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ASIAN HUMAN RIGHTS COMMISSION

Sri Lanka

Joint Submission to the UN Universal Periodic Review
42nd Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation,
NGO in General Consultative Status with ECOSOC**

And

Asian Human Rights Commission (AHRC)

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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2 The Asian Human Rights Commission (AHRC) was founded in 1984 by a prominent group of jurists and human rights activists in Asia. The AHRC is an independent civil society body, which seeks to promote greater awareness and realisation of human rights in the Asian region, and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations.
- 1.3 In this submission, CIVICUS and AHRC examine the Government of Sri Lanka's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Sri Lanka's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in November 2017. To this end, we assess Sri Lanka's implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.4 During the 3rd UPR cycle, the Government of Sri Lanka received nine recommendations relating to civic space. Of these recommendations, eight were accepted and one was noted. However, an evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrates that the Government of Sri Lanka has not fully implemented any of the recommendations relating to civic space effectively.
- 1.5 We are deeply concerned by the ongoing use of excessive force against HRDs and protesters and restrictive laws to limit civic space and fundamental freedoms. Further, we are alarmed at continuing judicial persecution, harassment and intimidation of HRDs, journalists, student protesters and others expressing dissenting opinions against the government.
- 1.6 Between 2017 and 2022, we observed alarming trends of a government crackdown on protests, arbitrary detention against activists and violations of the freedoms of opinion and expression.
- 1.7 The 1978 Constitution of Sri Lanka created an executive presidential system of governance, placing the president above the law of the land. Law enforcement agencies that have statutory power to investigate crimes act according to the whim of the executive branch of the state under the control of the president. The Attorney General's Department, which controls the prosecution of cases, also acts under the control of the president. Recruitment of the police, prosecution and judiciary are under the full control of the president's office. All public institutions, especially rule of law institutions, are obliged to politicians of the ruling party.

1.8 Arbitrary decisions of the executive branch are at the core of the disregard of human rights in Sri Lanka. Whatever protection is available in the constitution or international human rights instruments to which Sri Lanka is a party does not protect people from the abuse of the executive authorities of the state. The protection of the freedoms of association, peaceful assembly and expression is impossible in Sri Lanka unless constitutional reforms are introduced to adhere to the principles and guarantees enshrined in the International Covenant on Civil and Political Rights (ICCPR), and article 2 in particular.

1.9 As a result, civic space in Sri Lanka is currently classified as obstructed by the CIVICUS Monitor, indicating the existence of significant civic space restrictions.¹

- Section 2 of this submission examines Sri Lanka's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines the protection of HRDs, civil society activists and journalists.
- Section 4 examines the freedom of expression.
- Section 5 examines the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 3rd cycle.
- An annex on the implementation of 3rd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of Association

- 2.1. During Sri Lanka's examination under the 3rd UPR cycle, the government received and supported one recommendation on the freedom of association. It agreed 'to ensure a safe and enabling environment for civil society and human rights defenders'. However, as evidenced below, the government has failed to take adequate measures to realise this recommendation.
- 2.2. The freedom of association is enshrined in articles 14 (1) (c) of the Sri Lankan Constitution.² Article 22 of the ICCPR, to which Sri Lanka is a state party, also guarantees the state's obligation to respect, protect and fulfil the freedom of association. However, this guarantee has not been translated into practice by the government. On the contrary, it has increased restrictions on CSOs.
- 2.3. CSOs may obtain legal registration in several ways. Organisations can register as Non-Governmental Organisations (NGOs) under the Voluntary Social Service Organisations (VSCO) Act No. 31/1980, with a limited statutory definition that

¹ CIVICUS Monitor: Sri Lanka, <https://monitor.civicus.org/country/sri-lanka>.

