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## Freedom in the World 2019 - Sri Lanka

Partly Free

56 /100

### Overview:

Sri Lanka has experienced improvements in political rights and civil liberties since the 2015 election of President Maithripala Sirisena. However, the government has been slow to implement transitional justice mechanisms needed to address the aftermath of a 26-year civil war between government forces and Tamil rebels, which ended in 2009. Sirisena's reputation as a democratic reformer was further tarnished by a constitutional crisis in 2018, in which he attempted to unilaterally replace the prime minister, dissolve Parliament, and hold snap elections. The moves were blocked by the parliamentary majority and the courts.

### Key Developments:

#### Key Developments in 2018:

- After a delay of more than two years, local council elections finally took place in February. The Sri Lanka People's Front (SLPP), a new political group headed by former president Mahinda Rajapaksa, won over 44 percent of the vote.
- In March, anti-Muslim rioting in the Kandy district, which included the participation of Buddhist politicians and the police, led to the destruction of mosques and other property, as well as documented assaults on Muslims and at least two deaths.
- In October, President Sirisena sacked Prime Minister Rani Wickremesinghe and attempted to replace with him with Rajapaksa. Parliament repeatedly staged no-confidence votes against Rajapaksa, and he was unable to establish his authority as head of government, prompting Sirisena in November to order the dissolution of Parliament and call snap elections. His actions were widely considered unconstitutional.
- In December, the Court of Appeal ruled that Rajapaksa could not take office, and the Supreme Court ruled unanimously against the president's dissolution of Parliament. The decisions effectively rolled back the president's moves and restored Wickremesinghe to the premiership.

### Political Rights and Civil Liberties:

## POLITICAL RIGHTS: 24 / 40

## A. ELECTORAL PROCESS: 9 / 12 (+1)

**A1. Was the current head of government or other chief national authority elected through free and fair elections? 3 / 4**

The 1978 constitution vested strong executive powers in the president, but the approval of the 19th Amendment in 2015 curtailed those powers by reintroducing term limits—holding the president to a maximum of two five-year terms—and requiring the president to consult the prime minister on ministerial appointments, among other changes. The prime minister and cabinet must maintain the confidence of Parliament.

President Sirisena was elected in 2015, defeating Rajapaksa, the incumbent, with 51 percent of the vote. Both were members of the Sri Lanka Freedom Party (SLFP), but Sirisena ran as the candidate of an opposition alliance. Monitors from the Commonwealth Observer Group noted government abuses of administrative resources, as well as preelection violence that mainly affected Sirisena supporters, but deemed the election generally credible. Sirisena appointed Wickremesinghe as prime minister that year.

**A2. Were the current national legislative representatives elected through free and fair elections? 3 / 4**

The 225-member unicameral Parliament is elected for six-year terms through a mixed proportional representation system. In the 2015 parliamentary elections, Wickremesinghe's United National Party (UNP) led a coalition, the National Front for Good Governance, to victory with 106 seats. The SLFP-led United People's Freedom Alliance (UPFA) took 95 seats, and the Tamil National Alliance (TNA), the largest party representing the ethnic minority, won 16 seats. Three smaller groups divided the remainder. While dozens of violent incidents, including murder, were reported prior to the elections, the polling itself was considered credible.

Local council elections originally scheduled for 2015 were finally held in February 2018 after a delay of more than two years, which the government blamed on a dispute over delimitation of voting districts. Provincial council elections scheduled for 2017 were also repeatedly postponed and had not yet been held at the end of 2018, which the government also attributed to delimitation issues.

**A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 3 / 4 (+1)**

The Election Commission of Sri Lanka, which administers and oversees all elections in the country, has built a reputation for independence in recent years. A member of the three-person commission was at the forefront in petitioning the Supreme Court against the president's dissolution of Parliament in November 2018. The commissioner's stance was important, as the controversial attempt by President Sirisena to call early parliamentary elections—part of his effort to replace Prime Minister Wickremesinghe—would have needed the approval of all commission members.

In 2017, after changes to the legal framework for local elections were adopted, the government cited constituency delimitation issues to justify the postponement of the elections. But the chairperson of the election commission declared that he would authorize elections in areas that were not affected by the delimitation concerns, which forced the government to finally hold the elections in all constituencies in February 2018. Analysts attributed the repeated delays to the ruling party's fear that it would be defeated in the local polls.

