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UNIVERSAL PERIODIC REVIEW
SRI LANKA
4th Cycle - 2022

UNITED NATIONS COUNTRY TEAM

Universal Periodic Review (UPR) SRI LANKA 2017 – 4th Cycle **Joint Submission - UN Country Team**

1. Introduction

This submission collates human rights information available to the UN Country Team as contribution to the UN sources report to Sri Lanka's 4th cycle of UPR in January 2023.

2. Context

Since Sri Lanka's 3rd UPR review in November 2017 there were significant contextual developments including the Constitutional crisis of November 2018, the Easter Sunday terrorist attacks of April 2019, a new Government following Presidential and Parliamentary elections in November 2019 and August 2020, the Covid-19 pandemic since 2020 and, in 2022 a foreign exchange crisis and a default on foreign debt servicing.

The Government coalition resulting from the 2015-2016 elections encountered a crisis in late 2018 when then President Sirisena decided to replace the Prime Minister, in a move that the courts later reversed, deeming it unconstitutional.

On 21 April 2019, (Easter Sunday), three churches and three hotels were targeted in a series of coordinated Islamist terrorist suicide bombings. A total of 269 people were killed. The incident triggered anti-Muslim mob attacks in a number of locations, the proclamation of a State of Emergency and a large security operation.

In November 2019, the *Sri Lanka Podu Jana Peramuna* (SLPP) candidate, Gotabhaya Rajapaksa, won the Presidential elections. The Parliamentary elections of August 2020 confirmed the majority for SLPP. In November 2020, the Parliament passed the 20th Amendment to the Constitution, reversing some reforms introduced in 2015 by the 19thA. The 20thA centralised executive power in the office of the President and removed a number of procedural checks and balances to the executive presidency. It replaced the Constitutional Council - which restrained the Presidents discretion in appointing key State actors including the judiciary, the Attorney General and the Inspector General of Police- by a diluted mechanism. Concerns regarding a lack of independence in appointments resulted in the Global Alliance for National Human Rights Institutions (GANHRI) deciding to downgrade the Sri Lankan Human Rights Commission to B status.

In 2020 and 2021 Sri Lanka faced Covid-19 with strict lockdowns over extended periods of time, imposing restrictions to movement and arresting hundreds for curfew violations.

In 2022 Sri Lanka is suffering the effects of its worst economic crisis since independence. Mass protests and street violence in May and July forced the Government to resign. Sri Lanka defaulted on its external debt servicing on 20 May and is negotiating a programme with the IMF. Hyperinflation, power cuts, fuel and gas shortages, as well as a break down in supplies of medicines and food have had a serious impact on everyday life.

Sri Lanka acceded to the Optional Protocol to the Convention against Torture and has identified the Human Rights Commission of Sri Lanka as the National Prevention Mechanism (NPM) for the purposes of the optional protocol.

Since the last UPR review in November 2017 Sri Lanka has received five country visits by thematic special procedures¹.

During the 3rd UPR cycle the previous government reported advances in constitutional reforms and setting up structures of transitional justice to deal with past human rights violations. However, the administration resulting from the 2019 elections has not prioritised dealing with the past and that agenda has significantly weakened. Three offices created as part of that agenda (Office on Missing Persons, Office for Reparations and Office for National Unity and Reconciliation) have remained operational albeit with limited results and failing to gain the confidence of victims. Another office (Secretariat for Coordinating Reconciliation Mechanisms) was dismantled and plans to establish a Truth and Reconciliation Commission and a Special Judicial Mechanism were abandoned.

The National Human Rights Action Plan (NHRAP) for the period 2017 – 2021 was adopted in 2017. The process for drafting a new NHRAP is at its inception and many objectives in the NHRAP 2017 – 2021 remain unmet.

3. Implementation of Human Rights Obligations

1) Equality and Non – Discrimination

The Constitution of Sri Lanka guarantees equality before the law and equal protection of the law to all citizens (Art 12 (4)). However, several laws discriminate against women including customary, personal and family laws, Land Development Ordinance (regarding grants of land to women), Sections 365, 365A and 399 of the Penal Code that discriminate against LGBT persons criminalising same sex relations. Furthermore, the Constitution prohibits judicial review of past laws, written and unwritten (post-enactment review of constitutionality of legislation) notwithstanding any inconsistency with fundamental rights (Article 16). Equality and Non-Discrimination could be reinforced if a Bill of Rights in the Constitution would establish a hierarchy of fundamental rights over other legislation.