² Constitution of Sri Lanka, http://www.priu.gov.lk/Cons/1978Constitution/Chapter_03_Amd.htm.

covers only associations engaged primarily in social services activities,. Organisations can also register as a society or non-profit company under the Companies Act No. 7 of 2007. Despite registration being voluntary, unregistered CSOs face undue restrictions on exercising their right to association.³

- 2.4. During his visit to Sri Lanka in 2021, the United Nations Special Rapporteur on Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, shed light on the discriminatory practices that disproportionately impact on CSOs, particularly in north and east Sri Lanka. Practices include informal refusals, conducted in verbal form without proper documentation, of CSOs working on politically sensitive issues such as LGBTQI+ rights, disappearances, land rights and transitional justice.⁴
- 2.5. The Special Rapporteur was also alarmed by the trend of surveillance and intimidation against CSOs. These take the form of frequent visits to CSOs by security officers from the Criminal Investigation Department (CID), trailing of CSO representatives by police to their private residences⁵ and heavy surveillance conducted by plainclothes security forces on CSO premises.⁶
- 2.6. In March 2018, the government attempted to introduce an amendment to the VSCO Act. The proposed draft contained a provision to 'regulate, supervise & inspect' CSOs through a legalised 'National Secretariat for NGOs' with extraordinary and excessive powers in the context of reporting and approvals. It also included a provision that grants the authorities excessive powers to suspend or cancel CSO registration for various reasons. These include instances where CSOs are deemed by the authorities to be a threat or prejudicial to national security or public interest or the organisations are operating contrary to national interests. Despite the success of multi-stakeholder cooperation, including from civil society, in blocking the amendment, CIVICUS and AHRC are concerned that the proposed bill may be reintroduced in the near future.⁷

3. Harassment, intimidation and attacks against HRDs, civil society activists and journalists

³ Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of peaceful assembly: Visit to Sri Lanka', 2020, A/HRC/44/50/Add.1 para 57

⁴ Ibid, para 63.

⁵ Ibid, para 75.

⁶ Ibid, para 76.

⁷ 'Government backs down on restrictive NGO law amendments', CIVICUS Monitor, 10 April 2018, <https://monitor.civicus.org/updates/2018/04/10/government-backs-down-restrictive-ngo-law-amendments>

- 3.1. Under Sri Lanka's previous UPR examination, the government supported four out of five recommendations on the protection of HRDs, journalists and civil society representatives. The recommendations include a commitment to take measures to 'adequately protect human rights defenders, to ensure proper investigation into alleged attacks and to prosecute those found responsible', 'ensure the protection of civil society actors and journalists and to investigate cases of threats and attacks against them' and 'ensure the protection of women human rights defenders in accordance with international standards'. The Government rejected a recommendation to adopt a national policy to protect HRDs. However, as examined in this section, the Government has failed to operationalise these recommendations effectively.
- 3.2. Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR also guarantees the activity of HRDs and their civil and political rights. However, a culture of impunity and abuse of power persists, which uses violence and torture against HRDs and seeks to silence civil society and political dissenters. Restrictive laws have been continuously used against HRDs who criticise the regime.
- 3.3. The Prevention of Terrorism Act (PTA) 1979, part I, section 3 contains an overly broad scope of conduct categorised as terrorism.⁸ The law allows, among other issues, the issuance of a 'Detention Order' that allows the arrest and detention of suspects for 90 days without charge, which the authorities can renew every 90 days for 18 months. The provision has been abused by the authorities and used to arbitrarily arrest, detain and harass HRDs. Further, under sections 11.1 (A –E) and 14.1, the authorities can prohibit international travel and the freedoms of association and expression and sanction surveillance of an individual under suspicion of 'unlawful activity'. The law facilitates unlawful acts such as arbitrary detention, allowing officials to move and keep a suspect in 'any place for the purpose of interrogation', use torture to extract false confessions and target minority communities and civil society groups.⁹
- 3.4. Since assuming power in November 2019, President Gotabaya Rajapaksa and his administration have used the PTA to target political opponents and members of the minority Muslim and Tamil communities.
- 3.5. In February 2022, the Rajapaksa administration proposed an amended version of the PTA, which was approved by the majority of parliament the following month.

⁸ Prevention of Terrorism Act, <https://www.parliament.lk/uploads/bills/gbills/english/6123.pdf>.

