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FIDH - International Federation for Human Rights

and its partner organization in Sri Lanka

Center for Human Rights and Development (CHRD)

135th Session of the UN Human Rights Committee

Shadow report for the review of Sri Lanka's sixth periodic report

30 May 2022

1. Declaration of a state of emergency and emergency regulations incompatible with ICCPR (Arts. 4, 6, 9, 19, 21, 22)

In early 2022, widespread public discontent intensified over the Sri Lankan government's protracted economic mismanagement, which led to severe shortages of fuel, electricity, medicine, food, and other basic necessities. This resulted in peaceful nationwide protests that called for the resignation of President Gotabaya Rajapaksa and his brother, Prime Minister Mahinda Rajapaksa.¹ From mid-March 2022, daily protests took place in Colombo, the capital, especially in front of the Presidential Secretariat. Similar protests were held in other parts of the country, including in Kandy (Central Province), Galle (Southern Province), and Kurunegala (North Western Province). To date, protests are ongoing.

1.1 Declaration of a state of emergency and emergency regulations not justified (Article 4)

In response to the wave of predominantly peaceful anti-government protests, President Rajapaksa declared a state of emergency twice. The declarations were not justified under Article 4 of the ICCPR, under which such declarations should only be made in response to a situation that "threatens the life of the nation."²

The President first declared a state of emergency on 1 April, following sporadic and isolated incidents of violence that took place during a demonstration in front of the President's private residence in Colombo on 31 March.³ The declaration of the state of emergency was revoked by the President on 5 April. On 6 May, amid a nationwide strike to call for the President's resignation, President Rajapaksa declared a second state of emergency.⁴ This declaration was made after police fired teargas and arrested students who were protesting in front of Parliament in Colombo.⁵ The declaration of a state of emergency under the Public Security Ordinance (PSO) granted the President the power to issue broad and sweeping emergency regulations.⁶

¹ On 9 May, Prime Minister Mahinda Rajapaksa resigned after weeks of protests that called for his resignation.

² ICCPR, Article 4 (1), and its interpretation by the UN Human Right Committee in its General Comment No. 29.

³ OHCHR, *Sri Lanka: Concern at measures in response to protests amid economic crisis*, 5 April 2022; <https://www.ohchr.org/en/press-briefing-notes/2022/04/sri-lanka-concern-measures-response-protests-amid-economic-crisis>

⁴ Reuters, *Sri Lanka president declares state of emergency after day of protests*, 7 May 2022; <https://www.reuters.com/world/asia-pacific/anti-government-protest-strike-sri-lanka-shuts-schools-businesses-2022-05-06/>

⁵ Guardian, *Sri Lankan president calls second state of emergency in five weeks*, 6 May 2022; <https://www.theguardian.com/world/2022/may/06/sri-lankan-president-calls-second-state-of-emergency-in-five-weeks>

⁶ Public Security Ordinance No.25 of 1947, Section 5; [https://ihl-databases.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/afad7ae740f9b625c12577370039c9e1/\\$FILE/Public%20Security%20Ordinance.pdf](https://ihl-databases.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/afad7ae740f9b625c12577370039c9e1/$FILE/Public%20Security%20Ordinance.pdf)

On 9 May, supporters of then-Prime Minister Mahinda Rajapaksa violently attacked peaceful anti-government protesters while police officers stood by and failed to intervene. The attacks spurred a series of arson attacks carried out by unidentified individuals on vehicles, houses, and properties of ruling-party members of Parliament. Overnight, the President issued emergency regulations back-dated to 6 May, when the state of emergency was declared.⁷

According to the PSO, a declaration of a state of emergency must be immediately communicated to Parliament for its ratification.⁸ Failure to ratify the state of emergency by Parliament within 14 days automatically annuls the declaration of a state of emergency.⁹ On 20 May, the Presidential Secretariat confirmed that the government had decided not to present the emergency regulations to Parliament and that the state of emergency had been lifted.¹⁰

According to United Nations (UN) records, it would also appear that the Sri Lankan government failed to notify the UN Secretary-General of any derogations of its obligations under the ICCPR (Article 4), following the declarations of a state of emergency and the adoption of emergency regulations.¹¹

The emergency measures adopted by Sri Lanka's President within a context of public protests were unjustified, unnecessary, and disproportionate. The emergency regulations dated 6 May were incompatible with several provisions of the ICCPR [See below, Sections 1.2, 1.3, 1.4, and 1.5].

1.2 Shoot-on-sight orders threaten the right to life (Article 6)

Following the arson attacks that took place on 9 May, the Ministry of Defense issued an order that authorized members of the armed forces to shoot on sight any persons involved in theft of public property or causing damage to life.¹² Similarly, the police were given order to shoot individuals on the same basis.¹³ The shoot-on-sight order contravened the non-derogable provision on the right to life under Article 6 of the ICCPR.

1.3 Arrests without warrant authorized (Article 9)

The emergency regulations sought to remove judicial due process safeguards in the arrest and detention of suspects and were inconsistent with Article 9 of the ICCPR.

The regulations enabled members of the police and the armed forces to carry out search and arrest of civilians without a warrant for any offenses under the regulations and several offenses under the Penal Code.¹⁴ In addition, the emergency regulations allowed for lengthy periods of detention without judicial oversight for up to two weeks,¹⁵ which could have resulted in a detainee being subject to torture or ill treatment. The emergency regulations also sought to usurp the authority of the judiciary, as the Criminal Procedure Code requires suspects to be produced before the magistrate within 24 hours of their arrest.¹⁶

1.4 Freedom of expression curtailed (Article 19)

Sweeping and vaguely worded provisions of the regulations sought to severely curtail the right to freedom of expression, allowing for the prosecution of individuals under the pretext of preventing the spread of false rumors

⁷ Gazette (Extraordinary) No.2278/ 23, 6 May 2022: http://documents.gov.lk/files/egz/2022/5/2278-23_E.pdf

⁸ Public Security Ordinance, Section 2(3).

⁹ *Ibid.*, Section 2(4).

¹⁰ Newswire, *No more State of Emergency in Sri Lanka*, 21 May 2022; <https://www.newswire.lk/2022/05/21/no-more-state-of-emergency-in-sri-lanka/>

¹¹ UN Treaty collection, *Depositary Notifications (CNs) by the Secretary-General*, last accessed on 30 May 2022; <https://treaties.un.org/pages/CNs.aspx?cnTab=tab1&clang=en>

¹² Ministry of Defense, *Legal actions to be taken against unlawful acts irrespective of political affiliations – Defence Secretary*, 11 May 2022; https://www.defence.lk/Article/view_article/4538

¹³ Reuters, *Sri Lanka police given orders to shoot to maintain order*, 11 May 2022; <https://www.reuters.com/world/asia-pacific/sri-lanka-police-given-orders-shoot-maintain-order-2022-05-11/>

¹⁴ Gazette (Extraordinary) No.2278/ 23, Regulation 11 (1).

¹⁵ *Ibid.* Regulation 11 (2).

¹⁶ Section 37 of the Code of Criminal Procedure.

or false information. For example, the public distribution of leaflets or posters, the content of which were “prejudicial to public security, public order, or the maintenance of supplies and services essential to the life of the community,” were prohibited.¹⁷ The communication of false rumors, statements or images that were likely to cause public disorder and communicated verbally or through social media were also prohibited.¹⁸

1.5 Blanket restrictions on the right to freedom of peaceful assembly (Article 21)

The blanket prohibitions on assemblies and the penalties for those participating in unlawful assemblies under the emergency regulations were disproportionate and unnecessary, in contravention of Article 21 of the ICCPR and Article 14 of the Constitution of Sri Lanka.

The President was given the power to prohibit public processions or public meetings in any area for any period of time.¹⁹ A participant in an unlawful assembly, as defined under Section 138 of the Penal Code, with the common objective of causing destruction to property, death or injury to another, committing theft or criminal assault, could have been sentenced to life imprisonment or imprisonment of up to 20 years under the regulations.²⁰

The overbroad provisions of the regulations allowed for arbitrary and forcible removal, including by members of the armed forces, of individuals from public places without providing any justification for their removal.²¹ A person removed from a public place, by the police or a member of the armed forces, could have been arrested and detained.

Whenever a member of the public poses no threat and is unarmed, the use of force is incompatible with the UN Guiding Principles on the Use of Force and Firearms by Law Enforcement Officials, which require law enforcement to apply non-violent means before resorting to the use of force.

Recommendations

- Ensure any future declarations of a state of emergency and emergency regulations are in compliance with the ICCPR.
- Immediately rescind the shoot-on-site orders issued to the police and the members of the armed forces.
- Ensure that any future declaration of a state of emergency and measures derogating rights under the covenant are notified to the UN Secretary-General, in compliance with Article 4(3) of the ICCPR.

2. Constitutional framework and right to an effective remedy (Arts. 2, 6, 7, 9, 14, 16, 26)

List of Issues (LoI), para. 2

[P]lease report on the implementation of the nineteenth amendment to the Constitution (enacted to limit excessive executive power and facilitate independent institutions including the judiciary).