Slow progress on protecting rights of women is largely underpinned by social norms on gender, low representation of women in formal leadership (<6% of women in Parliament) to drive transformation, and lack of investment in gender equality and women's empowerment.²

The Muslim Marriage and Divorce Act includes provisions that permit child marriage, unfair divorce practices, marital rape and polygamy.³ In 2021, Cabinet decisions were announced to address key issues of consent and legal age, representation of women in Qazi Courts,⁴ and

¹ Working Group on Arbitrary Detention December 2017); Independent Expert on Foreign Debt (September 2018); Special Rapporteur on Freedom of Assembly and Association (July 2019), Special Rapporteur on Freedom of Religion and Belief (August 2019); Special Rapporteur on Contemporary Forms of Slavery it causes and consequences (November 2021).

² UNWOMEN

³ UNICEF

⁴ *Ibid.*

amendments to the law were approved by Cabinet⁵ but not yet presented to Parliament. There has been no progress on the reform of Thesawalamai and Kandyan Law, which also contain discriminatory provisions.⁶

Three bills recommending legislative reform removing gender discriminatory provisions in the General Marriages Ordinance, and the Land Development Ordinance, and introducing a minimum age of marriage in Sri Lanka were initiated by the Parliamentary Oversight Committee on Women and Gender and presented to Parliament but are yet to be enacted.⁷

2) Right to Life, Liberty and Security of a Person

"Right to life", -although not expressly guaranteed by the Constitution- is implicitly recognized through other fundamental rights. Capital punishment remains a legal penalty, but has not been implemented since 1976. In 2019 then President Sirisena announced plans to resume executions, but the idea was later abandoned with the change of Government.

The Report of the OHCHR Investigation on Sri Lanka (OISL) ⁸ of September 2015 noted that there were reasonable grounds to believe that crimes against humanity or war crimes were committed during the conflict. HRC Resolution 30/1 of 2015 builds on the OISL findings.⁹ In the reporting period there have been little progress in advancing accountability for mass violations identified in the OISL report.

Sri Lanka signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in December 2015 and ratified it in May 2016. In order to give domestic validity to the ICPPED the Parliament passed Act No. 5 of 2018.¹⁰

Sri Lanka established an Office on Missing Persons in 2016,¹¹ made operational in February 2018 with the appointment of commissioners, to provide for the searching and tracing of missing persons and provide assistance to relatives. The OMP showed a degree of progress in its first years of operation that led to the publication in November 2020 of a first list of complaints of missing and disappeared persons.

Arbitrary detention is aggravated by the use of problematic emergency legislation through which deprivation of liberty becomes the automatic response to a wide variety of situations. Bail regime is inconsistent and pre-trial detention is lengthy (up to 10 years) and broadly administered, resulting in over half of the Sri Lankan prison population awaiting trial. The right to challenge the legality of detention is not effectively guaranteed. The Prevention of Terrorism Act, Law No 48 of 1979, is still operational and its application entails restrictions to fair trial guarantees.

With regards children in contact with the law, there remain inconsistencies with the UNCRC and the Beijing Principles. Children aged 16-17 are judged as adults and detained in adult prisons. Children aged 12-15 are often given long (3 years) custodial sentences. Alternative measures and

⁵ <https://www.newsfirst.lk/2021/07/20/cabinet-green-light-to-amend-marriage-procedure-in-mmda/>

⁶ UNWOMEN

⁷ UNDP

⁸ Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2) available at <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/LKIndex.aspx>

⁹ OHCHR

¹⁰ international convention for the protection of all persons from enforced disappearance Act, No. 5 of 2018 (21 March 2018)

¹¹ Office On Missing Persons (Establishment, Administration and Discharge Of Functions) Act, No. 14 of 2016

diversion systems have not yet been established.¹²

3) Rule of Law

Delays in the justice system are recurrent. Levels of impunity are particularly high with respect to certain offences like sexual violence. The Police Grave Crimes Abstract for 2021¹³ reflects 1966 cases of rape recorded, but not a single conviction for rape by the courts in the same year. Crimes against children which in principle must be prioritised and expedited can take up to six years for indictment.¹⁴ While some backlog of cases in the Attorney General's Department was cleared in 2022, long delays in reaching a verdict remain.¹⁵

Sri Lanka has increased both the Minimum Age of Criminal Responsibility from 8 to 12 and the minimum age for child labour from 14 to 16. Sri Lanka has also increased the minimum age for child domestic labour to 18¹⁶.

The average time to enforce a contract in Sri Lanka is 1318 days. Land, Partition and Testamentary cases on average take a generation to be settled and a criminal trial takes on average 9 ½ years to conclude in the High Court. A criminal matter will take a year to be fixed for appeal and 3-4 years for the said appeal to be completed. In this backdrop in 2021, a three-year plan targeting digitisation of courts was implemented to streamline court hearings.

