempting to leave the country without first seeking permission. The measure was seen as an attempt to prevent these officers from fleeing abroad with incriminating evidence against members of the new administration, and an attempt to stop the pursuit of justice for human rights violations and crimes under international law.⁵⁶ Amnesty International has seen with concern that most of those who were placed under travel bans, transferred, demoted or arrested, were carrying out investigations including into human rights abuses committed during the armed conflict. Many were moved to positions where they would no longer be able to pursue accountability, further undermining the right to truth, justice and reparations for victims of human rights violations.⁵⁷

⁴⁹ Extraordinary Gazette No. 2157/44 issued on 9 January 2020 available at http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf

⁵⁰ Human Rights Watch, *Reject ‘Political Victimization’ Findings*, 30 April 2021, <https://www.hrw.org/news/2021/04/30/sri-lanka-reject-political-victimization-findings>

⁵¹ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

⁵² Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

⁵³ The Sunday Times, *Shani makes bombshell claims on Easter attacks in FR case filed to prevent arrest*, 20 February 2022, <https://www.sundaytimes.lk/220220/news/shani-makes-bombshell-claims-on-easter-attacks-in-fr-case-filed-to-prevent-arrest-473839.html> and Daily FT, *Threats to Shani Abeysekera must be taken seriously*, 8 December 2022, https://www.ft.lk/ft_view_editorial/Threats-to-Shani-Abeysekera-must-be-taken-seriously/58-742821

⁵⁴ Daily FT, *Threats to Shani Abeysekera must be taken seriously*, 8 December 2022, https://www.ft.lk/ft_view_editorial/Threats-to-Shani-Abeysekera-must-be-taken-seriously/58-742821

⁵⁵ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

⁵⁶ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

⁵⁷ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

UN HUMAN RIGHTS COUNCIL (UNHRC)

Given the lack of redress for serious human rights violations, the UN Human Rights Council (UNHRC) in 2015 passed Resolution 30/1, Promoting reconciliation, accountability and human rights in Sri Lanka. The Council has passed resolutions on Sri Lanka consecutively from 2012, owing to the lack of willingness and action by the government to provide effective remedies to victims linked to the armed conflict. In 2020 the government withdrew its support for the 2015 resolution.⁵⁸ In 2021, the Council voted on a resolution to set up a mechanism to collect evidence for future accountability efforts.⁵⁹

OFFICE ON MISSING PERSONS

Following commitments made in the 2015 UNHRC resolution 30/1, in 2016 a permanent body was statutorily formed to investigate cases of missing persons.⁶⁰ The members of the Office on Missing Persons (OMP) are appointed through the parliament's Constitutional Council, and therefore is at the mercy of the independence of the Council. Amnesty International has documented concerns around the OMP's membership.⁶¹ In November 2020, the OMP released a list of complaints and information received by the OMP regarding missing and disappeared persons. The lists were then taken down under the leadership of controversial Chair Upali Abeyratne,⁶² and new lists have been uploaded at the time of submission.⁶³ Despite ample evidence publicly available to the contrary, in 2022, the current Chair of the OMP rebutted claims that those who surrendered to the Sri Lankan authorities at the end of the war in 2009 went missing,⁶⁴

In 2022 the government announced its interest to set up a truth and reconciliation mechanism, which received cabinet approval in 2023.⁶⁵ Amnesty International has urged the government to consider⁶⁶ when establishing such a Truth and Reconciliation Commission.

RECOMMENDATIONS

- Ensure the impartial adjudication of cases of serious human rights violations through effective and impartial investigations, witness and victim protection and prosecutions;
- Ensure there is no political interference in court cases of serious human rights violations, including through the appointment of Commissions of Inquiry;
- Accede to the Rome Statute of the International Criminal Court and implement it fully into national law;
- Amend the Constitutional provision that enables the President to make pardons of persons convicted by the judiciary for human rights violations or crimes under international law;
- Stop the harassment of and reprisals against criminal investigators for their roles in seeking accountability for perpetrators of human rights violations;
- Ensure the effective operation of the Office on Missing Persons and ensure that any members appointed are committed to the mandate of the Office, and are keen to facilitate effective investigations into cases before the office;

⁵⁸ The Hindu, *Sri Lanka notifies UN about rights resolution withdrawal*, 26 February 2020, <https://www.thehindu.com/news/international/sri-lanka-notifies-un-about-rights-resolution-withdrawal/article61626417.ece>