Since the submission of the state report to the UN Human Rights Committee in February 2019, Sri Lanka’s legal and institutional framework has undergone significant changes under President Gotabaya Rajapaksa. Many of the progressive measures enacted under the 19th Amendment have been reversed to increase the powers of the executive branch.

On 22 October 2020, Parliament (dominated by the ruling party Sri Lanka People’s Front) passed the 20th Amendment to the Constitution, in a move that severely undermined accountability measures and human rights.

¹⁷ Gazette (Extraordinary) No.2278/ 23, Regulation 14.

¹⁸ *Ibid.* Regulation 15.

¹⁹ *Ibid.* Regulation 11 (11).

²⁰ *Ibid.* Regulation 12 (1).

²¹ *Ibid.* Regulation 36 (1).

Some of the key features of the 20th Amendment are as follows:²²

- The President is only required to seek the non-binding observations of the Parliamentary Council²³ in making key appointments to members of the Human Rights Commission of Sri Lanka (HRCSL), the Police Commission, and other independent commissions.²⁴
- The President can exercise wide discretion in appointing the Chief Justice and other Supreme Court judges.
- Abolition of the National Procurement Commission and the National Audit Commission, which were key institutions that provided accountability for public finance.
- The President can dissolve Parliament after two and a half years. Under the 19th Amendment, the President could only dissolve Parliament after four and a half years of a five-year term.

Subsequent to the anti-government protest movement, on 11 May 2022, President Rajapaksa stated that he intended to introduce a constitutional amendment to reinforce provisions of the 19th Amendment, which would transfer more powers to Parliament.²⁵ On 23 May, the 21st Amendment to the Constitution was presented to the cabinet of ministers. However, the proposed amendment fails to incorporate key features of the 19th Amendment, including provisions that precluded the President from assigning any functions of any ministries to himself/herself.²⁶

2.1. Independence of key institutions undermined

As a result of the 20th Amendment, the credibility of key independent institutions, such as the HRCSL, the Police Commission, and the Office of Missing Persons (OMP), were undermined due to political appointments that were made by President Gotabaya Rajapaksa. The newly appointed HRCSL commissioners have little or no experience in human rights related work and the body lacks gender balance and ethnic and religious diversity. Many of the new appointees have military backgrounds and/or a record of interfering with investigations into human rights violations due to their involvement in abuses. President Rajapaksa appointed Jagath Balasuriya, an active organizer of the ruling political party, as the Chairman of HRCSL. He later resigned and a former justice of the Supreme Court was appointed. Among a series of appointments of Buddhist monks to independent institutions, the President also appointed a Buddhist monk as a member of HRCSL.²⁷ Only one commissioner is a woman – an ethnic Tamil - with no representation from the Muslim community.

In the state report to the UN Human Rights Committee, the Sri Lankan government stated that the HRCSL was accredited with “A” status to become the third country in South Asia to reach that status. However, in December 2021, the Global Alliance of National Human Rights Institutions (GANHRI) recommended downgrading HRCSL to “B” status primarily due to its lack of transparency in the appointment process, lack of pluralism, and lack of effectiveness.²⁸

With regard to the OMP, its credibility was undermined by the appointments made by President Rajapaksa. In its reply to the List of Issues (LoI), the government stated that commissioners had been appointed to the OMP based on expertise and professional qualifications.²⁹ This statement is contradicted by the appointment to the OMP of former Inspector General of Police (IGP) Jayantha Wickramaratne, who has been accused of destroying

²² Al Jazeera, *Sri Lanka votes to strengthen presidential power*, 22 October 2020;

<https://www.aljazeera.com/news/2020/10/22/sri-lanka-parliament-votes-to-strengthen-presidential-power>

²³ The Parliamentary Council consists of members of Parliament.

²⁴ Under the 19th Amendment, which was abolished with the passage of the 20th Amendment, appointments to independent commissions were made by a Constitutional Council that comprised of legislators from different political parties and civil society.

²⁵ Daily Mirror, *Will appoint new PM and Cabinet this week: Prez*, 11 May 2022;

https://www.dailymirror.lk/breaking_news/Will-appoint-new-PM-and-Cabinet-this-week-Prez/108-236804

²⁶ News First, *‘Vital provisions in 19A NOT included in 21A’ – BASL expresses concern & writes to President, PM, & Justice Minister*, 23 May 2022; <https://www.newsfirst.lk/2022/05/23/vital-provisions-in-19a-not-included-in-21a-basl-expresses-concern-writes-to-president-pm-justice-minister/>

²⁷ The Morning, *Prez gives Monk a position at Human Rights Commission of SL*, 14 December 2021;

<https://www.themorning.lk/prez-gives-monk-a-position-at-human-rights-commission-of-sl/>

²⁸ The Morning, *World body wants HRCSL downgraded*, 13 December 2021; <https://www.themorning.lk/world-body-wants-hrcsl-downgraded/>

²⁹ Replies of Sri Lanka to the List of Issues in relation to its sixth periodic report, 6 May 2022; (para 75).

vital evidence in the murder of journalist Lasantha Wickrematunge [See below, Section 3.3].³⁰ In December 2020, former Supreme Court Judge Upali Abeyratne, a well-known ally of the Rajapaksa administration, was appointed as Chairman of the OMP – a development that drew much criticism from families of the missing persons.³¹ Justice Abeyratne led a Presidential Commission of Inquiry that sought to exonerate state actors accused of enforced disappearances during the civil war [See below, Section 2.2]. This included exonerating officers who were involved in emblematic cases pending before the OMP.

The Chairman of the Police Commission, former IGP Chandra Fernando, has been criticized for failing to investigate human rights abuses and has justified the use of torture and extrajudicial killings during his tenure as IGP between 2004 and 2006.³²

2.2. Independence of the judiciary threatened

In keeping with his election campaign promise to shield the military from accountability, President Gotabaya Rajapaksa took several measures that exonerated officers implicated in human rights violations.

On 26 March 2020, a Presidential pardon was granted to Staff Sergeant Sunil Ratnayake, resulting in his release from prison. Rathnayake had been sentenced to death in June 2015, a punishment upheld by the Supreme Court, for the Mirusuvil massacre in the Northern Province in December 2000, when eight Tamil civilians, including four children, were murdered during the civil war.

In January 2020, a Presidential Commission of Inquiry was formed to investigate complaints of political victimization that occurred between 8 January 2015 – 16 November 2019, during the previous administration. The commission recommended acquitting army, police, and intelligence officers who were facing prosecution in several high-profile human rights and corruption cases. The Presidential Commission of Inquiry on political victimization, headed by Justice Upali Abeyratne [See above, Section 2.1],³³ undermined the independence of the judiciary, as cases that were pending before the courts were examined in parallel by this commission. The commission sought to interfere with ongoing judicial proceedings and created delays in the already prolonged police investigations.³⁴ In the course of its controversial proceedings, the commission reached the conclusion that various alleged perpetrators of human rights violations were victims of politically motivated prosecutions and recommended pending investigations and judicial proceedings against them be dropped.³⁵ The inquiry also recommended that lawyers, investigators, and prosecutors in those cases be prosecuted on charges of fabricating evidence.

2.3. Accountability for past human rights abuses and corruption unaddressed

In 2020-2021, many victims of past human rights violations were deprived of their right to an effective remedy following the Attorney General's decision to discontinue the prosecutions of individual suspected of, or charged with, these abuses. To date, no one has been held accountable for those violations.

The Attorney General dropped charges against former Navy Commander Wasantha Karannagoda, in a key case of abduction and extrajudicial killings of 11 Tamil youth and extortion against their families in 2008 and 2009,

³⁰ Newswire, *Ex-Police Chief's appointment to the Office of Missing Persons sparks concern*, 31 May 2021; <https://www.newswire.lk/2021/05/31/ex-police-chiefs-appointment-to-the-office-of-missing-persons-sparks-concern/>

³¹ The Morning, *Office on Missing Persons comes under fire*, 1 November 2021; <https://www.themorning.lk/office-on-missing-persons-comes-under-fire/>

³² Asian Human Rights Commission, *SRI LANKA: Chandra Fernando leaves the post of Inspector General of Police with a dark legacy — will the new IGP change the course?* 8 October 2006; <http://www.humanrights.asia/news/ahrc-news/AS-241-2006/>

³³ Justice Abeyratne was later appointed as the Chairperson of the OMP and the Right to Information Commission (RTIC).