⁹ 'In a legal black hole: Sri Lanka's failure to reform the Prevention of Terrorism Act,' Human Rights Watch, 7 February 2022, <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>

The amended version did not address the fundamental flaws of the law that have enabled human rights violations. Notably, the new law does not make any changes to defining the offences that constitute ‘terrorism’, does not put adequate measures to prevent torture, and does not address the issue of prolonged arbitrary detentions, among other issues.¹⁰

- 3.6. UN experts criticised the amended PTA in a statement in March 2022. The statement highlighted the grave risk of the PTA to the rights and liberties of victims of arbitrary detention and to religious and ethnic minorities and the violation of due process of law that will further curb dissent. The experts called for an immediate moratorium on the use of PTA and its reform.¹¹ The statement followed a letter previously sent by Special Rapporteurs in December 2021 to the Sri Lankan government highlighting the adverse impact of PTA.¹²
- 3.7. In February 2022, the Sri Lankan Foreign Ministry issued a statement targeting Ambika Satkunanathan, a human rights lawyer and women HRD (WHRD), stemming from her testimony to the European Parliament on 27 January 2022 describing the deterioration of human rights in Sri Lanka. Satkunanathan was a commissioner of the National Human Rights Commission of Sri Lanka. Prior to that, she was for many years a legal consultant to the Office of the UN High Commissioner for Human Rights. The statement from the Ministry aimed at delegitimising her testimony and placed her at risk of physical danger as retribution for her work. The Ministry repeatedly equated human rights advocacy with ‘terrorism’, citing provisions under the PTA.¹³
- 3.8. In May 2021, 10 Tamil men and women were arrested under the PTA in the eastern coastal village of Kalkudah for holding a vigil to mark the thousands of Tamil civilians who were killed in the final months of fighting between the Sri Lankan government and separatist Liberation Tigers of Tamil Eelam (LTTE) in 2009. Those who attended the memorial event lit a flame of remembrance and laid flowers on the beach.¹⁴

¹⁰ ‘Sri Lanka: Commentary on the Prevention of Terrorism Act Amendment Bill’, Amnesty International, 18 March 2022.

¹¹ ‘Sri Lanka: UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law’, Office of the High Commissioner for Human Rights (OHCHR), 2 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>.

¹² ‘Joint communication of the UN Special Rapporteurs on the situation of Sri Lanka – OL LKA 7/2021’, United Nations, 9 December 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863>

¹³ ‘Assault on Civic Freedoms continue in Sri Lanka as an economic crisis hits the country’, CIVICUS Monitor, 29 March 2022, <https://monitor.civicus.org/updates/2022/03/29/assault-civic-freedoms-continue-sri-lanka-economic-crisis-hits-country>.

¹⁴ CIVICUS Monitor, 17 November 2021, op. cit.

- 3.9. Hejaaz Hizbullah, a lawyer who has represented victims of human rights violations, was arrested under the PTA on 14 April 2020. He was held illegally without charge and did not appear before the magistrate for over 90 days. During his arbitrary arrest and prolonged detention, the authorities deprived him of access to his family and lawyers. It was known that the day before his arrest, Hizbullah joined others in submitting a letter addressed to President Rajapaksa criticising the denial of burial rights to the Muslim community under Sri Lanka's COVID-19 regulations.¹⁵
- 3.10. Ahnaf Jazeem, a poet and teacher, has been under remand under the PTA since May 2020. Ahnaf Jazeem was arrested in connection with a Tamil-language poetry anthology, Navarasam, which he wrote and published in July 2017, as well as on unsubstantiated claims of exposing his students to 'extremist' content with the intention of turning them into followers of 'extremist ideology'. His legal counsel has claimed they were denied meaningful access and confidentiality when meeting Jazeem and he has also allegedly been subjected to torture and cruel, inhumane and degrading treatment in detention.¹⁶
- 3.11. Judicial harassment is also used to target politicians and lawyers who challenge the current administration. Harassment comes in the form of legal and administrative scrutiny as well as smear campaigns. The Supreme Court held Ranjan Leo Sylvester Alphonsu, a politician and former member of parliament, guilty of contempt of court on 12 January 2021. The reason for the charge and the conviction was a broadcast in 2017 that alleged that many lawyers and judges are corrupt.¹⁷ The court sentenced him to four years' imprisonment.
- 3.12. Kumaravdivel Guruparan is another lawyer targeted by the authorities. He is a senior lecturer at the Faculty of Law of the University of Jaffna. He appeared as counsel on behalf of victims in the case of 24 young Tamils who were subjected to enforced disappearance while in military custody in 1996. In November 2019, Guruparan was banned by the University Grants Commission (UGC) from teaching law while also practising in court. The ban was followed by a letter sent by the army to the UGC questioning why Guruparan was permitted to engage in legal practice while being a member of the faculty. Guruparan resigned from the university on 16

¹⁵ 'On Hejaaz Hizbullah: The latest victim of Sri Lanka's draconian Prevention of Terrorism Act', Amnesty International, 15 July 2020, <https://www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act>.