Article 13(3) of the Constitution provides a range of rights the accused enjoys in criminal justice processes, including right to be tried within a reasonable time without undue delay. However, there is no clear legal remedy to enforce this right.

Sri Lanka has not revoked the PTA nor has it made considerable progress in introducing new counter-terrorism legislation in line with International human rights standards. On 10 February 2022, the PTA Amendment Bill was presented to Parliament increasing magistrates' powers to visit places of detention and speeding up of trials, but the proposed amendments leave intact some of the most problematic provisions of the PTA such as an overly broad and vague definition of terrorism, admissibility of confessions and lengthy administrative and pre-trial detention.

4) Freedom from Torture

The Constitution specifies that "*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*". Sri Lanka enacted the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Act¹⁷ in 1994. However, torture remains prevalent. The OHCHR report to the Human Rights Council in April 2022¹⁸ cited cases of allegations of ill treatment and torture by the police and noted an incident in which the then State Minister of Prison Management visited two prisons in Anuradhapura and Colombo and made prisoners to kneel at gunpoint and threatened to kill them.

¹² UNICEF

¹³ https://www.police.lk/images/crime_statistics/2021/GRAVE_CRIME_ABSTRACT_FOR_WHOLE_ISLAND_2021.pdf

¹⁴ OHCHR

¹⁵ UNICEF

¹⁶ UNICEF

¹⁷ Act 24 of 1994, <http://www.srilankalaw.lk/Volume-II/convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-act.html>

¹⁸ A/ HRC/ 49/ 9

In 2021 the Criminal Procedure code was amended to require Magistrates to visit police stations at least once a month to personally see suspects in police custody to check on whether they have been subject to torture or ill treatment during and after arrest.

Under the PTA the admissibility of confessions made before a police officer acts as perverse incentive for coercion. In a recently concluded landmark case the Court of Appeal reversed a 2017 conviction considering the High Court judge had failed to consider allegations of torture when admitting the accused confession as sole evidence¹⁹.

The Human Rights Commission is designated as the NPM but requires further resources, both financial and human, to enable it to effectively discharge this mandate.

In 2021, the Supreme Court of Sri Lanka in a landmark Judgement (SC/FR/97/2017) recognized severe corporal punishment as torture. In 2022, the National Child Protection Authority established a committee, chaired by a President's Counsel to revitalise an initiative to develop a Cabinet Paper on the issue. Sri Lanka needs to make a firm commitment and take tangible action to prohibit all forms of corporal punishment in the country.

5) Freedom of Movement

Freedom of movement is enshrined in the Constitution, Article 14(1). However, security checkpoints remain prevalent in some parts of the country as a legacy of the armed conflict, or other reasons including implementation of Covid-related restrictions or detection of smuggling. During certain stages of the Covid pandemic freedom of movement was limited with the imposition of lockdowns, curfew and temporary bans on inter-provincial travel. Certain categories of citizens (former combatants that have undergone rehabilitation) seem to be kept under surveillance and monitoring that may impact their freedom of movement.

6) Freedom of religion or belief, expression, association, and peaceful assembly, and right to participate in public and political life

Though the Constitution [Article 14(1)] states that “Every citizen is entitled to the Freedom of Speech and Expression, including publication” it also provides [Article 15] for the restriction of the Freedom of Expression for limited purposes of racial and religious harmony, national security, public order and protection of public health or morality to secure rights and society, parliamentary privilege, contempt of court, defamation or incitement to an offence. The ICCPR Act and the Prevention of Terrorism Act have been used in manners that limit free expression.

On 12 March 2021, Regulations No. 01 of 2021²⁰ were published on the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology). Furthermore, on 27 January 2022, a Bill²¹ to amend the PTA was published in the Government Gazette with enhanced provisions against speech-related offenses. The Official Secrets Act of 1955²² bans

¹⁹ Sunderalingam Ketheeswaran case. Arrested in 2009, charged in the High Court of Moneragala in 2013, convicted and sentenced in 2017 and finally acquitted by Court of Appeal in 2022.

²⁰ http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf

²¹ http://documents.gov.lk/files/bill/2022/1/171-2022_E.pdf

²² <http://www.srilankalaw.lk/Volume-VI/official-secrets-act.html>

reporting on classified information with sentences up to 14 years imprisonment.²³

The Personal Data Protection Bill²⁴ was published in the Government Gazette on 25 November 2021. The Bill has provisions to regulate the processing of Personal Data and to identify and strengthen the Rights of Data Subjects.