³⁴ Center for Policy Alternative, *A Commentary on the Presidential Commission of inquiry and the Special Presidential Commission of Inquiry on political victimization*, April 2021; <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-Col-SPCol-on-Political-Victimization.pdf>

³⁵ Human Rights Watch, *Sri Lanka: Reject 'Political Victimization' Findings*, 30 April 2021; <https://www.hrw.org/news/2021/04/30/sri-lanka-reject-political-victimization-findings>

during the civil war.³⁶ The charges against Karannagoda were dropped in October 2021, based on a confidential report provided to the Attorney General. In January 2021, the Attorney General dropped charges against all five defendants, including former Liberation Tigers of Tamil Eelam (LTTE) cadre and now-member of Parliament, Sivanesanathurai Chandrakanthan, aka Pillaiyaan, charged with the murder of Tamil member of Parliament Joseph Pararajasingham in December 2005.³⁷ In 2015 the UN Office of the High Commissioner for Human Rights (OCHR) found that there were reasonable grounds to believe the “Kauruna group,” which included Chandrakanthan, killed Joseph Pararajasingham.³⁸ In May 2021, the Attorney General also ordered the release of the six individuals charged with the murder of *BBC* journalist Mylvaganam Nimalarajan in October 2000, which had been pending in courts for 15 years.³⁹ The Attorney General’s decision to acquit the six without investigating other suspects or informing the IGP, amounted to a denial of justice for the murdered journalist.⁴⁰ Between March 2020 and October 2021, the Attorney General also withdrew indictments in approximately 20 cases, including corruption and misappropriation charges, against former Finance Minister Basil Rajapaksa, who is President Gotabaya Rajapaksa’s brother.⁴¹

Recommendations

- Repeal the 20th Amendment to the Constitution and re-introduce provisions of the 19th Amendment through a new constitutional amendment.
- Introduce a constitutional amendment to repeal the Parliamentary Council and establish a Constitutional Council that comprises reputed members from the profession and experts in relevant fields and from civil society to recommend and make appointments to key-independent institutions.
- Introduce a constitutional amendment that would ensure that appointments to the higher judiciary are vetted by a council of retired judges and reputable senior lawyers.
- Take concrete measures to ensure that qualified, non-politically affiliated professionals are appointed to independent commissions and that the composition of these bodies reflects gender balance and ethnic and religious diversity.
- Enact the necessary reforms to ensure that the Attorney General and the President do not undermine the rule of law and the right of victims to an effective remedy.
- Adopt measures to ensure the independence of the judiciary.

3. Right to freedom of expression heavily restricted (Article 19)

3.1. Laws used to curtail freedom of expression

Sri Lanka’s International Covenant on Civil and Political Rights (ICCPR) Act and the Prevention of Terrorism Act (PTA) have often been used by the authorities to curtail freedom of expression. In some instances, both laws have been used together to target individuals, especially those belonging to minority communities.

³⁶ Al Jazeera, *Sri Lanka drops charges against ex-navy chief over 11 killings*, 14 October 2021; <https://www.aljazeera.com/news/2021/10/14/sri-lanka-charges-former-navy-chief-11-killings-civil-war-tamils>

³⁷ Amnesty International, *Sri Lanka: 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/>

³⁸ OHCHR, *Report of the OHCHR Investigation on Sri Lanka*, 16 September 2015; <https://www.ohchr.org/en/hr-bodies/hrc/ois/>

³⁹ Sunday Times, *Suspects in journalist Nimalarajan’s murder case released*, 6 May 2021; <https://www.timesonline.lk/news-online/Suspects-in-journalist-Nimalarajans-murder-case-released/2-1133232>

⁴⁰ Sri Lanka Working Journalist Association, *Sri Lanka: Reopen the investigation into the murder of journalist Mylvaganam Nimalarajan*, 24 May 2021; <https://samsn.lk/sri-lanka-reopen-the-investigation-into-the-murder-of-journalist-mylvaganam-nimalarajan/>

⁴¹ This included cases of corruption against several current and former members of Parliament of the ruling party, including: Johnston Fernando, Mahindananda Aluthgamage, Rohitha Abeygunawardena, Wimal Weerawansa, Udaya Gammanpila, and Pavithra Wanniarachchi. In these cases, the Attorney General informed the courts that there was insufficient evidence to continue with the prosecution.

a. Misuse of the International Covenant on Civil and Political Rights (ICCPR) Act

Lol, para. 26

Please also respond to concerns regarding [...] prosecution for online expression under vaguely defined regulations, including through the misapplication of Section 3 of International Covenant on Civil and Political Rights Act No. 56 of 2007.

Mirroring Article 20(2) of the ICCPR, Section 3(1) of the ICCPR Act No. 56 of 2007 (ICCPR Act) aims to prohibit racial or religious hatred that incites violence, hostility, or discrimination.⁴² However, Section 3(1) of the ICCPR Act has been misused by the government to curtail freedom of expression and freedom of assembly, make arbitrary arrests, and propose policies on fake news.⁴³ The Act has also been misused by religious figures, mostly Buddhist monks, to instigate the arrest of members of minorities. Under the law, offenses under Section 3 are cognizable and only a High Court judge can grant bail under exceptional circumstances.⁴⁴

Several writers and artists have been targeted for allegedly insulting Buddhist sensitivities and were arrested and/or called in for questioning in relation to their work. On 1 April 2019, Shakthika Sathkumara, an award winning writer who published a fictional short story depicting a Buddhist monk as a homosexual paedophile, was arrested and detained for four months following a complaint filed by a Buddhist monk.⁴⁵ On 1 May 2020, the UN Working Group on Arbitrary Detention adopted an Opinion that declared Sathkumara's deprivation of liberty "arbitrary," as there was no legal basis for his arrest and detention.⁴⁶ The same Buddhist monk who filed the complaint against Sathkumara also sought legal action against Malaka Dewapriya, an award winning radio playwright and film director, in October 2019. The complainant alleged that the title of the radio drama created by Dewapriya was blasphemous of Buddhist terminology.⁴⁷ Police attempted to arrest Dewapriya under the ICCPR Act, but did not take him into custody due to public outcry.⁴⁸

Many Tamil youths from the Northern, Eastern, and Central Provinces have been arrested and detained under the ICCPR Act and the Prevention of Terrorism Act [See below, Section 3.1 (b)] for prolonged periods of time for Facebook posts containing photographs and poems that memorialized their relatives who had died during the civil war. They were arrested on allegations of attempting to regroup and revamp the proscribed armed organization Liberation Tigers of Tamil Eelam (LTTE). According to CHRD documentation, from 2018 to 2021, up to 60 Tamil youth were arrested, predominantly on charges under the ICCPR Act, and held in custody for over a year and then released on bail on a staggered basis.⁴⁹ Some charges are still pending. The police further misused provisions of the ICCPR Act to obtain prohibition orders from Magistrate Courts in several jurisdictions to prevent Tamils in the North and East from memorializing and commemorating those who died in the civil war [See below, Section 4.1 (a)].

Muslims have been targeted and arrested under the ICCPR Act for social media posts as well. On 9 April 2020, Ramzy Razeek, a social media commentator, was arrested and detained for five months for a Facebook post in

⁴² International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007; <https://citizenslanka.org/wp-content/uploads/2015/12/International-Covenant-on-Civil-Political-Rights-ICCPR-Act-No-56-of-2007E.pdf>

⁴³ See below, Sections 3.6(a) and 4.1(a).

⁴⁴ ICCPR Act, No. 56 of 2007, Section 3(4).

⁴⁵ Amnesty International, *Drop all charges against Shakthika Sathkumara*, 24 August 2020; <https://act.amnestyusa.org/page/65823/action/1?locale=en-US>

⁴⁶ Working Group on Arbitrary Detention, *Opinion No. 8/2020 concerning Delankage Sameera Shakthika Sathkumara (Sri Lanka)*, 22 May 2020; UN Doc. A/HRC/ WGAD/2020/8; https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_8_Advance_Edited_Version.pdf

⁴⁷ Sunday Observer, *Grilling of playwright Malaka Dewapriya: Continued use of ICCPR to crack down on artistes*, 20 October 2019; <http://www.sundayobserver.lk/2019/10/20/news-features/grilling-playwright-malaka-dewapriya-continued-use-iccpr-crack-down>

⁴⁸ Economy Next, *Playwright Dewapriya released after recording long statement*, 17 October 2019; <https://economynext.com/playwright-dewapriya-released-after-recording-long-statement-46941/>

⁴⁹ Cases litigation handled by CHRD from 2019 to 2022 under its Free Legal Assistance Program.

which he advocated for an “ideological jihad using the pen and keyboard as weapons.”⁵⁰ Razeek complained to the police of online death threats against him and his family in connection with the social media post. Instead of investigating the death threats, the police arrested him and claimed that he violated Section 3(1) of the ICCPR Act and cybercrimes legislation. Similarly, on 12 January 2020, the cybercrimes division of the Criminal Investigation Department (CID) of the police arrested Fazl Nizar, a writer and businessman, for a Facebook post in which he allegedly insulted Buddhist monks. When Nizar was produced before the Fort Magistrate’s Court in Colombo, CID officials stated that he committed an offence under the ICCPR Act.⁵¹

Recommendations

- Stop misusing the ICCPR Act to arrest and detain those who exercise their right to freedom of expression.
- Raise awareness among police officers about the application of the ICCPR Act and permissible restrictions to the right on freedom of expression on the basis of necessity and proportionality, in accordance with Article 19(2) of the ICCPR and UN Human Rights Committee’s General Comment No. 34 of the.
- Amend the ICCPR Act to incorporate provisions of Articles 19, 21, and 22 of the ICCPR, and to allow magistrates to grant bail for offenses under the Act.

b. Misuse of anti-terrorism legislation: The Prevention of Terrorism Act (PTA)

Despite repeated commitments made to repeal the PTA, the government has misused this legislation to target members of the Muslim and Tamil minority communities and to curtail their right to freedom of expression.