¹⁶ 'Sri Lanka: Two years on, escalating assaults on freedoms by the Rajapaksa administration', CIVICUS Monitor, 17 November 2021, <https://www.civicus.org/index.php/media-resources/news/5444-sri-lanka-two-years-on-escalating-assault-on-freedoms-by-the-rajapaksa-administration>.

¹⁷ 'Sri Lanka: Four years prison term for contempt of court violates the International Covenant for Civil and Political Rights', Asian Human Rights Commission, 2021, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-001-2021>.

July 2020.¹⁸

- 3.13. WHRD and lawyer Achala Senevirathne, who represented families in a case involving the enforced disappearance of 11 young people in 2008 in which senior military commanders were implicated, was harassed on social media, including with threats of physical violence and sexual abuse in May 2020. Despite her complaints with regard to her safety and security, the police did not take any action.¹⁹
- 3.14. CIVICUS and AHRC have also documented the harassment of journalists following the presidential election on 16 November 2019, with threats of arrest, surveillance and lengthy police interrogations linked to their reporting. Dharisha Bastians, former editor of the Sunday Observer newspaper and a contributor to the New York Times, has been persecuted by the police in retaliation for her work, as have her family and associates. Since December 2019, the authorities have attempted to link Bastians to the disputed abduction of a Swiss Embassy employee in Colombo. The government claims the alleged abduction was fabricated to discredit the government. Since Bastians had reported on the incident as a journalist, the police obtained and published her phone records, searched her house and seized her computer.²⁰
- 3.15. In April 2022, security forces and police resorted to violence, injuring at least eight journalists covering a protest calling for the president to resign over his failure to provide essential goods, including food and medicine, at affordable prices.²¹

4. Freedom of expression, media freedom and access to information

- 4.1. Under the 3rd UPR cycle, the government received and supported six recommendations relating to the freedoms of opinion and expression. The government pledged, among other things, to 'adopt comprehensive legislation on hate speech and incitement to hatred' and to 'take concrete measures aimed at

¹⁸ 'Human rights lawyer Kurmaravadivel Guruparan barred from practicing law', Front Line Defenders, 13 November 2019, <https://www.frontlinedefenders.org/en/case/human-rights-lawyer-kumaravadivel-guruparan-bared-practicing-law>.

¹⁹ 'Sri Lanka: Human rights under attack', CIVICUS Monitor, 29 July 2020, <https://www.civicus.org/index.php/media-resources/news/4532-sri-lanka-human-rights-under-attack>.

²⁰ 'End Persecution of Journalist Dharisha Bastians Targeted for Reports, Defense of Human Rights', Front Line Defenders, 24 June 2020, <https://www.frontlinedefenders.org/en/statement-report/end-persecution-journalist-dharisha-bastians-targeted-reports-defense-human-rights>.

²¹ 'Journalists reporting protest to oust Sri Lanka president beaten up 'black and blue'', Journalists for Democracy in Sri Lanka, 2 April 2022, <http://www.jdslanka.org/index.php/news-features/media/1082-journalists-reporting-protest-to-oust-sri-lanka-president-beaten-up-black-and-blue>.

preventing and punishing the perpetrators of hate speech and incitement of violent attacks against ethnic and religious minorities'. However, the government has not taken effective measures to implement the recommendations.