⁵⁹ UNHRC resolution 46/1

⁶⁰ OMP Act, Section 10, <https://www.srilankalaw.lk/Volume-VI/office-on-missing-persons.html>

⁶¹ 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/>

⁶² 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/>

⁶³ Official website of the Office on Missing Persons <http://www.omp.gov.lk/missing-persons>

⁶⁴ Reuters, *Families in Sri Lanka yearn for answers on relatives who disappeared in civil war*, 2 November 2022, <https://www.reuters.com/world/asia-pacific/sri-lankans-yearn-answers-relatives-who-disappeared-civil-war-2022-10-26/>

⁶⁵ Economy Next, *Sri Lanka cabinet nod for truth & reconciliation mechanism as talks threaten to collapse*, 17 January 2023, <https://economynext.com/sri-lanka-cabinet-nod-for-truth-reconciliation-mechanism-as-talks-threaten-to-collapse-109429/>

⁶⁶ Tweet by Amnesty International South Asia available at <https://twitter.com/amnestysasia/status/1603312428326215681?s=20&t=RD7rPNyTy1DK1JGoSVzNNO>

- Any truth mechanism must be set up in line with country-wide consultations on transitional justice mechanisms which made recommendations on the contours of a credible truth-seeking mechanism, for example: one that is substantially different from past Presidential Commission of Inquiry, is able to determine the root causes of the conflict, make recommendations for non-recurrence, and refer cases for prosecutions with a view of holding perpetrators of violations to account. International law does not permit the grant of amnesties or similar measures of impunity for crimes under international law or serious human rights violations, and this must be understood from the outset;
- Promptly make the declaration under Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from victims.

RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AND LIBERTY AND SECURITY OF PERSON (ARTICLES 6, 7, 9 AND 14)

RECOGNITION OF THE RIGHT TO LIFE AND THE DEATH PENALTY

At the time of submission, the Sri Lankan Constitution did not recognize the right to life. Courts continue to hand down death sentences for drug-related offences as the death penalty remains in the law books.⁶⁷ In 2019, then President Maithripala Sirisena signed the death warrants of four persons convicted of drug-related offences, in a move that would have undone Sri Lanka's unofficial moratorium on the death penalty.⁶⁸ Notwithstanding the preparations made by the government to reinstate the death penalty,⁶⁹ civil society

⁶⁷See for e.g., Daily Mirror, *Suspended imprisonment on accused turned to death penalty*, 24 January 2023, https://www.dailymirror.lk/breaking_news/Suspended-imprisonment-on-accused-turned-to-death-penalty/108-252807 and Amnesty International, *Death sentences and executions 2021*, 24 May 2022, <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

⁶⁸ Amnesty International, *President Maithripala Sirisena Signs Execution Warrants for Four Prisoners, Plans Shrouded in Secrecy*, 26 June 2019, <https://www.amnesty.org/en/latest/press-release/2019/06/sri-lanka-president-maithripala-sirisena-signs-execution-warrants-for-four-prisoners-plans-shrouded-in-secrecy/>

⁶⁹ Amnesty International, *Halt preparations to resume executions*, 2 April 2019, <https://www.amnesty.org/en/documents/asa37/0075/2019/en/> and BBC News, *Sri Lanka begins recruitment drive for 'moral' hangmen*, 13 February 2019, <https://www.bbc.com/news/world-asia-47230147>

managed to secure a temporary stay against carrying out the executions.⁷⁰ There were eight death sentences imposed during 2021, including one for drug-related offences, but the true figure is likely to be higher.⁷¹

ALLEGATIONS OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Ahnaf Jazeem: Amnesty International appealed against the detention conditions of poet Ahnaf Jazeem, who was detained by the authorities since 16 May 2020 under the draconian PTA. Throughout the period of his detention, he was held in squalid conditions that may amount to cruel, inhuman or degrading treatment.⁷²

Ramzy Razeek: Ramzy Razeek, a retired government official and social media commentator, was detained since 9 April 2020 for a Facebook post. Authorities held him in conditions that may amount to cruel, inhuman or degrading treatment, while he was suffering from several medical complications, in overcrowded and unhygienic prison facilities.⁷³