The Right to Information Act (RTI) aims at promoting participation in public life through combating corruption and promoting accountability and good governance. However, the Right to Information Commissions Annual Report of 2019 reflects a steady rise of complaints received in relation to noncompliance by Public Authorities since 2017.²⁵

During the reporting period there have been several incidents of threats, intimidation, or physical assault of journalists and activists, some of which have left the country as a result. Over decades a large number of professionals were killed or disappeared with impunity.²⁶ The Government has not responded to UNESCO requests concerning 9 cases of journalists' killings recorded between 2006 and 2021, which remain judicially unresolved.²⁷ The Government may wish to consider taking advantage of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

The right to Freedom of Assembly is stipulated under article 14 (1) (b) of the Constitution. The Special Rapporteur on the rights to freedom of peaceful assembly and association noted that despite legislation and regulations he had heard a number of concerning reports of protests that were met with use of force that seemed disproportionate. During the 2022 crisis a number of incidents were recorded during crowd control at protests: In Rambukkana, in April 2022 a spontaneous protest was responded with live ammunition that killed one demonstrator. On 9 May 2022 a crowd of pro-Government supporters attacked an anti-Government protest site in Colombo demolishing tents and assaulting demonstrators, amidst alleged passivity of the police.²⁸

Freedom of Association

Trade union rights to freely form are guaranteed in the Constitution (Article 14(1)(d)) and the Trade Union Ordinance and Industrial Disputes Act. Sri Lanka has ratified ILO Conventions No. 87 and 98. There is weak and uneven implementation, particularly pronounced -but not restricted to- enterprises in the export processing zones or licensed by the Board of Investment of Sri Lanka. Trade unions allege that the Department of Labour is not diligent in labour inspection in export processing zones, where less than 5% of workers are unionised. Employers have established Employees Councils within their enterprises that include representatives of employers and are not controlled by workers. Trade unions allege that these Councils thwart the formation of unions and weaken collective action.²⁹

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has drawn the attention to the current too high threshold of 40% percentage for

²³ UNODC

²⁴ http://documents.gov.lk/files/bill/2021/11/152-2021_E.pdf

²⁵ http://www.rticommission.lk/web/images/pdf/annual_report/annual-report-2019-eng.pdf

²⁶ UNESCO

²⁷ <https://en.unesco.org/themes/safety-journalists/observatory/country/223750> UNESCO

²⁸ OHCHR

²⁹ ILO

representativity to be recognised as a collective bargaining agent and recommended that where no union reaches the required threshold unions should be given the possibility to negotiate, at least on behalf of their members.³⁰

Unfair labour practices are prohibited by law (Industrial Disputes (Amendment) Act No. 56 of 1999), but there have been few prosecutions and zero convictions to date and unionists allege the Department of Labour does not prevent union-busting and victimisation of organisers. The CEACR has urged the Government to amend the Industrial Disputes Act to grant trade unions the right to bring anti-union discrimination cases directly before the courts.³¹

The Minister of Labour can refer industrial disputes to compulsory arbitration making it possible to prohibit strikes³² (in contravention of ILO Convention No. 87 that identifies narrow reasons for prohibition). Cancellation of registration of trade unions and penal sanctions for workers carrying a peaceful strike are also problematic provisions.

Public sector workers do not enjoy the right to collective bargaining nor a dispute resolution mechanism. CEACR urged the Government to guarantee the right to collective bargaining with respect to salaries and other conditions of employment of public sector workers.³³

7) Freedom of Religion

Article 9 of the Constitution provides for freedom of thought, conscience, and religion, including the freedom to change religion. The law recognizes four religions: Buddhism, Islam, Hinduism, and Christianity, while giving Buddhism the “foremost place”. The UN Special Rapporteur on Freedom of Religion or Belief observed “significant gaps” in “upholding accountability and access to justice as well as ensuring non-recurrence of human rights violations.” Religious minorities face restrictions in the manifestation of their religion or belief, such as proselytization, conversion, and building of places of worship, in addition to numerous incidents of violent attacks. The National Christian and Evangelical Association has documented 43 incidents of attacks on churches, intimidation of and violence against pastors and their congregations, impediments to burial of those who died of COVID and obstruction of worship services between January and May 2022.

Land disputes over religious sites are common, particularly in the North and East, with several State departments (Archaeology Dept., Task force on Archaeology Heritage in the Eastern Province) being perceived as not impartial. In March 2020, the Ministry of Health (MOH) made cremation compulsory for COVID-19 victims, denying Muslims who died from the virus the Islamic tradition of burying their dead.