On 12 March 2021, a new regulation was introduced under the PTA with the objective to expand its scope to include any words, either spoken, read, or by signs or visual representation, which cause or intends to cause “acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.”⁵² Violations of the new regulation can be punished with up to two years of detention without trial.

On 16 May 2020, a young Muslim poet, Ahnaf Jazeem, based in Puttalam, North Western Province, was arrested under the PTA and detained for 18 months on charges of promoting Islamic extremism, based on a Tamil language poetry anthology he had published in 2017. On 15 December 2021, he was released on bail with strict conditions, including monitoring by the Terrorism Investigation Division (TID) of the police.⁵³ During his detention he was subjected to torture and cruel, inhumane, and degrading treatment by sleep deprivation and being handcuffed and tied to the leg of a table for several months to obtain a confession for his alleged involvement in the Easter Sunday attacks in 2019, when a series of coordinated suicide bombings in Colombo killed 269 people.⁵⁴

On 14 April 2020, the CID arrested Hejaaz Hizbullah, a Muslim human rights lawyer and a vocal government critic, over a speech he made in Puttalam, North Western Province. He was detained without charge under the PTA for 22 months for allegedly causing communal disharmony.⁵⁵

⁵⁰ Daily Express, *Ramzy Razeek released on bail after 5 months of Sri Lankan detention*, 19 September 2020; <http://dailyexpress.lk/global/2183/>

⁵¹ Free Media Movement, *Media Freedom Rights Monitoring Report*, 1 January 2021; http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD_Jan_ENG.pdf

⁵² Gazette No. 2218/ 68, 12 March 2021; http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf

⁵³ CIVICUS, *Assault on Civic Freedoms continue in Sri Lanka as an economic crisis hits the country*, 29 March 2022; <https://monitor.civicus.org/updates/2022/03/29/assault-civic-freedoms-continue-sri-lanka-economic-crisis-hits-country/>

⁵⁴ Daily Mirror, *In conversation with Poet Ahnaf Jazeem “The poems I wrote were against the ISIS ideology,”* 11 March 2022; <https://www.dailymirror.lk/plus/in-conversation-with-Poet-Ahnaf-Jazeem-The-poems-I-wrote-were-against-the-ISIS-ideology/352-232803>

⁵⁵ Amnesty International et al, *Release Hejaaz Hizbullah and Others Denied Due Process under Abusive Law*, 28 July 2021; <https://www.amnesty.org/en/wp-content/uploads/2021/07/ASA3745252021ENGLISH.pdf>

The PTA has also been used to indiscriminately arrest Tamils for social media posts, particularly relating to Remembrance Day⁵⁶ and Maaveerar Naal (Heroes' Day).⁵⁷ According to a Eastern Province - Batticaloa District member of Parliament, approximately 40-50 people were arrested in 2020 in the North and East for Facebook posts relating to Remembrance Day and have been charged under the PTA.⁵⁸ On 18 November 2020, journalist Murugapillai Kokila Dasan, based in Batticaloa, Eastern Province, was arrested and detained under the PTA for posting two pictures on Facebook to celebrate Heroes' Day, which police alleged promoted LTTE terrorist ideology.⁵⁹ In November 2020, in Batticaloa, 19 people were arrested and detained under the PTA for posting birthday wishes online for the deceased leader of the LTTE.⁶⁰ In April 2021, Kanapathipillai Mohan, a leading businessman in Chenkalady, Batticaloa, was arrested under the PTA for social media posts. He remains in custody.⁶¹

Recommendations

- Amend the PTA to ensure its compliance with the ICCPR.
- Establish an immediate moratorium on prosecutions under the PTA.
- Ensure that terrorism legislation is not used to arrest those who exercise their right to freedom of expression, including in relation to memorialization activities.

3.2 Return of the white vans to threaten journalists and human rights defenders

In several recent incidents of harassment, perpetrators used white vans, a tactic that was routinely used during the time of the civil war to subject to enforced disappearance journalists, human rights defenders, and government critics. During that period, the frequent use of white vans for abductions led to the silencing of critics and dissidents, with many going into exile.⁶²

On 14 February 2022, activist Shehan Malaka, who advocated for truth and justice for the victims of the 2019 Easter Sunday attacks, was followed by a white van and threatened by men in civilian clothing while he was walking on a public road.⁶³ When he realized that he was followed by a white van, Malaka attempted to run away. The men, who later identified themselves as CID officers, accosted him and arrested him without a warrant. He was subsequently released on bail. It was later revealed that Malaka had been arrested based on a speech he delivered during a press conference, where he claimed that there may be political motives behind the Easter Sunday attacks.

On 14 February 2022, the residence of Colombo-based journalist Chamuditha Samarawickrama was attacked by a group of unidentified persons in a white van.⁶⁴ Similarly, in February 2022, in Kalmunai, Eastern Province, Tamil activist Nithanshan, who advocated for the repeal of the PTA, was followed by unidentified men in a white van. The men, who claimed to be a part of the State Intelligence Service, attempted to kidnap him.⁶⁵

⁵⁶ Remembrance Day is held each year on 18 May, the date in which the civil war ended in 2009. It is the day in which Sri Lankan Tamils honor the memory of those who died during the civil war.

⁵⁷ Maaveerar Naal (Heroes' Day) is held each year on 27 November, the date in which the first LTTE cadre died in combat in 1982. Heroes' week is held annually from 21- 26 November, to commemorate the death of those who died fighting for the LTTE.

⁵⁸ Daily FT, *TNA MP lambastes Govt. for creating bogeyman of minorities to hide inabilities*, 7 December 2020; <https://www.ft.lk/news/TNA-MP-lambastes-Govt-for-creating-bogeyman-of-minorities-to-hide-inabilities/56-709860>

⁵⁹ Free Media Movement, *Media Freedom Rights Monitoring Report*, 1 January 2021; http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD_Jan_ENG.pdf

⁶⁰ Inform, *Repression for Dissent in Sri Lanka in November -December 2020*; https://www.inform.lk/wp-content/uploads/2021/03/RoD_Nov-Dec2020.pdf

⁶¹ Litigation handled by CHRD from 2019 to 2022 under its Free Legal Assistance Program.

⁶² Al Jazeera, *Rajapaksa's brother probed over killings*, 18 January 2015; <https://www.aljazeera.com/news/2015/1/18/rajapaksas-brother-probed-over-killings>

⁶³ Observatory for the Protection of Human Rights Defenders, *Sri Lanka: Arbitrary arrest and subsequent release on bail of Shehan Malaka*, 25 February 2022; <https://www.fidh.org/en/issues/human-rights-defenders/sri-lanka-arbitrary-arrest-and-subsequent-release-on-bail-of-shehan>

⁶⁴ News First, *Sri Lankan Journalist Chamuditha Samarawickrama's residence attacked*, 14 February 2022; <https://www.newsfirst.lk/2022/02/14/sri-lankan-journalist-chamuditha-samarawickramas-residence-attacked/>

⁶⁵ The Morning, *ITAK youth wing assistant escapes white van abduction: Shanakiyan*, 18 February 2022; <https://www.themorning.lk/itak-youth-wing-assistant-escapes-white-van-abduction-shanakiyan/>

3.3 Attacks on journalists

Lol, para. 26

With reference to the previous concluding observations (para. 21), please respond to continued reports of harassment, intimidation, surveillance and attacks against journalists, media workers and human rights defenders, and report on measures taken to ensure that they are protected effectively against such acts and to bring perpetrators to justice.

a. Journalists assaulted, arrested

During the recent wave of anti-government protests that began in March 2022, journalists have been targeted by police and government supporters while covering public assemblies.

On 31 March 2022, during a protest in front of the President's residence in Colombo, the police and the Special Task Force (STF), a paramilitary unit of the police, assaulted nine journalists despite being told they were from the media.⁶⁶ On 9 May 2022, several journalists were brutally attacked along with anti-government protesters by pro-government supporters. The police, who were in close vicinity of the attacks, failed to intervene to stop the attacks. Several journalists who were injured in the attacks had to be hospitalized.