*Score Change: The score improved from 2 to 3 because the election commission showed independence by holding local council elections despite the government's efforts to continue postponing them, and by resisting the president's unconstitutional attempt to call early parliamentary elections.*

## B. POLITICAL PLURALISM AND PARTICIPATION: 10 / 16

### **B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 3 / 4**

A range of political parties are able to operate freely and contest elections. The success of the SLPP, founded in 2016 and led by former president Rajapaksa, in the February local council elections demonstrated that new parties can form and operate without significant interference.

However, political debates between parties sometimes involve an element of violence and intimidation, which became apparent during the 2018 constitutional crisis. Among other incidents, Rajapaksa supporters attacked legislators opposed to his appointment as prime minister with chairs and chili powder to prevent them from holding a no-confidence vote in November.

### **B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4**

Opposition groupings are generally free to carry out peaceful political activities and are able to win power through elections. Most recently, the opposition SLPP won control of 231 out of 340 local councils in the February 2018 elections. However, opposition figures and supporters sometimes face harassment. Election observers noted that some opposition party members were attacked and intimidated in the Northern Province during the 2015 parliamentary election campaign.

### **B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4**

The military often inserts itself into political affairs. Members of the military openly backed then president Rajapaksa ahead of the 2015 election, and the armed forces recognized his appointment as prime minister in October 2018 despite protests that the

move was unconstitutional. Vote buying and political bribery are also a concern. Monitors said the government offered gifts and handouts to voters ahead of the 2015 presidential election, and Rajapaksa's efforts to win lawmakers' support during the 2018 constitutional crisis reportedly included bribery, with dueling allegations that bribes were either offered or demanded.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4**

A number of parties explicitly represent the interests of ethnic and religious minority groups, including several Tamil parties and the Sri Lankan Muslim Congress, the country's largest Muslim party. Tamil political parties and civilians faced less harassment and fewer hindrances in voting during 2015 presidential and parliamentary elections compared with the 2010 elections. However, systemic discrimination, including via language laws and naturalization procedures, negatively affects Tamils' political participation. The interests of women are not well represented in Sri Lankan politics, and women hold less than 6 percent of the seats in Parliament.

**C. FUNCTIONING OF GOVERNMENT: 6 / 12 (-1)**

**C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4 (-1)**

President Sirisena's effort in October 2018 to remove Prime Minister Wickremesinghe and replace him with Rajapaksa, and his subsequent attempt in November to dissolve Parliament and hold snap elections, were widely considered unconstitutional executive infringements on parliamentary authority. The crisis also left Sri Lanka without a fully functioning government for almost two months as the two claimants to the premiership sought to assert their legitimacy.

Nevertheless, Parliament demonstrated its independence by energetically resisting Rajapaksa's appointment, passing no-confidence votes and making it impossible for him to form a government. After a series of favorable court rulings, Wickremesinghe was restored to office in December.

*Score Change: The score declined from 3 to 2 due to the disruption to governance caused by the president's unconstitutional and ultimately unsuccessful attempts to replace the prime minister, dissolve Parliament, and hold snap elections.*

**C2. Are safeguards against official corruption strong and effective? 2 / 4**

The Sirisena administration's efforts to fight corruption, including arrests and indictments, have led to few convictions. Corruption remains a problem in the judiciary, public procurement, and customs.

In May 2018, Parliament approved a new law that created special courts to deal specifically with corruption. The change was meant to accelerate cases that have been delayed for years, many from former president Rajapaksa's administration. In September, Gotabhaya Rajapaksa, a former defense minister and brother of the former president, was indicted in an anticorruption court for allegedly misusing public funds to build a memorial to his parents. He awaited trial at the end of the year, and it remained to be seen whether the new courts would yield more corruption convictions.

### **C3. Does the government operate with openness and transparency? 2 / 4**

Individuals have used the 2017 Right to Information Act to access government records, but some large contracts with Chinese companies have lacked transparency. Notably, the government did not publish the details of a controversial lease agreement, signed in late 2017, that authorized a Chinese company to run the new Hambantota seaport for 99 years. In February 2018, the auditor general admitted that he could not provide precise figures on the size of the national debt due to the mismanagement of loan data.