7) Right to work and to just and favourable conditions of work

Right to work is not explicitly recognised in the Constitution except as a freedom to engage in a lawful occupation or profession, including the right to engage in trade union activities. Right to work in the formal sector is arguably available in practice³⁴ and it is generally perceived that

³⁰ ILO

³¹ ILO

³² Section 4, Industrial Disputes Act

³³ ILO

³⁴ http://www.ilo.org/colombo/whatwedo/projects/WCMS_126066/lang--en/index.htm?ssSourceSiteId=asia

labour laws favour the employee over the employer. Jurisprudence under the Fundamental Rights Chapter of the Constitution has established several obligations of the State as an employer. The Termination of Employment (Special Provisions Act)³⁵ specifies that no person in private sector enterprises of 15 or more workers, may be terminated from service other than by individual consent or by an application made by the employer to the Commissioner of Labour. Termination on disciplinary grounds can be challenged before a Labour Tribunal. In the private sector, several rights of workers have been the subject of legislative policy such as maternity benefits, due process guarantees on termination of employment, and minimum wages. There is no protection against discrimination at the work place compounded with a lack of social security, minimum wage stipulations, regulation of working hours and conditions of work for domestic workers, among other informal workers.

Women's labour force participation in Sri Lanka is around 32%, whereas that of men is 70.2%. The gender pay gap between men and women is reported at 24% (as of 2020). There is no law prescribing equal pay for work of equal value. There is no legal prohibition of discrimination in hiring. Labour laws do not encourage part-time employment, which could be conducive to higher women's labour force participation. Women, outside of essential services such as health, are restricted from night work but there is "administrative relaxation" by the Commissioner-General of Labour for night-work by women in export manufacturing. There is a lack of affordable and quality child care services, impacting women's ability to return to work after childbirth. Sri Lanka should consider ratification of ILO Convention No. 156 (Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities); Convention No. 175 (Part-Time Work); and Convention No. 190 (Violence and Harassment).³⁶

The Special Rapporteur on Contemporary forms of slavery³⁷ observed that contemporary forms of slavery still exist, and affect particularly those in vulnerable situations, including children, women, ethnic, linguistic and religious minorities as well as older person. He encouraged the government to step up its efforts in ending these practices by 2030 as a Pathfinder Country for Alliance 8.7.³⁸

The government did not relax its policy of excluding asylum-seekers and refugees from employment. The state's reconsideration of this policy is imperative to making the existing protection effective and meaningful.³⁹ Refugees and asylum-seekers are susceptible to arrest and detention if they engage in any income generating activities, but access to employment could reduce their dependency on very limited remittance and charitable support.⁴⁰

8) Right to social security and to an adequate standard of living

³⁵ Termination of Employment of Workmen Act, <http://www.srilankalaw.lk/Volume-VIII/termination-of-employment-of-workmen-special-provisions-act.html>

³⁶ ILO

³⁷ <https://www.ohchr.org/en/statements/2022/01/end-mission-statement-special-rapporteur-contemporary-forms-slavery-including#:~:text=%E2%80%9CTake%20immediate%20and%20effective%20measures,labour%20in%20all%20its%20forms%E2%80%9D.>

³⁸ OHCHR

³⁹ UNHCR

⁴⁰ UNHCR

The Directive Principles of State Policy enshrined in the Constitution require that the State ensures the realisation by all citizens of an adequate standard of living for themselves and their families including adequate food, clothing and housing.

Sri Lanka is facing its worst economic crisis and costs of living have escalated with inflation nearing 40% in May 2022. Already before the COVID-19 pandemic and the current crisis, multidimensional poverty stood at 16.0% for the general population and 42.2% for children under the age of five years⁴¹. There are shortages in food, fuel, cooking gas, medicines and medical equipment. Many sectors have been affected negatively, including education, essential services, travel and industry.

Sri Lanka lacks an unemployment protection scheme. The large informal sector is mostly not covered by social security schemes. Pension schemes for farmers, fishers and the self-employed are financed through voluntary enrolment and contribution and as outflows exceed inflows without increase in contribution rates and high default, these funds are non-operational. The Samurdhi cash transfer to poor households is of low value, and many who ought to be eligible are currently excluded.

In 1993 Sri Lanka has ratified the Maternity Protection Convention No. 103 (Revised), 1952, but is yet to ratify all the components of the ILO Convention 183 which is the most up-to-date international labour standard on maternity protection.

Child malnutrition and undernutrition are persistent challenges undermining progress in the health sector. In Sri Lanka, 17.3% of children under five are stunted with almost one third (32 per cent) of these children living in the estate sector, 15.1% experience wasting and 20.5% are underweight.⁴²

The Special Rapporteur on contemporary forms of slavery⁴³ highlighted issues faced by the Malayaha Tamils in the plantation sector, forced to live in colonial-era “line-houses”, often in undignified conditions, and their inability to acquire legal title to housing and land on estates.