- 4.2. The right to the freedoms of expression and opinion is guaranteed in article 14(1)(a) of the Constitution and article 19 of the ICCPR. However, CIVICUS and AHRC have observed increasing attacks against the freedom of expression and people who express dissent during the Rajapaksa administration. Restrictions against the freedom of expression have also been exacerbated by the COVID-19 pandemic, which the government used as pretext.
- 4.3. The government has imposed several regulations to combat 'fake news'. The Penal Code (Cap 19) section 120 penalises individuals who 'excite or attempt to excite feelings of dissatisfaction to the State, or excite or attempts to excite hatred to or contempt of the administration of justice, or raises dissatisfaction amongst the People of Sri Lanka' with a maximum two years' imprisonment.²² Further, section 98 of the Police Ordinance of Sri Lanka criminalises 'false reports to alarm people and create a panic'.²³ Section 6 of the Computer Crimes Act No. 24/2007 criminalises use of a computer in a manner that results in danger or imminent danger to 'public order'.
- 4.4. International human rights standards, including the Siracusa Principles, have stipulated that the use of 'public order' grounds to limit the freedom of expression should be conducted with heightened scrutiny, be as narrow as possible and be applied in good faith. Wordings such as 'creating panic' or 'raising dissatisfaction' are broad and without limitation in scope, potentially leading to abuse of power. The authorities have abused these ill-worded provisions to further clamp down on criticism of the government and law enforcement.
- 4.5. For example, in June 2021 the police announced that a specialised team within the CID will be established to reinforce the regulations related to 'fake news' to combat misinformation regarding COVID-19.²⁴ In a statement issued on 8 June 2021, the police stated that 'anyone creating, publishing, sharing, forwarding, or aiding and abetting the spread of 'fake news' on social media will be considered to have committed an offence under provisions in the police ordinance, the Penal Code, the 1979 Prevention of Terrorism Act, the Computer Crimes Act and other laws'

²² Cap 19 Penal Code of Sri Lanka, Section 120.

²³ Police Ordinance Section 98,

http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Police_Ordinance.pdf.

²⁴ 'Sri Lanka to curb fake news on social media', Daily News, 7 June 2021,

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

and ‘will be arrested without warrant’.²⁵ This set a precedent of arbitrary arrest and breach of the right to fair trial and equality before the law as enshrined in the ICCPR.

- 4.6. The Human Rights Committee, in a statement addressing concerns about excessive restrictions and measures on ‘fake news’ under the pretext of COVID-19 by state parties, stated that ‘freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant’.²⁶
- 4.7. Further, the High Commissioner for Human Rights expressed concerns over the alarming trend of arbitrary arrests under the pretext of responding to the COVID-19 pandemic and the impact this had on the freedom of expression in Sri Lanka. The High Commissioner particularly highlighted the statement made by the Acting Inspector General of Police, who threatened to arrest anyone who allegedly criticised government’s ineffectiveness in its response to the pandemic and who shared malicious and fake content.²⁷
- 4.8. There have been several instances of restrictions being imposed under the pretext of COVID-19 response. For example, in August 2021, former Spokesperson of the Health Ministry Dr Jayaruwan Bandara was summoned by the CID regarding comments he made in a television interview on the high prices of COVID-19 tests and the general handling of the pandemic.²⁸
- 4.9. Similarly, in August 2021, the CID questioned Dr Najith Indika and accused him of having mental health issues. Najith Indika posted on his Facebook account about the crisis faced by Avvisawella Hospital with the increase in the number of COVID-19 patients being reported.²⁹

²⁵ ‘Sri Lankan posting information deemed ‘false’ on social media face arrest without warrant’, Economy Next, 8 June 2021, <https://economynext.com/sri-lankans-posting-information-deemed-false-on-social-media-face-arrest-without-warrant-82783>.

²⁶ ‘Statement on derogations from the Covenant in connection with the COVID-19 pandemic’, Human Rights Committee, 30 April 2020, CCPR/C/128/2.

²⁷ ‘Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19 pandemic’, OHCHR, 3 June 2020, <https://www.ohchr.org/en/press-releases/2020/06/asia-bachelet-alarmed-clampdown-freedom-expression-during-covid-19?LangID=E&NewsID=25920>.

²⁸ ‘Former Health Ministry spokesperson Dr. Jayaruwan Bandara too summoned to CID over an interview’, Sri Lanka Brief, 31 August 2021, <https://srilankabrief.org/former-health-ministry-spokesperson-dr-jayaruwan-bandara-too-summoned-to-cid-over-a-interview>.