In an earlier incident, on 27 November 2021, Tamil journalist Viswalingam Viswachandran, who was covering a memorial event in Mullaitivu, Northern Province, was beaten by four military personnel with sticks wrapped in barbed wire.⁶⁷

In addition, one incident surfaced of a journalist being subjected to cruel, inhumane, and degrading treatment while in police custody. On 7 April 2021, journalist Malik Abeykoon was arrested without reason while covering a health workers' protest and was brutally assaulted multiple times while in police custody.⁶⁸ The police also submitted a fabricated medical report to the courts stating that he had not been assaulted.

b. Journalists prevented from carrying out their work

Tamil journalists working in the North and East of the country have been subjected to repeated interrogations and intimidations by police, including from the TID. Tamil journalists based in Batticaloa, Eastern Province, have been repeatedly summoned by the authorities for questioning about their works and have been ordered to submit their personal information to the police.⁶⁹ On 12 July 2021, the Secretary of the Batticaloa Journalist Association, Selvakumar Nilanthan, was summoned by TID officers who questioned him about his work and demanded access to his bank account and social media accounts.⁷⁰ In January 2020, unidentified persons circulated leaflets in Batticaloa carrying photographs of seven journalists, including Selvakumar Nilanthan, warning that journalists who wrote critically of the government would face the death penalty.⁷¹

⁶⁶ Reporters Without Borders, *At least nine journalists injured during Sri Lanka protests*, 7 April 2022; <https://rsf.org/en/least-nine-journalists-injured-during-sri-lanka-protests>

⁶⁷ Statement by the Mullaitivu Press Club, 28 November 2021; https://www.newswire.lk/wp-content/uploads/2021/11/20211128_181419.jpg

⁶⁸ Reporters Without Borders, *Sri Lanka: Journalist arrested and put under remand*, 12 April 2021; <https://www.ifj.org/media-centre/news/detail/category/press-releases/Article/sri-lanka-journalist-arrested-and-put-under-remand.html>

⁶⁹ International Federation of Journalists, *Sri Lanka: Tamil journalist targeted with repeated interrogations*, 16 September 2021; <https://www.ifj.org/media-centre/news/detail/category/press-releases/Article/sri-lanka-tamil-journalist-targeted-with-repeated-interrogations.html>

⁷⁰ Committee to Protect Journalists, *Sri Lankan anti-terror authorities interrogate journalist Selvakumar Nilanthan*, 14 July 2021; <https://cpj.org/2021/07/sri-lankan-anti-terror-authorities-interrogate-journalist-selvakumar-nilanthan/>

⁷¹ Journalists for Democracy in Sri Lanka, *Tamil journalists in Sri Lanka's east facing death threats*, 24 January 2020; <http://www.jdslanka.org/index.php/news-features/media/924-tamil-journalists-in-sri-lankas-east-facing-death-threats>

In an unprecedented move, journalists were banned from covering parliamentary proceedings in November 2020, on the pretext of preventing the spread of COVID-19.⁷² The prohibition included a ban on media personnel from covering the budget debate in Parliament.⁷³ The absence of media during parliamentary proceedings hindered citizens' right to information.

Recommendations

- Conduct thorough, impartial, and effective investigations into incidents of threats and harassment against human rights defenders and journalists.
- Ensure that human rights defenders and journalists, particularly those working in the North and East of the country, are not harassed for their work.
- Ensure that journalists are able to carry out their work without obstruction and fear of reprisal.

3.4 Impunity for killing and disappearance of journalists

Lol, para. 26

Provide information on progress made in addressing impunity for past cases, including on the status of the investigation into the killing of the journalist Lasantha Wickrematunge in January 2009 and into the disappearance of the journalist Prageeth Eknaligoda in January 2010.

Impunity for violence against members of the media has continued, as there has been very little progress in investigations and court cases relating to the death, disappearance, and assault of journalists, which have dragged on for over a decade. According to Journalist for Democracy in Sri Lanka, during the last phase of the civil war, from 2004 to 2010, 44 journalists and media workers were killed or disappeared.⁷⁴ There has been no single conviction for these crimes, and only two cases have reached the prosecution stage:⁷⁵ the case of the murder of journalist Nimalarajan in October 2000, which was pending in the Jaffna Magistrate's Court, was later discontinued by the Attorney General in May 2021 [See above, Section 2.3]; and the case of the disappearance of journalist Prageeth Eknaligoda in January 2010, which remains pending in courts.

Members of the military intelligence have been accused of being involved in the abduction and torture of journalist Keith Noyahr in 2008, the killing of journalist Lasantha Wickrematunge in 2009, and the disappearance of journalist Prageeth Eknaligoda in 2010.⁷⁶ In those years, President Gotabaya Rajapaksa was serving as Defense Secretary.⁷⁷

During the Presidency of Gotabaya Rajapaksa, the investigations into the murder of Lasantha Wickrematunge failed to make any progress, and several investigating officers who had allegedly suppressed and destroyed evidence in the Wickrematunge case were given positions in government institutions. Former Inspector General of Police Jayantha Wickramaratne, who was accused of concealing and destroying vital evidence in the Wickrematunge case, was appointed as a commissioner to the Office of Missing Persons [See above, Section

⁷² The Morning, *Parliament session: Limited MPs and no journalists*, 1 November 2020;

<https://www.themorning.lk/parliament-session-limited-mps-and-no-journalists/>

⁷³ International Federation of Journalists, *Why January remains black for journalists in Sri Lanka*, 15 February 2021;

<https://www.ifj.org/media-centre/news/detail/category/Articlesblogs/Article/why-january-remains-black-for-journalists-in-sri-lanka.html>

⁷⁴ Journalist for Democracy in Sri Lanka, *Media workers killed*; <http://www.jdslanka.org/index.php/killed-media-workers/40-killed-media-workers/85-media-workers-killed-in-2009>

⁷⁵ Daily Mirror, *The Hague Tribunal; protests in Sri Lanka and challenging impunity for crimes against journalist*, 13 May 2022; https://www.dailymirror.lk/opinion/The-Hague-Tribunal-and-Protests-in-Sri-Lanka-Challenging-impunity-for-crimes-against-journalists/231-236894#.Yn5W4kNW_48.twitter

⁷⁶ Investigations by the CID uncovered that a military intelligence unit called the Triploi Platoon, essentially a "death squad," was behind the attacks on journalists. See: Human Rights Watch, *Open wounds and mounting dangers*, 1 February 2021; <https://www.hrw.org/report/2021/02/01/open-wounds-and-mounting-dangers/blocking-accountability-grave-abuses-sri-lanka>

⁷⁷ Sunday Observer, *Phone records lead CID to big arrest in Keith Noyahr abduction case*, 15 April 2018;

<http://www.sundayobserver.lk/2018/04/15/news-feature/phone-records-lead-cid-big-arrest-keith-noyahr-abduction-case>

2.1].⁷⁸ Prasanna Alwis, who was accused of suppressing evidence and shielding suspects in the Wickrematunge case, was appointed as director of the CID, despite a court warrant issued for his arrest.⁷⁹

Lead police officers who oversaw investigations and uncovered seminal evidence in cases of assault of journalists were either arrested or went into exile. On 30 July 2020, former CID Director Shani Abeysekara, who was overseeing the investigations into the disappearance of Eknaligoda, the murder of Wickrematunge, the abduction and torture of Noyahr, and the assault of journalist Upali Tennakoon, was arrested and detained for 10 months on false charges of concealing evidence in a murder case.⁸⁰ Police Inspector Nishantha De Silva, who was investigating the murder of Lasantha Wickrematunge and other journalists, went into exile soon after the 2019 Presidential election.⁸¹

In the case of Prageeth Eknaligoda, a special trial-at-bar in Colombo commenced in 2019.⁸² However, not much progress has been made in this case and several hearings were postponed due to COVID-19 lockdowns. The Presidential Commission of Inquiry on political victimization [See above, Section 2.2], which ran a parallel inquiry procedure into the pending court case, ignored a court order aimed at preventing a key witness from appearing before the commission, and proceeded to hear his testimony. During the testimony before the commission, the witness reversed his earlier testimony that had incriminated military intelligence officers. The Presidential Commission of Inquiry recommended exonerating the accused military intelligence personnel and their commanding officers in the case.⁸³

Recommendations

- Complete pending investigations into the murders and disappearances of journalists from 2004 to 2009 and immediately commence prosecutions against the alleged perpetrators.
- Provide protection to witnesses in cases of murdered or disappeared journalists.