9) Right to Health

The right to health care is not included as a fundamental right in the Constitution but is indirectly mentioned in Article 27 (2)(c) on Directive Principles. The National Health Strategic Master Plan for 2016-2025 needs to address disparities in healthcare coverage and ensure affordable and accessible public health care, and create innovative ways to increase the budget for public health service delivery, taking into account the fast-growing aging population, increasing prevalence of non-communicable diseases and economic crisis.

During the COVID-19 pandemic the government made efforts to reduce the overall care burden and mortality rates through diverse interventions and based on global guidance and local epidemiological data. However, it is necessary to strengthen the public health programs which were compromised during the pandemic and revamp previous targeted preventative interventions to reach the most vulnerable including those with disabilities, living with HIV, elderly etc., as well as strengthening Psycho-Social Services to ante-natal, and post-natal women, young persons, and for the survivors of GBV.

⁴¹ Household Income and Expenditure Survey 2019

⁴² DHS 2016

⁴³ <https://www.ohchr.org/en/statements/2022/01/end-mission-statement-special-rapporteur-contemporary-forms-slavery-including>

As of 30 April 2022, Sri Lanka's Prison population was approximately 19,854 of which 8,113 are convicted prisoners. The government introduced a Prison Reform plan (2021- 2025) to deal with prison overcrowding. Despite these initiatives, prisons remain overcrowded, underfunded, with limited healthcare facilities. During the COVID-19 pandemic, limited care and preventive measures were provided. Several protests by inmates demanding protection, increase in testing and isolation facilities took place, i.e., Anuradhapura (March 2020); Mahara (November 2020); and Kandy (November 2020) resulting in 11 deaths and critically injuring many more. In response, the Department of Prisons with the technical support of Ministry of Health and UNODC developed the COVID- 19 Contingency Plan to minimize and manage the impacts of COVID-19.⁴⁴

Health services for youth and adolescents require increased access to information and services on sexual & reproductive health (SRH), nutrition and mental health.

While significant efforts have been made to ensure quality and affordable SRH services, service disruptions were observed during the pandemic and the economic crisis including non-accessibility of services for those most needed.⁴⁵ The Government should also take all possible measures to achieve Global minimum standards for medical termination of pregnancies, which includes rape, incest, and severe foetal malformations to prevent any possible mortality or morbidity.⁴⁶

All social determinants of health such as environment, education, societal support and food security are impacted by an ongoing financial crisis in Sri Lanka. Access to essential medical supplies and medicines remains an essential challenge.

The National STD/AIDS Control program has made significant strides to ensure service accessibility and reduce stigma and discrimination across the health sector and requires continuation of preventative & curative services that target key populations for prevention and treatment of STIs & HIV.⁴⁷

There is a need to strengthen the support for an individual's right to change their identity using the healthcare structure.

Social Protection and Rights of Older Persons

By 2030, one in every five Sri Lankans will be over the age of 60, and currently only around 30% are eligible for a pension. Women are less likely than men to have a pension; while having a longer life expectancy.

10) Right to Education

The constitution recognises education as a fundamental right, through the broad interpretation of the right to equality. A vast majority of Supreme Court cases that have been determined under Article 12(1) of the Constitution have been in relation to school admissions.

⁴⁴ UNODC

⁴⁵ UNFPA / WHO

⁴⁶ UNFPA / WHO

⁴⁷ UNFPA / WHO

In January 2022 a circular to eliminate anomalies in salaries of teachers and principals was published by the Ministry of Public Services and Provincial Councils and Local Government, and that revisions would be effective from 01 January 2022.

Nationwide school and pre-school closure for most of 2020 and 2021 disrupted learning for 4.8 million students and pre-school children. As of October 2021, Sri Lanka was among the countries with the longest period of school closure in the world. Prolonged school closures worsened a pre-existing learning crisis and has widened learning disparities across socio-economic classes and between girls and boys.⁴⁸ The current crisis and fuel shortage has exacerbated this situation with school closures, poor attendance and drop-outs.

Bullying in and around school is considerable, with a recent UNICEF study in four provinces on the prevalence and drivers of bullying concluding that close to half of all adolescents 12-18 years (n = 1,647) experienced at least one form of bullying in a typical month.⁴⁹

Refugees and asylum-seekers do not have access to schooling in government academic institutions. While UNHCR supports refugee children's education at primary level, secondary school children (refuge/asylum seekers) are unable to access education, hampering their rights and undermining their potential.