²⁹ ‘CID questions Dr. Najith Indika who posted a Facebook post about the crisis faced by the Avvisawella Hospital’, Center News, 15 August 2021, <http://newscenter.lk/2021/08/15/cid-questions-dr-najith-indika-who-posted-a-facebook-post-about-the-crisis-faced-by-avissawella-hospital-with-the-increase-in-covid-patients.html>.

- 4.10.** In June 2021, the Co-coordinator for People Human Rights Protection, Asela Sampath, was arbitrarily arrested by a group of 20 plainclothes police in June 2021. The police entered the house forcibly, tied Sampath's mouth with a cloth, allegedly physically assaulted him and took him away. Later, the police reported that Sampath was arrested in connection with a false statement made on social media regarding the AstraZeneca vaccine.³⁰ The complaint against him was lodged by the General Manager of the National Medicine Regulatory Authority and he was presented to the court few days after the arrest.³¹
- 4.11.** Several other people, including students, were arrested for allegedly posting false content on social media. In April 2020, five people, including a university student, were arrested on charges of posting false and misleading content about COVID-19 on social media.³²
- 4.12.** On 25 April 2020, the Human Rights Commission of Sri Lanka wrote to the police to inform them that criminalisation of criticism against public officials is unconstitutional and in breach of the principle of non-discrimination. Professor Udagama, on behalf of the Commission, urged the police, among other things, 'to review action discussed above and take necessary measures to ensure compliance'. As shown by the cases above, this has not occurred.³³
- 4.13.** There are also concerns about the misuse of the ICCPR Act of 2007, which among other provisions criminalises the advocacy of 'national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'. Poet and writer Shakthika Sathkumara was arrested in April 2019 in response to a complaint alleging that his short story was derogatory and defamatory to Buddhism.³⁴
- 4.14.** The government have also violated the right to access information by implementing disproportionate internet shutdowns on several occasions. During anti-government protests, the government imposed an internet shutdown in April 2022 as part of its emergency measures. Social media networks could not be accessed for more than 15 hours, clearly violating the right to access information.

5. Freedom of Peaceful Assembly

³⁰ CIVICUS Monitor, 18 November 2021, op. cit.

³¹ 'CID confirms arrest of consumer activist Asela Sampath', Colombo Page, 26 June 2021

http://www.colombopage.com/archive_21A/Jun26_1624684171CH.php.

³² 'Five arrested for sharing false content on COVID-19', Daily Mirror Online, 31 May 2022, https://www.dailymirror.lk/breaking_news/Five-arrested-for-sharing-false-content-on-COVID-19/108-186120.

³³ 'Commission calls for police to respect freedom of expression', Asia Pacific Forum, 30 April 2020

³⁴ 'Misuse of ICCPR Act and judicial system to stifle freedom of expression in Sri Lanka', CIVICUS Monitor, 5 July 2019, <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>

- 5.1.** During Sri Lanka's examination under the 3rd UPR cycle, the government did not receive any specific recommendations relating to the freedom of peaceful assembly. Nevertheless, the government supported the recommendation to ensure a safe and enabling environment for civil society and HRDs. As evidenced below, the government has failed to realise this recommendation.
- 5.2.** Freedom of peaceful assembly is guaranteed by Constitution Article 14(1)(b) and ICCPR article 21. However, despite efforts undertaken to transform the police force into a well-trained, community-policing force since the end of the war, the overall approach of the police towards managing peaceful assemblies seems to rest on the negative perception that protests and demonstrations are generally a nuisance and should be prevented, rather than treating them as a fundamental right that is essential to democracy and inherent to every person.³⁵
- 5.3.** The Constitution stipulates that the freedom of peaceful assembly can be limited in the 'interests of religious harmony'³⁶ and the 'interest of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.'³⁷ Further, Police Ordinance article 77(1) stipulates a requirement for protesters to seek permission from the local police before holding a protest.³⁸ Failure to notify may result in all organisers, promoters and individuals taking part in a protest being guilty of an offence of unauthorised assembly.
- 5.4.** CIVICUS and AHRC have observed a continuous crackdown against protesters by the current administration since President Rajapaksa assumed power in 2019. For instance, the administration has used states of emergency to legitimise the use of excessive power against protesters. Following the terrorist attacks of 21 April 2019, three emergency regulations were adopted by the president,³⁹ which were extended three times, for a month each time. The regulations had a disproportionate impact on the freedoms of peaceful assembly and expression, as full discretion was provided to the police to determine what kind of activities are deemed a public disturbance.
- 5.5.** Since February 2022 Sri Lanka has faced its worst economic crisis since independence in 1948 with the country unable to pay its debts. This has led to high prices for everything, including food, and has led to a crisis of availability of petrol,

³⁵ Human Rights Council, 2020, op. cit., para 44.