Treatment of protesters: Amnesty International recorded at least three occasions where authorities ill-treated protesters demonstrating against the government in 2022 as a part of mass public protests against the government's handling of the economy. In response to a large protest outside then President Rajapaksa's private residence, on 31 March the Police arrested 54 individuals, including journalists covering the incident. Many of them complained of being assaulted and subjected to torture or other ill treatment in police custody.⁷⁴ On 9 July, six journalists were assaulted by members of the Special Task Force (STF) while they covered a demonstration outside then Prime Minister Wickremesinghe's private residence.⁷⁵ 21 July, protesters and journalists⁷⁶ complained of being beaten up by the Police and the Army as they dispersed peaceful protesters who had gathered outside the Presidential Secretariat.⁷⁷

In January 2023, Amnesty International called on the legislature⁷⁸ to reject the Bureau of Rehabilitation Bill which would enable torture and other ill-treatment. The bill permits employees at rehabilitation centres to use techniques that would amount to torture or other ill-treatment, including to strike, wound, ill-treat or wilfully neglect those held in such centres.⁷⁹ The bill was passed.⁸⁰

⁷⁰ First granted by the Supreme Court on 5 July 2019, and subsequently extended on 29 May 2020 and 11 February 2021. See, Colombo Gazette, *FRs against death penalty listed for support on 14 October*, 29 May 2020, <https://colombogazette.com/2020/05/29/frs-against-death-penalty-listed-for-support-on-14-october/>; Colombo Gazette, *Stay order on death penalty extended*, 11 February 2021, <https://colombogazette.com/2021/02/11/stay-order-on-death-penalty-extended/>; and Amnesty International, *Death sentences and executions 2020*, 21 April 2021, <https://www.amnesty.org/en/documents/act50/3760/2021/en/>

⁷¹ Amnesty International, *Death sentences and executions 2021*, 24 May 2022, <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

⁷² Amnesty International, *Letter to the Human Rights Commission of Sri Lanka on Ahnaf Jazeem*, 1 July 2021, <https://www.amnesty.org/en/documents/asa37/4355/2021/en/>

⁷³ Amnesty International, *Health concerns for detained blogger: Ramzy Razeek*, 20 May 2020, <https://www.amnesty.org/en/documents/asa37/2357/2020/en/>

⁷⁴ Amnesty International, *Authorities must respect peoples' right to protest*, 1 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/sri-lanka-authorities-must-respect-peoples-right-to-protest/>

⁷⁵ Amnesty International, *End government crackdown on peaceful protesters*, 5 August 2022, <https://www.amnesty.org/en/documents/asa37/5928/2022/en/>

⁷⁶ Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022, <https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

⁷⁷ Amnesty International, *Shameful, brutal assault on peaceful protesters must immediately stop*, 22 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/sri-lanka-shameful-brutal-assault-on-peaceful-protesters-must-immediately-stop/>

⁷⁸ Amnesty International, *Reject the Bureau of Rehabilitation Bill: Open letter to Members of Parliament in Sri Lanka*, 17 January 2023, <https://www.amnesty.org/en/documents/asa37/6359/2023/en/>

⁷⁹ Tweet by Amnesty International South Asia <https://twitter.com/amnestysasia/status/1610696151917023232?s=20&t=WrfmK3AFHKhgD5XdfNk6hg>

⁸⁰ Daily News, *Rehabilitation Bill passed with majority*, 19 January 2023, <https://www.dailynews.lk/2023/01/19/local/295500/rehabilitation-bill-passed-majority>

RECOMMENDATIONS

- Abolish the death penalty, commute all death sentences to terms of imprisonment, and recognize the right to life in Sri Lanka's Constitution;
- Strengthen legal safeguards for eliminating all forms of ill-treatment or torture, both in police custody and in extra-custodial settings (including during protests);
- Ensure the prompt and fair investigation of allegations of torture or other ill-treatment by an independent authority different from the authority investigating or prosecuting the case against the alleged victim, with a view to holding those credibly accused to account;
- Ensure that detention centres comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners;
- Ensure that victims of torture and other forms of ill-treatment are provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Ensure that all detainees are guaranteed prompt and unimpeded access to legal counsel in pretrial detention and while on trial, including having a lawyer present during interrogation by police.