12) People with Disabilities

Persons with disabilities face significant challenges in the absence of policies and practices promoting and protecting their right to be included in the community, to study in the mainstream education system, to receive timely and quality health and social care services, while the state does not have a system on early identification of disability and early interventions. The current certification and registration of disabilities start at the age of five, effectively leaving thousands of children with disabilities out of reach of the social financial transfers and other benefits.

Sri Lanka ratified the CRPD and needs to incorporate enabling domestic legislation.⁵⁰ Persons with disabilities have long stressed the need for a strong state coordination mechanism and an independent monitoring mechanism that would be established through a Disability Rights Bill which would meet the government's commitment to the CRPD.⁵¹

Quality support to children with special needs is hampered by the poor knowledge of health workers and parents about early childcare and psychosocial development. According to the National Strategic Plan on Child Health, there are inadequate systematic development-screening programs to identify children with special needs. Disability services are a nascent area within the health system, lacking comprehensive services, multidisciplinary therapeutic approaches, or overall awareness. Children with disabilities have been somewhat integrated into the school system, although they cannot be classified as socially included from a rights-based perspective and are often invisible within the data. Guaranteeing the rights of children with disabilities does not refer only to physical accessibility but required specialised learning programs, materials,

⁴⁸ UNICEF

⁴⁹ UNICEF. (2020). Estimating the Prevalence and Drivers of Bullying including Cyberbullying – Sri Lanka. Colombo: UNICEF Sri Lanka.

⁵⁰ Sri Lanka ratified the Convention on the Rights of Persons with Disabilities on 08 February 2016.

⁵¹ OHCHR

trained staff, etc⁵². Twenty three percent (23.4 %) of children aged 5-14 with disabilities are excluded from mainstream education and amongst those who do attend school, participation reduces with age.⁵³

13) Minorities and Indigenous people

The Estate sector across the country has a disproportionately low standard of living.⁵⁴ While multidimensional poverty levels are higher in rural than urban areas, they are highest in estate areas, with more than half (51.3 per cent) of all people in these areas living in poverty. Poverty in the estate sector has a close relationship to low-wage employment rather than unemployment due to the dominance of tea plantations as a major employer. Education outcomes in the estate sector are both a reflection and a cause of poverty, with only half of poor adults there having completed primary education compared to 65% in rural areas and only 2.3% having completed secondary education compared to 8.8%.⁵⁵ Poverty in the estate sector is also strongly associated with the lack of infrastructure and access to markets, which limits the productive potential of one's livelihood.⁵⁶ The economic crisis has exacerbated these issues, with the reduction of crops and access to food being a major concern.

14) Migrants Refugees and Asylum seekers

The National Policy on Durable Solutions for Conflict Affected Displacement⁵⁷ (National Policy) adopted in 2016, is yet to be fully implemented. Voluntary repatriation of Sri Lankan refugees (UNHCR facilitated) marginally increased in 2016/2017 but numbers started declining since 2018, arguably due to COVID, political developments and the economic crisis. Sri Lankan refugee communities abroad, particularly in India, remain significant. Access to land, housing, access to livelihoods, water, and sanitation and, in some instances, personal/civil documentation and reinstatement of their nationality status continue to hamper repatriation and reintegration efforts.⁵⁸

Improvement in the security screening of returnees resulted in reduction in the processing time at airport and the follow up visits in the districts of return. This created a less intimidating atmosphere for the returnees. No cases of arrest and detention were reported during the period at the airport or the places of return in relation to returnees facilitated by UNHCR⁵⁹

In the absence of a domestic legal framework, UNHCR carries out registration, refugee status determination (RSD) and durable solutions (RST) under its mandate pursuant to a Memorandum of Understanding (MoU) with the Government of Sri Lanka.

As of May 2022, there are 169 foreign asylum-seekers and 784 refugees registered with UNHCR-Sri Lanka, mostly from Pakistani and Afghan religious and ethnic minorities. The protection environment for asylum-seekers and refugees in Sri Lanka is weak as it has no basis in national

⁵² UNICEF

⁵³ DCS, Statistical Data 2012

⁵⁴ David Newhouse, Pablo Suarez-Becerra, and Dung Doan 2016; Department of Census and Statistics, 2017.

⁵⁵ David Newhouse, Pablo Suarez-Becerra, and Dung Doan 2016; Sinnathurai Vijayakumar and Březinová Olga 2012.

⁵⁶ Sinnathurai Vijayakumar and Březinová Olga 2012. (Source UNICEF)

⁵⁷ UNHCR <http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf>.