³⁶ Constitution of Sri Lanka, op. cit.

³⁷ Ibid.

³⁸ Police Ordinance, op. cit., article 77(1).

³⁹ Gazette Nos. 2120/3, 2120/4 and 2120/5

diesel, gas and other essentials. This led to massive protests on a scale unseen in recent times, calling for the president's resignation. With the nationwide protests the repression of civic freedoms has also increased. There have been large-scale arrests of young people for participating in protests under various pretexts, often on fabricated charges. Many protesters have been detained without bail following arrests.

- 5.6. On 1 April 2022, President Rajapaksa declared a state of emergency to curb protests caused by the economic crisis. President Rajapaksa said the emergency was declared 'in the interests of public security, protection of public order and the maintenance of supplies and services essential to the life of the community'. The state of emergency came into effect on 6pm on 2 April. The regulation allowed the authorities to arbitrarily arrest and detain suspects and restrict fundamental rights such as the freedoms of peaceful assembly and expression. The authorities also imposed a nationwide 36-hour curfew.
- 5.7. CIVICUS and AHRC have documented the use of excessive force by the police against protesters, including the use of water cannon, teargas and rubber bullets. Hundreds have been arbitrarily arrested between March and May 2022 and there have been incidents of torture or ill-treatment in detention, including denial of access to medical care and lawyers. Journalists have also been targeted and some are facing charges. The authorities used state of emergency regulations to curtail protests and shut down social media networks. Pro-government mobs were unleashed to attack protesters and protest sites with impunity.
- 5.8. The Sri Lankan police also deployed excessive force, such as the use of teargas and water cannon, to disperse hundreds of protesters who marched outside President Rajapaksa's residence on 31 March 2022, leaving at least 50 injured. Dozens of protesters were arrested and some ill-treated.⁴⁰
- 5.9. The authorities have previously deployed systematic attempts to prevent or disrupt protests and arrest peaceful protesters. In February 2021, Sri Lankan magistrates across districts in the north-east issued bans and injunctions against civil society members, journalists and other individuals ahead of a 'walk for justice' organised by Tamil war victims' families and CSOs. The protest called for the UN and the international community to heed calls for justice and accountability.⁴¹

⁴⁰ 'Sri Lanka: Lift restrictions on fundamental freedoms and investigate violations', CIVICUS Monitor, 5 April 2022, <https://www.civicus.org/index.php/media-resources/news/5728-sri-lanka-lift-restrictions-on-fundamental-freedoms-and-investigate-violations>.

⁴¹ 'Court bans issued against #P2P protests across the North-East', 4 February 2021, Tamil Guardian <https://www.tamilguardian.com/content/court-bans-issued-against-p2p-protests-across-north-east>.

- 5.10.** Under the pretext of the COVID-19 pandemic, the Sri Lankan government imposed a ban on all protests and gatherings, claiming this measure was necessary to 'prevent the spread of COVID-19'.⁴² After the imposition, the police dispersed a number of protests and harassed participants, including activists, workers, students and farmers.
- 5.11.** Five activists were detained due to their participation in a peaceful protest for education rights on 3 August 2021 near parliament. They were denied bail until 11 November 2021, despite lawyers arguing exceptional circumstances due to the COVID-19 pandemic, upcoming university examinations and underlying health conditions.⁴³
- 5.12.** On 8 July 2021, police arrested 31 people, including Joseph Stalin, the General Secretary of the Ceylon Teachers' Union, and several leaders of the Inter University Students Federation, shortly after they began a protest against the Kotelawala National Defence University Act, which they claim seeks to 'militarise' higher education in Sri Lanka. The arrested people were presented before the Colombo Magistrate's Court. When the protesters were released on bail, police prevented them from leaving the court premises and they were forcibly taken to quarantine facilities.⁴⁴
- 5.13.** On 7 July 2021, police broke up a demonstration of Joint Employees Association of Engineering Corporation members outside the corporation's head office in Colombo. Five people were arrested for allegedly violating quarantine regulations.⁴⁵
- 5.14.** The UN Special Rapporteur on Freedom of Peaceful Assembly and of Association highlighted his concern about the crackdown against the freedom of peaceful assembly based on his visit to Sri Lanka. Notably, the Special Rapporteur recalled that failure to notify authorities of an assembly does not render an assembly unlawful, and noted that under current legislation spontaneous and urgent assemblies are prohibited, in contravention of international human rights standards.⁴⁶