INTERNALLY DISPLACED PERSONS, REFUGEES AND ASYLUM SEEKERS (ARTICLES 2, 7, 12, 13, 17 AND 26)

Refugees and asylum seekers in Sri Lanka, primarily from Pakistan, Afghanistan and Iran, came under attack following the Easter Sunday bombings in 2019. More than 1,100 refugees and asylum seekers were forced from their homes by violent mobs in the aftermath,⁸¹ some due to direct threats of violence by individuals and groups armed with knives and sticks and relocated to community centres and a police station close to their original homes.⁸² Thereafter, over 150 refugees and asylum seekers who were sheltering at the garage of a local police station were moved to a camp located in Vavuniya, in the north of Sri Lanka, prepared by the United Nations High Commissioner for Refugees (UNHCR) in collaboration with the government. Refugees and asylum seekers, many members of minority groups in their country of origin, experienced multiple forms of displacement including forced evictions from homes, contributing to further insecurity.⁸³ The government then made attempts to forcibly return asylum seekers back to their countries of origin in violation of international law and the principle of non-refoulement.⁸⁴

RECOMMENDATIONS

- Ensure the safety, dignity and human rights of all refugees and asylum seekers within Sri Lanka are protected, including the right to adequate housing in both temporary and long-term arrangements, protection from arbitrary or forced evictions, security of tenancy and access to remedies to protect these rights in law;

⁸¹ Amnesty International, *Refugees fear for their safety amid desperate conditions*, 16 May 2019,

<https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-refugees-fear-for-their-safety-amid-desperate-conditions-2/>

⁸² Amnesty International, *Unsafe at home, unsafe abroad: State obligations towards refugees and asylum seekers in Sri Lanka*, 1 November 2019, <https://www.amnesty.org/en/documents/asa37/1250/2019/en/>

⁸³ Amnesty International, *Unsafe at home, unsafe abroad: State obligations towards refugees and asylum seekers in Sri Lanka*, 1 November 2019, <https://www.amnesty.org/en/documents/asa37/1250/2019/en/>

⁸⁴ Amnesty International, *Halt forced returns of Pakistani religious minorities*, 14 June 2019,

<https://www.amnesty.org/en/latest/news/2019/06/sri-lanka-halt-forced-returns-of-pakistani-religious-minorities-2/>

- Guarantee the rights to safety, security and freedom of movement for refugees and asylum seekers regardless of their nationality or immigration status. Protective custody or relocation that restricts freedom of movement of refugees and asylum seekers should be for as short a time as possible, where necessary, proportionate and in accordance with the requirement to guarantee adequate safety and shelter, food, water and sanitation, decent living conditions and personal liberty for those refugees and asylum seekers that remain displaced, until their relocation or resettlement;
- Ensure prompt, independent, impartial and effective investigations into violence directed towards refugees and asylum seekers or their property. Where there is adequate evidence, perpetrators should be prosecuted and tried before a court of law, with the right to a fair trial respected;
- Accede to the Refugee Convention and the Optional Protocol to the Convention.

NON-DISCRIMINATION, PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL AND RELIGIOUS HATRED, FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEF, AND THE RIGHTS OF MINORITIES (ARTICLES 2, 18, 20, 26 AND 27)

In 2021 Amnesty International documented several decisions and efforts that indicated a worrying trend of increased marginalization and targeting of Sri Lanka's Muslim community, including a cabinet proposal to ban the burqa and the niqab (face veil), a cabinet proposal to ban madrasas and the mandatory scrutiny of all Islamic religious books arriving in the country.⁸⁵

Regulations issued under the Prevention of Terrorism Act (PTA) on de-radicalization of people from holding violent extremist religious ideology: On 12 March 2021, the Sri Lankan President issued new regulations under the PTA. The regulations intended to refer people who have surrendered or have been arrested on suspicion of an offence under the PTA or the Emergency Regulations No. 1 of 2019, 11 to a 'rehabilitation programme.' As documented by Amnesty International,⁸⁶ the regulations contained overly broad, vague and subjective offences; would facilitate 'rehabilitation' and detention up to two years without a trial; would prevent suspects from challenging their detention through legal means and safeguards that would usually be available by law; limit access to family while in 'rehabilitation'; provide broad powers of arrest to authorities including to the armed forces; and put suspects at risk torture and other ill-treatment including sexual violence and other forms of gender-based violence, enforced disappearances and extrajudicial executions while in detention. At the time of submission, the regulations had not come into effect as it was being challenged in the Supreme Court.

Forced cremations⁸⁷: In March 2020, the Sri Lankan authorities moved to change the Ministry of Health guidelines on the management of a dead body in the context of COVID-19 to order cremations for anyone who

⁸⁵ 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/>

⁸⁶ 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/>

⁸⁷ 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/>

died or is suspected to have died of COVID-19.⁸⁸ Despite the World Health Organization (WHO) guidance that allowed for either burials or cremations, forced cremations took place for almost a year in Sri Lanka. On 5 March 2021, the government resumed burials- a long overdue and welcome move. However, the sites earmarked for burials were in remote parts of the country, inaccessible to many.