3.5. Whistleblowers and government critics silenced, harassed

In May 2021, the Ministry of Health issued an order stating that disciplinary action would be taken against any officer of the Ministry for making statements to the media criticizing government policies and administrative procedures in relation to the handling of COVID-19.⁸⁴

Several doctors were questioned by the CID for criticizing the government's handling of COVID-19. On 31 August 2021, former Ministry of Health Spokesperson Jayaruwan Bandara was summoned by the CID for comments he made during an interview with a journalist on the high price of COVID-19 tests.⁸⁵ Najith Indika, a doctor at a hospital in Avissawella, Western Province, was questioned by the CID for critical remarks he made on Facebook on a crisis at his hospital due to the high number of COVID-19 patients.⁸⁶

The government also arrested and harassed public servants for expressing their opinion and exposing illegal activities. For example, on 21 May 2021, Chamila Jayasinghe, the Assistant Commissioner of Land Settlement in

⁷⁸ Newswire, *Ex-Police Chief's appointment to the Office of Missing Persons sparks concern*, 31 May 2021;

<https://www.newswire.lk/2021/05/31/ex-police-chiefs-appointment-to-the-office-of-missing-persons-sparks-concern/>

⁷⁹ Economy Next, *Ahimsa's objections on CID Director's appointment; Constitutional Council wants NPC's observations*, 25 June 2020; <https://economynext.com/ahimsas-objections-on-cid-directors-appointment-constitutional-council-wants-npcs-observations-71410/>

⁸⁰ Media.lk, *Shani-Mendis released on bail after 10 months*, 16 June 2021; <https://medialk.com/english/2021/06/16/shani-mendis-released-on-bail-after-10-months/>

⁸¹ Asia News, *Rajapaksa crimes investigator flees from death threats*, 26 November 2019; <https://www.asianews.it/news-en/Rajapaksa-crimes-investigator-flees-from-death-threats-48645.html>

⁸² A trial-at-bar consists of proceedings brought before three High Court judges to consider novel points of law in trials of criminal cases of exceptional public importance.

⁸³ Daily FT, *Justice for Prageeth*, 27 January 2022; https://www.ft.lk/ft_view_editorial/Justice-for-Prageeth/58-729682

⁸⁴ Daily FT, *Health Min. issues circular on disciplinary action against media statements*, 21 May 2021;

<https://www.ft.lk/news/Health-Min-issues-circular-on-disciplinary-action-against-media-statements/56-718203>

⁸⁵ News First, *Dr. Jayaruwan Bandara to appear at CID on Tuesday*, 30 August 2021;

<https://www.newsfirst.lk/2021/08/30/dr-jayaruwan-bandara-to-appear-at-cid-on-tuesday-31/>

⁸⁶ News 19, *CID questions Dr. Najith Indika over a Facebook post*, 15 August 2021; <https://www.news19.lk/cid-questions-dr-najith-indika-over-a-facebook-post/>

Kotmale, Central Province, was arrested by the CID for sharing a Facebook post related to deforestation in a forest reserve.⁸⁷ He was charged under Section 120 of the Penal Code for allegedly “provoking the people against the government.” On 24 January 2022, former Executive Director of the Consumer Affairs Authority (CAA), Thushan Gunawardena, a whistleblower, was prevented by Immigration officials from traveling abroad on the ground that he was named as a suspect in a fraud case.⁸⁸ Gunawardena exposed a scam on the sale of garlic at Sathosa, a state-owned cooperative store, which led to the arrest of four Sathosa officials. Gunawardena said he faced political pressured to resign from his position at the CAA after exposing the scam.⁸⁹

Recommendations

- Ensure public officials do not face reprisals for their work and for expressing their opinions.
- Refrain from issuing directives that prevent public officials from speaking to the media.

3.6 Online content blocked

Lol, para. 26

Please also respond to concerns regarding [...] reports of undue restrictions on online expression, including undue blocking of online content, social media and communication platforms.

a. Policies for cubing fake news mulled

In April 2021, the government presented a paper to the cabinet of ministers that proposed the adoption of a new law to combat fake and misleading assertions online.⁹⁰ On 20 April 2021, the cabinet adopted the proposal, which paved the way for drafting a bill to protect society “from the harm caused by false propaganda online.”⁹¹

In June 2021, the CID formed a special team to take action against dissemination of fake news on social media platforms, relying on provisions of Section 3 of the ICCPR Act (creating religious disharmony), Section 120 of the Penal Code (feelings of disaffection with the state), and Section 98 of the Police Ordinance (false reports to alarm people and create panic).⁹² The CID and the computer crimes division of the police conducted investigations to monitor the internet for violators.

b. Misuse of state of emergency to block social media platforms

On three occasions between 2019 and 2022, the government blocked all the main social media platforms and messaging apps when a state of emergency was declared following public protests, terrorist attacks, and communal violence.⁹³ The most recent incident took place on 3 April 2022, when all the main social media platforms were blocked for 16 hours following an anti-government protest that escalated when an army bus and jeep were set on fire in front of President Rajapaksa’s private residence in Colombo.⁹⁴ The move was an obvious

⁸⁷ The Leader, *Asst. Land Commissioner arrested for sharing a post on Facebook*, 22 May 2021;

<https://english.theleader.lk/news/1418-asst-land-commissioner-arrested-for-sharing-a-post-on-facebook>

⁸⁸ Newswire, *Whistleblower made suspect & prevented from leaving SL*, 24 January 2022;

<https://www.newswire.lk/2022/01/24/whistleblower-made-suspect-and-prevented-from-leaving-sl/>

⁸⁹ Sunday Times, *Garlic scam: Trade Minister Bandula says Govt. must exonerate him*, 3 October 2021;

<https://www.sundaytimes.lk/211003/news/garlic-scam-trade-minister-bandula-says-govt-must-exonerate-him-457232.html>

⁹⁰ News.lk, *Cabinet paper to enact laws to curtail fake and misleading assertions publicize through internet*, 21 April 2021;

<https://www.news.lk/news/political-current-affairs/item/32090-cabinet-paper-to-enact-laws-to-curtail-fake-and-misleading-assertions-publicize-through-internet>

⁹¹ News First, *Cabinet approves to draft ‘Fake News Law’*, 20 April 2021; <https://www.newsfirst.lk/2021/04/20/cabinet-approves-to-draft-fake-news-law/>

⁹² Daily News, *Sri Lanka to curb fake news on social media*, 7 June 2021;

<http://www.dailynews.lk/2021/06/07/local/251037/sri-lanka-curb-fake-news-social-media>

⁹³ The ban was imposed on Facebook, Twitter, WhatsApp, YouTube, Instagram, Facebook messenger, Telegram, TikTok, and Viber.

⁹⁴ Netblocks, *Social media restricted in Sri Lanka as emergency declared amid protests*, 2 April 2022; <https://netblocks.org/reports/social-media-restricted-in-sri-lanka-as-emergency-declared-amid-protests-JA6ROrAQ>

attempt to stop protesters from organizing and participating in ongoing anti-government public assemblies that called for the President's resignation.

Previously, following the Easter Sunday attacks in April 2019, the government blocked multiple social media platforms and messaging apps repeatedly in April and May.⁹⁵ For nine consecutive days, all the main social media platforms were blocked under the pretext of implementing security measures following the attacks.

In 2018, following communal violence that erupted in Kandy, Central Province, all the main social media platforms were blocked for one week following a request made by the Defense Ministry to the Telecommunication Regulatory Commission of Sri Lanka (TRCSL).⁹⁶ The measure was adopted as the government attempted to cut off communications between organizers of violent mobs that engaged in the destruction of property belonging to Muslims. However, the move resulted in reduced circulation of information from reliable sources on the situation on the ground, and people resorted to rely on rumors.⁹⁷

Recommendations

- Refrain from imposing blanket shutdowns of social media platforms at times of social unrest.
- Communicate government action transparently and raise awareness of public misinformation and disinformation.

LoI, para. 26

Please also respond to concerns regarding the lack of independence of Telecommunications Regulatory Commission.

3.7 Lack of independence of the Telecommunications Regulatory Commission

In recent years, under President Rajapaksa's administration, measures adopted by the government to increase presidential control over the TRCSL and other telecommunication bodies have undermined their independence and enabled interference by the executive branch.

In December 2019, President Rajapaksa issued a gazette notification that TRCSL would be brought under the purview of the Ministry of Defense.⁹⁸ The initial placement of the TRCSL within the direct purview of the Ministry of Defense raised fears of government surveillance. In December 2019, President Rajapaksa appointed Defense Ministry Secretary Kamal Gunaratne, who has been implicated by UN reports in alleged war crimes and crimes against humanity, as the Chairman of TRCSL.⁹⁹

In November 2020, the government created a new Ministry of Technology, which now oversees the TRCSL, with President Rajapaksa holding the portfolio for the ministry.¹⁰⁰ The Ministry of Technology oversees other key telecommunications institutions, including the Information and Communication Technology Agency and the Sri Lanka Computer Emergency Readiness Team.

Recommendations

- Remove the TRCSL and other telecommunications bodies from the purview of the President and ensure they are able to operate independently from the executive branch.
- Ensure qualified and independent professionals are appointed to the TRCSL.