## **ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION**

**Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favor of another group? -1 / 0**

Following the end of the civil war in 2009, the military presence in the Tamil-populated areas of the north and east increased. The Rajapaksa administration encouraged settlement by ethnic Sinhalese civilians by providing land certificates, housing, and other infrastructure, with the aim of diluting local Tamil majorities in these areas. While such policies ended after Rajapaksa left office in 2015, and some land has been released from military control, displacement of Tamil civilians remains a concern.

CIVIL LIBERTIES: 32 / 60 (+1)

## **D. FREEDOM OF EXPRESSION AND BELIEF: 8 / 16**

### **D1. Are there free and independent media? 2 / 4**

Freedom of expression is guaranteed in the constitution, and respect for this right has dramatically improved since 2015.

However, challenges to press freedom persist, and senior government officials and lawmakers sometimes threaten journalists. In June and July 2018, two local reporters, who worked with the *New York Times* on a story that scrutinized the Rajapaksa government's dealings with Chinese companies to build the Hambantota port, were attacked on social media and maligned by members of Parliament at a press conference.

Impunity for past crimes against journalists is a problem. Several investigations into journalists' killings have been reopened in recent years, but none have resulted in convictions.

**D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 2 / 4**

The constitution gives special status to Buddhism, while religious minorities face discrimination and occasional violence. The construction of new mosques sometimes leads to protests.

In March 2018, anti-Muslim rioting in the Kandy district, which included the participation of SLPP politicians and the police, led to the destruction of mosques and other property, as well as documented assaults on Muslims and at least two deaths. Violence against Christians remained a problem during the year; according to the National Christian Evangelical Alliance of Sri Lanka (NCEASL), there were 67 attacks against Christians reported between January and September.

**D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4**

Academic freedom is generally respected, but there are occasional reports of politicization at universities and a lack of tolerance for dissenting views among both professors and students, particularly for academics who study issues related to the Tamil minority.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 2 / 4**

The civil war remains a sensitive topic. State officials' harassment of civil society activists working on human rights issues in the north and east has deterred open discussion of those topics among private citizens. The attempted appointment of Rajapaksa—who was credibly accused of war crimes during his presidency—as prime minister in October 2018 contributed to a climate of fear among Tamils that also impeded free expression.

In an effort to suppress anti-Muslim rioting that broke out in March, the government blocked social media platforms including Facebook, Viber, and WhatsApp nationwide for three days.

**E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 8 / 12**

**E1. Is there freedom of assembly? 2 / 4**

Although demonstrations occur regularly, authorities sometimes restrict freedom of assembly. Police occasionally use tear gas and water cannons to disperse protesters. The army has continued to impose some restrictions on assembly in the north and east,

particularly for planned memorial events concerning the final battles of the long-running civil war, in which thousands of civilians were killed alongside Tamil rebels and their leaders.

**E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 3 / 4**

Nongovernmental organizations (NGOs) are generally free to operate without interference, but some NGOs and activists were subjected to harassment and violent attacks in 2018. In July, Srishobana Yogalingam, who campaigns against enforced disappearances, was assaulted in the northern city of Jaffna. Also that month, antitorture activist Amitha Priyanthi of the NGO Janasansadaya was attacked by two unidentified men on motorcycles near her home in Beruwela.

**E3. Is there freedom for trade unions and similar professional or labor organizations? 3 / 4**

Most of Sri Lanka's trade unions are independent and legally allowed to engage in collective bargaining. Except for civil servants, most workers can strike, though the 1989 Essential Services Act allows the president to declare any strike illegal.

While more than 70 percent of the mainly Tamil workers on tea plantations are unionized, employers routinely violate their rights. Harassment of labor activists and official intolerance of union activities, particularly in export processing zones, is regularly reported.