Attacks⁸⁹: Sri Lanka's Muslim population has been the target of violence by mobs that rarely faced accountability under consecutive governments. Muslim-owned houses, shops and businesses and places of religious worship have been attacked on multiple occasions over consecutive years in the recent past. Examples of this violence were seen in Aluthgama and Beruwala in 2014 where at least four people were killed, and many others were injured.⁹⁰ In Gintota in 2017, dozens of Muslim homes and businesses were burned and vandalized.⁹¹ In Ampara in 2018, violent mobs attacked Muslim houses, businesses, mosques and other property. In Digana and Theldeniya also in 2018, similar attacks took place while the Police looked on, and according to media reports allegedly took part in the violence.⁹² In Negombo in 2019 in the aftermath of the April 2019 bombings, mob attacks targeted mostly refugees and asylum seekers, as flagged previously. In attacks in the North-western province and in Minuwangoda in 2019, at least one person was killed as a result of widespread violence that took place in some areas. Eyewitnesses that spoke with Amnesty International claimed the Police did little to intervene to stop the violence.⁹³

TARGETED HARASSMENT

The Sri Lankan authorities have mounted a concerted clamp down on civic space, including arresting those of Muslim faith who have criticized the government. Amnesty International recorded several key cases where members of the Muslim community have been arbitrarily and unfairly targeted by law enforcement authorities.⁹⁴

Hejaaz Hizbullah:⁹⁵ Amnesty International recorded the arbitrary arrest and detention of a Muslim lawyer who is a minority rights advocate appearing as counsel on behalf of many Muslim victims of human rights violations. Hejaaz Hizbullah was arrested under the PTA in April 2020 and was denied unrestricted access to family and legal counsel for most of his detention. In March 2021, he was charged and indicted for "inciting communal disharmony," for "advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" under the ICCPR Act (national legislation giving effect to the ICCPR) and for conspiracy and abetment charges under the Penal Code. Hizbullah is currently out on bail after almost two years in detention. We believe that the charges against him are trumped up to penalize him for his activism.

Ahnaf Jazeem:⁹⁶ 25-year-old poet Ahnaf Jazeem was arrested by authorities also using the draconian PTA in May 2020 for a collection of poems he published under the title "Navarasam." Sinhalese-speaking law enforcement officers have said that the poems written in Tamil contain "extremist" messages. Amnesty International reviewed the poems and have found that his writings speak against extremism, violence and war. Ahnaf was in detention for 19 months before being allowed bail. Access to lawyers was only permitted after two months of continuous appeals by his lawyer, and only with officers of the Terrorism Investigation Division (TID) listening in on privileged conversations between Jazeem and his lawyers. Jazeem was also made to sign documents written in a language he doesn't understand. Authorities have attempted to get him to make self-

⁸⁸ Amnesty International, *Sri Lanka: Religious minorities must have their final rites respected*, 3 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/sri-lanka-religious-minorities-must-have-their-final-rites-respected/>

⁸⁹ 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/>

⁹⁰ Amnesty International, *Sri Lanka: Act now to prevent further bloodshed in anti-Muslim violence*, 17 June 2014, www.amnesty.org/en/latest/news/2014/06/sri-lanka-act-now-prevent-further-bloodshed-anti-muslim-violence/

⁹¹ Daily FT, *Gintota and the shadows of extremism*, 24 November 2017, <https://dbsjeyaraj.com/dbsj/archives/56506>

⁹² Amnesty International's submission to the Special Rapporteur on Freedom of Religion and Belief, 8 June 2020, <https://www.amnesty.org/en/documents/asa37/2487/2020/en/>

⁹³ Amnesty International's submission to the Special Rapporteur on Freedom of Religion and Belief, 8 June 2020, <https://www.amnesty.org/en/documents/asa37/2487/2020/en/>

⁹⁴ 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/>

⁹⁵ 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/>

⁹⁶ 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/>

incriminating, forced confessional statements. He was denied access to his family for close to five months. In 2022 the Sri Lankan authorities added Ahnaf to a list of designated persons.⁹⁷

Ramzy Razeek:⁹⁸ Social media commentator, Ramzy Razeek was arrested on 9 April 2020 for a Facebook post on 2 April 2020, where he called for an ideological jihad (ideological struggle), using the pen and keyboard as weapons, against the government's policy of forced cremations in the context of COVID-19. Razeek spent more than five months in detention without charge or proper access to a lawyer amidst deteriorating health conditions. He was finally released on bail on 17 September 2020. Although released, the case against Razeek remains open, and faces the threat of arrest and formal charges being brought against him at any time - a means through which his harassment continues to date.