⁹⁵ International Center for Counter Terrorism - The Hague, *Turning the Tap Off: The Impacts of Social Media Shutdown After Sri Lanka's Easter Attacks*, October 2020; <https://icct.nl/app/uploads/2020/10/StratComms-Report-2.pdf>

⁹⁶ Sunday Times, *All social media sites blocked*, 7 March 2018; <https://www.timesonline.lk/news/all-social-media-sites-in-the-country-blocked-trc/18-1040291>

⁹⁷ Netblocks, *Counting the cost of Sri Lanka's internet shutdown*, 27 March 2018; <https://netblocks.org/reports/sri-lanka-internet-shutdown-economic-impact-VxyM7EAZ>

⁹⁸ Gazette 2153/ 12, 10 December 2019; http://documents.gov.lk/files/egz/2019/12/2153-12_E.pdf

⁹⁹ Ministry of Defense, *Defence Secretary Maj.Gen. Gunaratne assumed duties as the TRCSL Chairman*, 6 December 2019; https://www.defence.lk/Article/view_Article/757

¹⁰⁰ Economy Next, *President will hold Sri Lanka's new Ministry of Technology*, 24 November 2020; <https://economynext.com/president-will-hold-sri-lankas-new-ministry-of-technology-76280/>

4. Freedom of peaceful assembly restricted (Article 21)

4.1 Discriminatory practices to curtail peaceful assemblies in the North and East

Lol, para. 27

Please respond to reports of interference with the exercise of freedom of peaceful assembly, including intimidation of families and activists against organizing and participating in memorial ceremonies for persons who have disappeared, the allegedly biased and routine use of court injunctions to prevent assemblies.

In the state report to the UN Human Rights Committee, the government stated that “since 2015, citizens have freely staged vigils on 19th May commemorating the grave loss of life due to the armed conflict that ended on the same date in 2009.”¹⁰¹ This situation changed completely after the election of President Rajapaksa, as authorities sought and obtained court orders that have been used to intimidate, arrest, and harass protest organizers and politicians from engaging in such commemoration events.

a. Court injunctions and arrests of organizers and participants in memorial events

Commemoration events in the North and East of the country have been hampered on many instances, denying victims’ families the right to freedom of peaceful assembly.

In an alarming trend, organizers and participants in memorial ceremonies have been arrested on charges brought under both the Prevention of Terrorism Act (PTA) and the ICCPR Act. In 2020-2021, arrests under the PTA increased in the North and East when Tamil communities attempted to remember their loved ones who lost their lives during the civil war. Memorial events are organized during Maaveerar Naal (Heroes’ Day) on 27 November, an annual commemoration day for LTTE cadres who died in the civil war, and for Remembrance Day on 18 May, the date on which the civil war ended in 2009. Arrests were made on the allegation that event organizers were revamping and regrouping the LTTE. In addition, charges were brought under the ICCPR Act based on the claim that event organizers were promoting LTTE ideology on social media and thus attempting to disturb communal harmony and peace. [See above, Section 3.1 (a)]. Arrests were made by the Terrorism Investigation Division (TID) of the police and those arrested were served with detention orders immediately after the arrest.

In November 2020, the police obtained a series of court orders to prevent memorial ceremonies in Jaffna, Mullaitivu, Mannar, Mallakam, Chavakachcheri, and Trincomalee to mark Maaveerar Naal (Heroes’ Day).¹⁰² During the court hearing, the Attorney General claimed that these events would result in disharmony among communities, in violation of the ICCPR Act.¹⁰³ As a result of the prohibition orders preventing memorial events, families resorted to lighting clay oil lamps at their private homes in front of the portraits of the family members who were killed during the war.

Acts of intimidation by the authorities against organizers and participants in commemoration events have not been limited to families of the deceased. Journalists and local politicians have also been targeted. In November 2020, two journalists in Jaffna, Northern Province, were targeted by local police who filed court injunctions alleging the journalists were involved in planning memorial activities.¹⁰⁴ On 19 November 2020, the Vavuniya Magistrate’s Court issued orders that banned eight politicians from multiple political parties from participating in any commemoration activities.¹⁰⁵ On 22 November 2020, the police also interrogated S. Sujansan, a divisional

¹⁰¹ Sixth periodic report submitted by Sri Lanka, CCPR/ C/LKA/6, 25 April 2019 (para 118).

¹⁰² Maaveerar Naal (Heroes’ Day) is held each year on 27 November, the date in which the first LTTE cadre died in combat in 1982. Heroes’ week is held annually from 21- 26 November, to commemorate the death of those who died fighting for the LTTE.

¹⁰³ Sunday Times, *North East courts ban Tiger commemorative events*, 29 November 2020;

<https://www.sundaytimes.lk/201129/news/north-east-courts-ban-tiger-commemorative-events-424114.html>

¹⁰⁴ Tamil Guardian, *Tamil journalists targeted in crackdown via restraining order*, 24 November 2020;

<https://www.tamilguardian.com/content/tamil-journalists-targeted-crackdown-restraining-order>

¹⁰⁵ Sri Lanka Brief, *Sri Lanka: 2020 Heroes’ day commemorations are banned in North and East*, 21 November 2020; <https://srilankabrief.org/sri-lanka-2020-heroes-day-commemorations-are-banned-in-north-and-east/>

council member in Mullaitivu, regarding a commemoration event to remember the victims of a claymore attack in November 2007.¹⁰⁶ In September 2021, Selvarajah Kajendran, a member of Parliament from the opposition party All Ceylon Tamil Congress, was arrested in Jaffna, Northern Province, for participating in a memorial event.¹⁰⁷

On 18 May 2021, 10 persons, including two women and an infant, who lit clay lamps at a private beachside property during a small memorial event organized by families who lost loved ones during the last phase of the civil war, were arrested by police in Kalkudah, Eastern Province, on charges under the PTA and the ICCPR Act. All those detained were released after being in detention for more than six months.¹⁰⁸

b. Intimidation of protest organizers and participants in the Northern and Eastern Provinces

Protesters in the North and East of the country have been routinely subjected to intimidation and surveillance by security forces and intelligence officers. Methods such as recording personal details of event participants, questioning protest organizers, harassment through phone calls, and filming the attendees have been common practices used to intimidate protesters. For example, on 29 April 2022, during a protest held in Batticaloa, Eastern Province, to seek justice for murdered journalist Dharmeratnam Sivaram, plainclothes police officers were observed recording footage of the protest.¹⁰⁹

Security forces and intelligence officers have regularly intimidated and harassed Tamils in their homes and threatened those travelling to memorial events to discourage participation. Intelligence officers have also attended many memorial ceremonies to monitor participants. The presence of intelligence officials at these ceremonies has had a chilling effect on participants, given the role of security forces in committing abuses during and after the conflict.

c. Family members of victims of disappearances harassed, prevented from protesting

Family members of disappeared persons have frequently been targeted and faced state scrutiny for organizing protests. Key activists who demanded justice for disappeared persons have also been targeted through pre-emptive court orders.¹¹⁰

In a recent protest organized on 20 March 2022, police attempted to prevent families of persons who disappeared during the civil war from exiting a bus and staging the protest in front of the Jaffna Special Economic Centre in Madduvil, Northern Province, during a visit of by then-Prime Minister Mahinda Rajapaksa. Police officers were deployed in the area to block the protesters from surrounding the venue and some of the family members who were finally able to exit the bus and protest were assaulted by the police.

Although there have been occasional protests and demonstrations to demand justice for disappeared persons, many of the family members and relatives who have been part of the protests from the early stages are now deceased. Those who are still alive are aged, suffer from health ailments, and continue to face routine harassment from security forces.

4.2 Unnecessary and disproportionate use of force against protesters

LoI, para. 27

Please respond to reports of [.....] disproportionate force against protesters, including the use of water cannon and tear gas.

¹⁰⁶ Inform, *Repression of dissent in Sri Lanka: 1 November- 31 December 2020*; March 2021; https://www.inform.lk/wp-content/uploads/2021/03/RoD_Nov-Dec2020.pdf

¹⁰⁷ Al Jazeera, *Sri Lanka arrests Tamil MP for commemorating separatist rebel*, 24 September 2021; <https://www.aljazeera.com/news/2021/9/24/sri-lanka-arrests-tamil-mp-separatist-rebel>

¹⁰⁸ Magistrate's Court Valaichenai Case No. B 251/ 2021.