⁵⁸ UNHCR

⁵⁹ UNHCR

legislation. Sri Lanka has not ratified the 1951 Convention relating to the Status of Refugees and has no national legal or policy framework for asylum-seekers and refugees. In this absence, asylum-seekers and refugees receive only the most basic protection, are treated as irregular immigrants and may be subject to arrest, detention, and deportation under the Immigrants and Emigrants Act.⁶⁰

Sri Lanka has continued to ensure minimum international protection space in its territory by remaining committed to its obligations under the MoU to tolerate the presence of asylum-seekers until their refugee status determination process is completed, and of refugees until they are provided with a suitable durable solution elsewhere. Asylum-seekers and refugees generally enjoy freedom of movement and have free access to the state healthcare system and the COVID vaccination programme.⁶¹ The government recognises a responsibility towards ensuring the safety of asylum-seekers and refugees when in the territory as seen by the positive response from the security authorities when asylum-seekers and refugees were subjected to a violent backlash from host communities in the immediate aftermath of the Easter Sunday bombings in 2019.⁶²

16) Gender equality

National policy and planning on the rights and empowerment of women

Sri Lanka has developed a National Action Plan on Women, Peace, and Security and is developing a National Policy on Gender Equality. Additionally, the National Action Plan on Sexual and Gender Based Violence, which expired in 2020 is being prepared for renewal. The National Action Plan on Women Headed Households which was prepared in 2017⁶³ remains in draft form. The adoption, implementation, and resourcing of these must be prioritized⁶⁴

Women's political participation

Women's political representation continues to be very low at national and provincial levels, with women's representation in parliament dropping to 5.3% in 2020. Women's representation in local government increased to 22%⁶⁵ following the legislation of a 25% quota in 2016.⁶⁶ Quotas at national and provincial levels – in line with CEDAW recommendations – have not been established. The space for the meaningful participation and leadership of women within government continues to be limited by patriarchal political systems and persisting discriminatory social norms.⁶⁷

Subgroups of marginalized women experience higher gender inequalities and violations, including women who have survived conflict-related violence, women of ethno-religious minorities including the plantations community, women with disabilities, women of diverse sexual orientation, and women heads of households. The needs of these groups of women must

⁶⁰ Immigrants and Emigrants Act No. 20 of 1948 [Sri Lanka], 1 November 1949, available at http://www.hrcsl.lk/PFF/Library_Domestic_Laws/Legislations_related%20to_Migrants_Workers/1948%20No%2020%20Immigrants%20and%20emigrants.pdf

⁶¹ UNHCR

⁶² UNHCR

⁶³ <http://www.childwomenmin.gov.lk/storage/app/media/WHF.pdf>

⁶⁴ UNWOMEN

⁶⁵ https://www.ifes.org/sites/default/files/ifes_womens_political_representation_in_sri_lanka.pdf

⁶⁶ Local Authorities Elections (Amendment) Act, No. 16 Of 2017

⁶⁷ UNWOMEN

also be equitably streamlined through rights-based recommendations and reforms.⁶⁸

Recommendations to reform the definition of rape in the Penal Code, including the criminalization of marital rape, have not been implemented. The Women's Wellbeing Survey of 2019⁶⁹ reported that one in four women experienced sexual and/or physical violence since the age of 15, and one of five women experienced sexual and/or physical violence at the hands of an intimate partner since the age of 15. Sexual bribery has not yet been specifically incorporated into the Bribery Act⁷⁰ as recommended by the CEDAW committee⁷¹, leaving survivors with limited recourse to justice. Survivors of sexual and gender-based violence who seek justice are met with considerable delays, frequently insensitive processes, and low reporting and conviction rates.⁷²

17) Discrimination against Children

Discrimination against children based on ethnic and economic basis persists, most particularly among minorities (Veddah/Wanniyaletto, Muslim and Tamil communities), in estate areas, remote rural children, refugees and asylum-seekers, children of overseas workers, children in institutional care and children with disabilities.⁷³ To address social cohesion, Sri Lanka has taken several measures including the development of the 2012 National Policy Framework for Social Integration and the National Policy on Education for Social Cohesion and Peace. There is a National Youth Policy that has a focus on social integration and cohesion and a 2012-2021 National Plan for a Trilingual Sri Lanka.^[2] There appears to be limited budget allocations towards the implementation of the National Policies.

⁶⁸ UNWOMEN

⁶⁹ http://www.statistics.gov.lk/Resource/reference/WWS_2019_Final_Report

⁷⁰ Bribery Act (1954)

⁷¹ CEDAW/C/LKA/CO/8, para 37(b)

⁷² UNWOMEN

⁷³ UNICEF

[2] UNICEF