RECOMMENDATIONS

- Take effective and targeted measures to ensure the protection and prevent violence against the Muslim community and other religious and ethnic minorities;
- Ensure the protection of the rights of minorities to freedom of expression, and to practise and manifest their religion, in keeping with international human rights law, and international best practice;
- Hold a prompt, thorough, independent and impartial investigation into all allegations of human rights violations and abuses during attacks and violence against minorities, ensuring that all those reasonably suspected of criminal responsibility are brought to justice through a fair trial by a competent court, without recourse to the death penalty;
- Stop the targeted harassment of minority communities, including by misusing the criminal justice system and abusing legislation such as the PTA and the ICCPR Act and ensure that any pending prosecutions stemming solely from the peaceful exercise of their rights, are dropped immediately;
- Provide all those affected by the violence with justice and the right to remedy, including through compensation, restitution, and accountability for those who perpetrated violence.

RIGHTS TO FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION (ARTS. 19, 21 AND 22)

⁹⁷ Asian Mirror, *Muslim poet Ahnaf Jazeem asks Govt. to remove him from terror list*, 26 September 2022, <https://asianmirror.lk/news/item/34489-muslim-poet-ahnaf-jazeem-asks-govt-to-remove-him-from-terror-list>; Extraordinary gazette available at http://www.documents.gov.lk/files/egz/2022/8/2291-02_E.pdf

⁹⁸ 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/>

FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

The right to freedom of expression came under attack on numerous occasions during the review period. Ramzy Razeek,⁹⁹ Shakthika Sathkumara,¹⁰⁰ Hejaaz Hizbullah¹⁰¹ and Sepal Amarasinghe¹⁰² were all targeted for exercising their right to freedom of expression. The authorities misused the ICCPR Act to selectively target critics and minorities, while also using the PTA as a tool to suppress dissent.

COVID-19: In April 2020 in response to Covid-19, acting Inspector General of Police (IGP) C.D. Wickramaratna instructed the Criminal Investigations Division (CID) and the police to take legal action against those who publish posts on social media criticizing government officials and obstructing their duties.¹⁰³ The instructions from the Acting IGP to arrest individuals merely for criticizing government officials is a violation of the right to freedom of expression.

Within the first month of lockdown, at least 17 people had been arrested for “spreading misinformation and false information” during the government’s COVID-19 response operations.¹⁰⁴ Since coming out of lockdown in most areas of the country in May 2020, Sri Lankan authorities issued guidelines on public gatherings.¹⁰⁵ While strongly discouraging public meetings, they issued instructions around how they must be conducted in the event such meetings were considered essential, including for example physical distancing, the use of face masks, etc.¹⁰⁶ On 9 June 2020, the police disrupted two anti-racist protests organized by the Frontline Socialist Party (FSP) in solidarity with Black Lives Matter after the police killed George Floyd in the USA. The police obtained an order by the Colombo Fort Magistrate on 8 June 2020 preventing the protest near or in the vicinity of the US embassy in Colombo citing COVID-19 health regulations.¹⁰⁷ Despite the protestors abiding by health guidelines, practising physical distancing while abiding by the court order, the police arrested more than 53 protestors.¹⁰⁸ A month later and citing again concerns around the pandemic, on 9 July 2020 the police attempted to obstruct a memorial event commemorating victims of the Navalay church bombing. In 1995, hundreds of civilians were allegedly killed by the Sri Lankan Air Force when they bombed around Navalay, in Jaffna, where internally displaced Tamils were seeking shelter.¹⁰⁹ Even after the court denied the police’s request for an interim order to ban the commemoration, the police went ahead to disperse and obstruct the protest. Since then, the police have repeatedly tried to obstruct peaceful protests organized by families of people who were forcibly disappeared. The police obstructed protests held in Batticaloa in the eastern province to mark the International Day of the Victims of Enforced Disappearances.¹¹⁰ The police sought an interim order from magistrates against the protests, citing, among other reasons, COVID-19 as a reason for the protests to be stopped. The Sri Lankan authorities acted selectively in applying restrictions on public gatherings.¹¹¹