⁴² 'COVID-19: Sri Lanka bans public meetings, protests over threat to rapid transmission', The New Indian Express, 6 July 2021, <https://www.newindianexpress.com/world/2021/jul/06/covid-19-sri-lanka-bans-public-meetings-protests-over-threat-to-rapid-transmission-2326404.html>.

⁴³ 'Sri Lanka: Release human rights defenders detained for advocating for education rights', CIVICUS, 10 November 2021, <https://civicus.org/index.php/media-resources/news/5435-sri-lanka-release-human-rights-defenders-detained-for-advocating-for-education-rights>.

⁴⁴ 'Sri Lanka: Immediately release peaceful protesters detained under COVID-19 quarantine', International Commission of Jurists, 10 July 2021, <https://www.icj.org/sri-lanka-immediately-release-peaceful-protesters-detained-under-covid-19-quarantine>.

⁴⁵ 'Police tough on protests; Arrest of activists condemned', News First, 7 July 2021, <https://www.newsfirst.lk/2021/07/07/police-tough-on-protests-arrests-of-activists-condemned>.

⁴⁶ 'Sri Lanka: UN experts condemn crackdown on protests', OHCHR, 8 April 2022, <https://www.ohchr.org/en/press-releases/2022/04/sri-lanka-un-experts-condemn-crackdown-protests>

6. Recommendations to the Government of Sri Lanka

CIVICUS and AHRC call on the Government of Sri Lanka to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

6.1. Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures and practices that unwarrantedly limit the freedom of association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding, including the mandatory registration requirement.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of HRDs, CSOs, journalists, political activists and others.
- Review and refrain from introducing legislation that restricts the freedom of association, including the proposed amendment of the Voluntary Social Service Organisations Act No. 31/1980 and the Company Act No. 7 2007.

6.2. Protection of HRDs

- Provide civil society members, activists, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of offences to justice.
- Immediately revise proposed counter-terrorism legislation that replaces the Prevention of Terrorism Act. Consult civil society groups on the formulation of new provisions in order to ensure that they align with international best practice standards.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs by adopting a specific law on the protection of HRD in accordance with Human Rights Council resolution 27.31.

- Strengthen the independence of the judiciary and refrain from exercising political influence on the criminal justice system to ensure independent and impartial investigations of violations against HRDs.

6.3. Freedom of expression, media freedom and access to information

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Guarantee and protect the freedom of expression and access to information of HRDs promoting the rights of minorities.
- Refrain from utilising existing legislation, including the emergency measures on COVID-19 and the State of Emergency, to curb the freedom of expression and access to information, including arbitrary internet shutdowns.
- Amend restrictive provisions of the Penal Code of Sri Lanka including (Cap 19) section 120, Police Ordinance of Sri Lanka section 98 of the and the Computer Crimes Act No. 24/2007 section 6.

6.4 Freedom of peaceful assembly

- Conduct immediate and impartial investigations into all instances of extrajudicial killing and excessive force committed by security forces while monitoring protests.
- Dismantle regulations under the Police Ordinance Article that require protesters to seek permission from local police forces prior to holding a protest.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.
- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement

of civil society in the preparation of law and policy.

- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

6.7 Engagement with international human rights mechanisms

- Cooperate with international mechanisms, particularly in compliance with the ICCPR, to investigate and provide redress to victims whose fundamental freedoms have been violated

6.8 Constitutional review

- Review the amendment of the Constitution of Sri Lanka 1978 in order to reinstate the principle of rule of law as an operative legal principle and end impunity