**F. RULE OF LAW: 8 / 16 (+1)**

**F1. Is there an independent judiciary? 3 / 4 (+1)**

Political interference with and intimidation of the judiciary have abated somewhat under the Sirisena administration, and the courts asserted their independence during the 2018 constitutional crisis. A series of preliminary rulings culminated in December, when the Court of Appeal determined that Rajapaksa could not act as prime minister without a legal basis for his authority, and the Supreme Court struck down President Sirisena's attempt to dissolve Parliament and call snap elections. Despite this display of autonomy from the highest courts, corruption and politicization remain problems in the lower courts.

*Score Change: The score improved from 2 to 3 because the Supreme Court and Court of Appeal demonstrated their independence by ruling against President Sirisena's moves to replace the prime minister and dissolve Parliament.*

**F2. Does due process prevail in civil and criminal matters? 2 / 4**

Due process rights are undermined by the Prevention of Terrorism Act (PTA), under which suspects can be detained for up to 18 months without charge. The law has been used to hold perceived enemies of the government, and many detained under the PTA's provisions have been kept in custody for longer than the law allows.

In September 2018, the cabinet approved a draft counterterrorism bill to replace the PTA. It would increase the powers of the Human Rights Commission to act as a check on abuses by security forces and reduce the number of acts that can be considered terrorism, among other improvements. However, the bill still allows the detention of terrorism suspects for up to one year without charge, and civil society organizations expressed concerns that its positive provisions could get watered down in Parliament.

### **F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 2 / 4**

Police and security forces are known to engage in abusive practices, including extrajudicial executions, forced disappearances, custodial rape, and torture, all of which disproportionately affect Tamils. Due to backlogs and a lack of resources, independent commissions have been slow to investigate allegations of police and military misconduct.

Of the numerous transitional justice mechanisms outlined in a 2015 UN resolution that Sri Lankan authorities assented to in order to address human rights violations in the aftermath of the civil war, the government has so far only established an Office of Missing Persons, which was created in 2017 and tasked with setting up a database of missing persons, advocating for missing persons and their families, and recommending means of redress. A bill to create an Office of Reparations was passed by Parliament in October 2018, while a truth commission and a war crimes court have not yet been created as mandated by the resolution.

### **F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 1 / 4**

Tamils report systematic discrimination in areas including government employment, university education, and access to justice.

LGBT (lesbian, gay, bisexual, and transgender) people face societal discrimination, occasional instances of violence, and some official harassment. A rarely enforced article of the penal code prescribes up to 10 years in prison for same-sex sexual activity.

Women suffer from sexual harassment and employment discrimination, as well as discriminatory legal provisions. In January 2018, President Sirisena reversed his finance minister's decision to lift a long-standing ban on women buying alcohol, as well as new regulations that would have allowed women to work in bars without a permit.

## **G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 8 / 16**

### **G1. Do individuals enjoy freedom of movement, including the ability to change**

### **their place of residence, employment, or education? 2 / 4**

Freedom of movement is restricted by security checkpoints, particularly in the north, but recent years have featured greater freedom of travel. Women with children less than five years old are not allowed to travel abroad for work. Access to education is impeded by corruption, with bribes often required to obtain primary school admission.

### **G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 2 / 4**

Government appropriation of land in the north and east after the civil war for economic development projects or to establish "high security zones" prevented many displaced people from returning to their property. However, the Sirisena administration has released some military-held land for resettlement. Corruption sometimes hinders the effective enforcement of property rights. Some women face gender-based disadvantages regarding inheritance under the customary laws of their ethnic or religious group.

### **G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 2 / 4**

Rape of women and children and domestic violence remain serious problems, and perpetrators often act with impunity. According to government statistics, out of 2,036 rapes reported in 2016, not one resulted in a conviction. Although women have equal rights under civil and criminal law, matters related to the family—including marriage, divorce, and child custody—are adjudicated under the customary laws of each ethnic or religious group, and the application of these laws sometimes results in discrimination against women.

### **G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4**

Migrant workers are often exposed to exploitative labor conditions. Although the government has increased penalties for employing minors, thousands of children continue to work as household servants, and many face abuse. Women and children in certain communities are also vulnerable to forced sex work. In recent years, the government has made some attempts to address human trafficking, including by establishing a specialized police unit to assist victims and those who report trafficking.

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#### **ecoi.net summary:**

Annual report on political rights and civil liberties in 2018



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