⁹⁹ Amnesty International, *Poet detained for one year without charge: Ahnaf Jazeem*, 14 May 2014, <https://www.amnesty.org/en/documents/asa37/4119/2021/en/>

¹⁰⁰ Amnesty International, *Writer faces up to 10 years jail for story: Shakthika Sathkumara*, 29 July 2019, <https://www.amnesty.org/en/documents/asa37/0800/2019/en/>

¹⁰¹ Amnesty International, *Concerns mount for detained lawyer: Hejaaz Hizbullah*, 27 April 2020, <https://www.amnesty.org/en/documents/asa37/2221/2020/en/>

¹⁰² Tweet by Amnesty International South Asia available at <https://twitter.com/amnestysasia/status/1612425423803265024?s=20&t=sWU8uToRyAfEBQVQSZXkEg>

¹⁰³ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

¹⁰⁴ Amnesty International, *Old ghosts in new garb: Sri Lanka’s return to fear*, 17 February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

¹⁰⁵ Newswire, *Health Ministry new guidelines for weddings, funerals, places of worship & public meetings*, 27 May 2020, www.newswire.lk/2020/05/27/heath-ministry-new-guidelines-for-weddings-funerals-places-of-worship-public-meetings/

¹⁰⁶ Newswire, *Health Ministry new guidelines for weddings, funerals, places of worship & public meetings*, 27 May 2020, www.newswire.lk/2020/05/27/heath-ministry-new-guidelines-for-weddings-funerals-places-of-worship-public-meetings/

¹⁰⁷ Newswire, *Police obtain court order against FSPs “I can’t breathe” protest against US*, 8 June 2020, www.newswire.lk/2020/06/08/policeobtain-court-order-against-fsps-i-cant-breathe-protest-against-us/

¹⁰⁸ Newswire, *Police obtain court order against FSPs “I can’t breathe” protest against US*, 8 June 2020, www.newswire.lk/2020/06/08/policeobtain-court-order-against-fsps-i-cant-breathe-protest-against-us/

¹⁰⁹ Groundviews, *Naval church bombing – 25 years on*, 7 July 2020, <https://groundviews.org/2020/07/07/naval-church-bombing-25-years-on/>

¹¹⁰ Groundviews, *Disappearances in Sri Lanka: Struggles by families and reprisals*, 2 September 2020, <https://groundviews.org/2020/09/02/sinhalese-tamils-and-muslims-their-quest-is-the-same/>

¹¹¹ Compare video footage of National War Heroes’ Day Commemoration Ceremony, 19 May 2020, www.youtube.com/watch?v=QtgJbZKkAp8 with Newswire, *WATCH: Huge crowds gather in Kotagala to pay last respects to*

Memorial activities: On multiple occasions during the period under review, law enforcement authorities attempted to block memorial activities of families affected by the war.¹¹² In 2019 University authorities removed a war memorial at the Jaffna university, which depicted the civilians killed in the final phase of the civil war in 2009 in Mullivaikkal in Sri Lanka's northern Mullaitivu district.¹¹³ The practice of blocking memorial activities continued around key dates, such as in May and in November.¹¹⁴

Economic crisis: Sri Lanka witnessed large-scale demonstrations during the period under review. Amnesty documented in detail¹¹⁵ many instances of human rights violations in 2022 where authorities used excessive and unnecessary force to disperse protests which were largely peaceful. In two incidents, live ammunition was fired at protesters in April 2022 in Rambukkana and again in July 2022 in Colombo, resulting in at least two deaths.¹¹⁶ Authorities failed to protect peaceful protesters and facilitate protests during these incidents and used the armed forces to police protests.¹¹⁷

FREEDOM OF ASSOCIATION

Consecutive governments made attempts to amend the Voluntary Social Service Organisations Act (VSSO Act), which is the domestic legislation that regulates the right to association and establishes the process for the registration and supervision of NGOs. In August 2020 the government attempted to amend the law to grant the NGO Secretariat excessive powers to regulate NGOs in a manner inconsistent with international law. In addition to attempts to amend the VSSO Act, the government further showed signs of increasing its control over NGOs, including attempts to control and dictate the type of work and activities that NGOs can and cannot do,¹¹⁸ while monitoring them constantly.¹¹⁹ In 2022, the government made fresh attempts to bring in amendments to the VSSO Act. The proposed amendments would restrict the right to freedom of association, potentially hampering the operations of NGOs, for example through lengthy registration processes, imposing fines and imprisonment for non-registration, and giving powers to authorities to suspend, ban and dissolve NGOs.