¹⁰⁹ Newswire, *Police in civil caught filming protest in Batticaloa*, 29 April 2022; <https://www.newswire.lk/2022/04/29/police-in-civil-caught-filming-protest-in-batticaloa/>

¹¹⁰ Amnesty International, *Still no answers: an update on the rights of victims of enforced disappearances in Sri Lanka*, 2022; <https://www.amnesty.org/en/wp-content/uploads/2022/03/ASA3752782022ENGLISH.pdf>

Since March 2022, there have been several protests during which police used firearms and beat protesters with batons. On 19 April 2022, during a protest against rising fuel prices that took place in Rambukkana, Sabaragamuwa Province, police fired live ammunition to disperse demonstrators, killing one of them and injuring 14 others.¹¹¹ During court proceedings related to the incident, the disproportionate use of force was documented in many witness testimonies and videos, in which police appeared to chase protesters and fire shots with assault rifles.¹¹² On 29 April 2022, four police officers, including a Senior Superintendent of Police (SSP) who ordered opening fire during the protest, were arrested by the CID.¹¹³

On several instances during the anti-government protests that began in March 2022, the police resorted to the indiscriminate use of teargas and water cannons. These protests were predominantly peaceful before the police started using teargas and water cannons to disperse the demonstrators. On 31 March 2022, approximately 50 people, including nine journalists, were injured after police used water cannon and teargas at a protest outside the President's residence in Colombo.¹¹⁴ On 6 May 2022, during a protest in front of Parliament in Colombo, tear gas and water cannons were used in an indiscriminate manner against peaceful protesters. Several children who were present at the protest were affected by the teargas.¹¹⁵ The police also used water cannons to destroy a food tent that was set up for protesters outside the Parliament premises. The previous day, tear gas was used to stop protesters from removing barricades leading to Parliament. The police continued to fire tear gas canisters even after the crowds had dispersed.¹¹⁶

a. Harassment of peaceful protesters during anti-government rallies

During the anti-government protests in 2022, police adopted several methods of intimidation against the participants. In two instances, the police dismantled protest sites. On 17 April 2022, police removed temporary tents of protesters in Galle, Southern Province. Following the intervention of lawyers, the police agreed to allow the protests to continue with the tents re-installed. On the same day, the police also objected to temporary tents in Kandy, Central Province, but later allowed the tents to be installed. The police also deployed police vehicles to intimidate protesters and block access to protest sites. On 16 April 2022, several empty police trucks were parked near the Galle Face Green protest site in Colombo. Following a Bar Association statement that expressed concerns over attempts to disrupt peaceful protests, the police trucks were later removed from the location.¹¹⁷ Similarly, in May 2022, police buses were used to block protesters from demonstrating in front of Temple Trees, the Prime Minister's official residence in Colombo.¹¹⁸ To prevent a large university student-led protest from proceeding near Temple Trees, the police created barricades using GI pipes hidden with spikes.

In stark contrast, on 9 May 2022, police failed to intervene when large mobs supporting then-Prime Minister Mahinda Rajapaksa, armed with sticks and clubs, attacked peaceful anti-government protesters and burned and destroyed protest sites in front of the President's office at Galle Face Green and the Prime Minister's residence

¹¹¹ FIDH and CHRD, *Sri Lanka: Hold police accountable for use of lethal force against protesters*, 20 April 2022; <https://www.fidh.org/en/region/asia/sri-lanka/sri-lanka-police-use-lethal-force-against-protesters>

¹¹² Daily Mirror, *Unrest in Rambukkana: State level contradictions galore as victims await justice*, 25 April 2022; <https://www.dailymirror.lk/recommended-news/Unrest-in-Rambukkana-State-level-contradictions-galore-as-victims-await-justice/277-235614>

¹¹³ News First, *#Rambukkana Shooting: SSP & Constables to appear in Court; They were arrested from Police Hospitals*, 29 April 2022; <https://www.newsfirst.lk/2022/04/29/rambukkana-shooting-ssp-they-were-arrested-from-police-hospitals/>

¹¹⁴ Guardian, *Sri Lanka: 50 injured as protesters try to storm president's house amid economic crisis*, 1 April 2022; <https://www.theguardian.com/world/2022/apr/01/sri-lanka-protesters-try-to-storm-presidents-house-as-economic-crisis-deepens>

¹¹⁵ UNICEF, *UNICEF condemns violence against children during protests*, 7 May 2022;

<https://www.unicef.org/srilanka/press-releases/unicef-condemns-violence-against-children-during-protests>
¹¹⁶ AFP, *Sri Lanka police tear gas student protesters outside parliament*, 5 May 2022; <https://www.france24.com/en/live-news/20220505-sri-lanka-police-tear-gas-student-protesters-outside-parliament>

¹¹⁷ Newswire, *Police trucks removed: BASL says any attempt to disrupt protests will have grave repercussions*, 16 April 2022; <https://www.newswire.lk/2022/04/16/says-any-attempt-to-disrupt-protests-will-have-gravesions/>

¹¹⁸ News First, *Sri Lankan Cops remove police buses & trucks from Mynagagama*, 4 May 2022; <https://www.newsfirst.lk/2022/05/04/sri-lankan-cops-remove-police-buses-trucks-from-mynagagama/>

at Temple Trees in Colombo. Prisoners were among the government supporters who attacked the protesters.¹¹⁹ Senior Deputy Inspector General of Police for the Western Province, Deshabandu Tennakoon, was seen among the pro-government supporters who launched the unprovoked attack.¹²⁰ Among those attacked were disabled persons, catholic priests, and journalists. Approximately 78 people were hospitalized as a result of the attacks.¹²¹

These attacks were part of state-sponsored violence to quell anti-government protests. According to a member of Parliament, the Inspector General of Police had instructed the police not to prevent the attacks, even though they had prior information of the imminent attacks.¹²² According to the parliamentarian, it was only after the President intervened that police resorted to use tear gas and water cannons to disperse the attackers at Galle Face Green. On 17 May, the CID arrested two members of Parliament with the ruling party, the Sri Lanka People's Front, in connection with the attacks.¹²³

4.3 Peaceful protesters arbitrarily arrested and detained

In some cases, the police conducted arbitrary arrests without a warrant or without giving reasons for the arrests. On 31 March 2022, the police arbitrarily arrested 54 demonstrators who participated in an anti-government protest in front of the President's residence in Colombo.¹²⁴ Several of those detained were subject to cruel, inhuman, degrading treatment while in police custody. Similarly, on 4 May, 12 demonstrators in front of the Parliament in Colombo were detained without a reason.¹²⁵

In other cases, the police used the COVID-19 pandemic as a reason to arrest peaceful protesters. In July 2021, approximately 100 trade union leaders, political activists, and teachers participating in peaceful protests against a law to militarize university education, the forced organic fertilizer policy, and other issues, were arrested and later released on bail.¹²⁶ The peaceful protesters were arrested and detained for allegedly violating COVID-19 regulations.

On 8 July 2021, 45 people, including Sri Lanka Teachers Union General Secretary Joseph Stalin, were arrested for protesting in front of Parliament against a proposed law that sought to militarize the university education system.¹²⁷ Similar protests that were organized in Nuwara Eliya, Central Province, resulted in the arrest of four of the participants.¹²⁸

Recommendations

- Conduct impartial and independent investigations into all incidents involving unnecessary or disproportionate use of force by police against protesters, particularly those that resulted in the death or injuries of participants.
- Ensure that the police adopt non-violent measures to de-escalate tensions without resorting to force in the policing of assemblies.

¹¹⁹ News First, *Prisons Chief, Officers summoned to HRCSL*, 12 May 2022; <https://www.newsfirst.lk/2022/05/12/prisons-chief-officers-summoned-to-hrcsl/>

¹²⁰ Economy Next, *Sri Lanka protesters assault top cop Deshabandu Tennakoon*, 10 May 2022; <https://economynext.com/sri-lanka-protesters-assault-top-cop-deshabandu-tennakoon-94053/>

¹²¹ Channel News Asia, *Dozens injured as Sri Lanka government supporters run riot*, 9 May 2022; <https://www.channelnewsasia.com/asia/sri-lanka-colombo-curfew-clash-economic-crisis-2673271>

¹²² News Wire, *Ramesh Pathirana names two officials who deliberately failed to stop Galle Face attack*, 18 May 2022; <https://www.newswire.lk/2022/05/18/es-two-official-who-deliberately-failed-to-stop-galle-face-attack/>

¹²³ News First, *SLPP MPs Sanath Nishantha & Milan Jayatilake arrested*, 17 May 2022; <https://www.newsfirst.lk/2022/05/17/slpp-mp-sanath-nishantha-arrested/>

¹²⁴ Al Jazeera, *Police fire tear gas as Sri Lanka protesters defy curfew*, 3 April 2022; <https://www.aljazeera.com/news/2022/4/3/protesters-rally-in-sri-lanka-despite-curfew-social-media-curbs>

¹²⁵ Daily Mirror, *Dozen arrested for protesting near Parliament*, 4 May 2022; https://www.dailymirror.lk/top_story/Dozen-arrested-for-protesting-near-Parliament/155-236256

¹²⁶ FIDH et al., *Sri Lanka: End arbitrary arrests, reprisals against human rights defenders and activists advocating for education rights*, 28 September 2021; <https://www.fidh.org/en/issues/human-rights-defenders/end-arbitrary-arrests-reprisals-against-human-rights-defenders-and>

¹²⁷ Economy Next, *Sri Lanka police arrest over 45 for organising protests in violation of ban*, 8 July 2021; <https://economynext.com/sri-lanka-police-arrest-over-45-for-organising-protests-in-violation-of-ban-83828/>

¹²⁸ *Ibid.*

- Ensure that only properly trained law enforcement officers are deployed to police assemblies.
- Ensure that terrorism legislation is not used to arrest those who exercise their right to freedom of peaceful assembly, including in relation to memorialization activities.
- Ensure that the military and/or police do not engage in surveillance and intimidation of those exercising their right to peaceful assembly in the North and East of the country.