RECOMMENDATIONS

- End the clampdown on dissent and ensure the facilitation and protection of the rights to freedom of peaceful assembly, freedom of expression and freedom of association of all individual and groups, without discrimination;
- Hold to account those responsible for attacks against protesters, violations of freedom of expression and peaceful assembly, through a prompt, thorough and impartial investigation conducted by an independent authority different from the accused authority;
- Drop all charges for participation in an "unlawful assembly" brought against protesters solely for their peaceful exercise of their rights to freedom of expression and peaceful assembly, and release unconditionally those facing such charges;
- Repeal the Prevention of Terrorism Act (PTA) and issue an immediate moratorium on its use; Guarantee the protection of the human rights of all other PTA detainees including guarantees of 36

Arumugan Thondaman, despite curfew, 30 May 2020, www.newswire.lk/2020/05/30/watch-massive-crowd-in-kotagala-to-pay-last-respect-to-former-minister/

¹¹² Tweet by Amnesty International South Asia

https://twitter.com/amnestyasiasa/status/1262288552756277251?s=20&t=oB_mokOXTfohc8swxiiChw

¹¹³ The Hindu, *Removal of war victims' memorial at Jaffna University sparks tension*, 9 January 2021,

<https://www.thehindu.com/news/international/tense-situation-at-jaffna-university-after-authorities-remove-war-memorial/article33535428.ece>

¹¹⁴ Sri Lanka Brief, *Military blocks access to Jaffna Keerimalai Nakuleasvaram temple for Tamils on the remembrance day*, 21 July 2021, <https://srilankabrief.org/sri-lanka-military-blocks-access-to-jaffna-keerimalai-nakuleasvaram-temple-for-tamils-on-the-remembrance-day/>

¹¹⁵ Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022,

<https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

¹¹⁶ Amnesty International, *Penalized for Protesting: Sri Lanka's Crackdown on Protesters*, 8 September 2022,

<https://www.amnesty.org/en/documents/asa37/5986/2022/en/>

¹¹⁷ Amnesty International, *Authorities must refrain from use of military to police protests*, 14 July 2022, [Sri Lanka: Authorities must refrain from use of military to police protests - Amnesty International](https://www.amnesty.org/en/documents/asa37/5986/2022/en/)

¹¹⁸ A copy of the letter available at https://twitter.com/Mari_deSilva/status/1232594243107147777?s=20

¹¹⁹ Amnesty International, *Old ghosts in new garb: Sri Lanka's return to fear*, 17 February 2021,

<https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

due process and a fair trial, and protection from arbitrary arrest, detention, torture or other ill-treatment;

- Ensure that journalists, media workers, lawyers and human rights defenders have safe access to protest sites, and allow them to carry out their duties safely and without fear of reprisals;
- Refrain from deploying the armed forces and from using military equipment and techniques for the policing of public assemblies;
- Protect the physical safety of anyone taken into custody by the security forces, and guarantee the respect of their rights to liberty and security of person, to a free and fair trial, to be informed of the reason for arrest and the place of detention, and the right to be brought promptly before a judge, and ensure access to legal counsel and family;
- Stop all labelling peaceful protesters as criminals or terrorists;
- Ensure that any amendments to the VSSO Act respects, protects and fulfils the right to freedom of association.

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SRI LANKA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE 137TH SESSION, 27 FEBRUARY- 24 MARCH 2023

This submission has been prepared in advance of the UN Human Rights Committee's sixth periodic review of Sri Lanka. In this submission Amnesty International sets out its concerns in relation to issues related to the constitutional framework, non-discrimination and equality between men and women, states of emergency and counter-terrorism measures, accountability for serious human rights violations and the right to an effective remedy, the right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person; internally displaced persons, refugees and asylum seekers; the prohibition of advocacy of national, racial and religious hatred, freedom of conscience and religious belief, and the rights of minorities; rights to freedom of expression, peaceful assembly and freedom of association. This is not an exhaustive account of our organization's human rights concerns in Sri Lanka.

INDEX: ASA 37/6398/2023

JANUARY 2023
LANGUAGE: ENGLISH

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