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OPEN WOUNDS AND MOUNTING DANGERS

Blocking Accountability for Grave Abuses in Sri Lanka



Open Wounds and Mounting Dangers

Blocking Accountability for Grave Abuses in Sri Lanka

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Open Wounds and Mounting Dangers

Blocking Accountability for Grave Abuses in Sri Lanka

Summary	1
Silencing Victim's Families and Critics	4
Conflict-Era Violations and Failure of Accountability	6
Protecting and Reinstating Perpetrators	7
Key Recommendations	10
Methodology	12
I. Deteriorating Human Rights Situation in Sri Lanka	13
Suppression of Victims and Critics	13
Militarization	16
Presidential Commission of Inquiry on "Political Victimization"	17
Abolition of Constitutional Safeguards	19
Prevention of Terrorism Act	20
Attacks on Minorities	22
II. A History of Conflict and Abuse	27
Laws of War Violations	30
Targeting No Fire Zones: Attacks on Civilians and Hospitals	31
Extrajudicial Killings, Torture, Sexual Violence, and Enforced Disappearances	33
The Killing of 17 ACF Aid Workers	37
III. Welikada Prison Massacre, November 9, 2012	41
IV. Enforced Disappearance of Prageeth Ekneligoda, January 24, 2010	47
V. Tripoli Platoon, Targeting Journalists	51
Abduction of Keith Noyahr, May 22, 2008	51
Murder of Lasantha Wickrematunge, January 8, 2009	54
VI. "Disappearance" of 11 People by the Navy, 2008-2009	59

VII. “Trinco Five,” January 2, 2006.....	64
VIII. Mirusuvil Massacre, March 26, 2000.....	70
IX. UN Engagement with International Crimes in Sri Lanka.....	74
Report of Secretary-General’s Panel of Experts on Accountability in Sri Lanka	77
Report of the Secretary-General’s Internal Review Panel on UN Action in Sri Lanka—the Petrie Report	78
Report of the OHCHR Investigation on Sri Lanka (OISL Report)	79
Human Rights Council Resolution 30/1	82
Reports by UN Special Procedures	83
Sri Lankan Government Commissions of Inquiry.....	85
Recommendations	88
To the Government of Sri Lanka	88
To the Office of the Attorney General	89
To the Sri Lanka Police.....	89
To the Human Rights Commission of Sri Lanka	89
To the United States, United Kingdom, Germany, Canada, Japan, China, India, and Other Governments with Influence in Sri Lanka.....	90
To the European Union	91
To International Financial Institutions and Multilateral Donors	91
To the United Nations	91
To the UN Human Rights Council	92
Acknowledgments	93
Appendix: Letter from Human Rights Watch to Attorney-General Dappula De Livera.....	94

Summary

The protection of basic human rights in Sri Lanka is once again at a turning point. Since his election in 2019, President Gotabaya Rajapaksa and his government have waged a campaign of fear and intimidation against human rights activists, journalists, lawyers, and other perceived challengers. The administration has pursued policies hostile to ethnic and religious minorities and repressed those seeking justice for abuses committed during the country's 26-year civil war that ended in 2009. Fundamental democratic freedoms and fragile post-war reconciliation are in danger.

This report details how the Gotabaya Rajapaksa government is blocking investigations into some emblematic cases of serious violations, documents ongoing repression of minority groups, and highlights the intimidation of activists and family members of victims seeking accountability. The government has withdrawn from a 2015 consensus resolution (known as resolution 30/1) of the United Nations Human Rights Council that sought to ensure justice and end impunity; and has claimed an end to the “era of betraying war heroes” and “allowing foreign forces to interfere in the internal affairs of the country.”

The secessionist insurgency of the Liberation Tigers of Tamil Eelam (LTTE) led to serious human rights abuses by both sides and claimed over 100,000 lives. This report finds that, notwithstanding the Sri Lankan government's claims to be committed to a domestic justice process—despite many that have failed in the past—several police investigations into human rights violations that had made modest progress since 2015 have since been derailed under Rajapaksa's presidency. On March 26, 2020, President Rajapaksa even pardoned Sgt. Sunil Ratnayake, one of very few members of the Sri Lankan security forces ever convicted of human rights violations. At the same time, several officials facing serious allegations of wartime abuses have been appointed to senior government positions.

Sri Lanka now presents an acute challenge to the United Nations' commitment to upholding international human rights and humanitarian law in the face of grave crimes. Since the conflict, UN member countries have invested in accountability for serious crimes committed during the conflict and in building rights-respecting institutions. In view of Sri Lanka's current backsliding and intransigence on impunity, it is crucial that foreign governments, donors, and international institutions now reinforce efforts to promote

accountability, starting with a resolution at the Human Rights Council session beginning in February 2021 to maintain scrutiny of Sri Lanka's human rights situation.

The resolution should seek to establish an independent international mechanism to investigate allegations of war crimes and human rights violations, secure evidence, identify perpetrators, and prosecute those responsible. The UN Office of the High Commissioner for Human Rights (OHCHR) should continue to monitor and report on the human rights situation in Sri Lanka and provide recommendations on actions needed to provide justice for victims and accountability for perpetrators.

The UN's own credibility is at stake. Facing severe criticism for the global body's failures to intervene and protect civilians in the final phase of the war, then-UN Secretary-General Ban Ki-moon in June 2010 appointed a three-member panel of experts to advise him, which recommended "a comprehensive review" of actions by the UN system "regarding the implementation of its humanitarian and protection mandates." That review, which became known as the Petrie Report, laid bare the "systemic failures" of the UN in its engagement on Sri Lanka during the conflict and its aftermath, and is the basis of the policy of Human Rights up Front.

The Human Rights Council in March 2014 called for an independent investigation by the OHCHR. The OHCHR Investigation on Sri Lanka, known as the OISL Report, found horrific wartime abuses committed by both sides to the conflict and concluded that "for accountability to be achieved in Sri Lanka, it will require more than a domestic mechanism." Following the OISL Report, the Human Rights Council in 2015 passed a landmark consensus resolution that set out a detailed set of steps for Sri Lanka to pursue accountability and reconciliation, as well as security sector reform, to prevent future abuses. Sri Lanka's compliance with these recommendations will be evaluated by the council in 2021 and will come up short.

To protect Sri Lanka's beleaguered civil space and marginalized populations, foreign governments and the United Nations should both press the Rajapaksa government to end ongoing abuses and advance efforts to hold accountable those responsible for past atrocities.

Soon after taking office, President Rajapaksa began appointing current and former military officers to oversee civilian agencies and by creating “task forces” of military officers with loosely defined remits. The government issued directives putting the Defense Ministry in control of civilian agencies such as the police and amended the constitution to remove important limits on presidential power. Sri Lanka’s already inadequate and flawed investigative and legal institutions have lost any semblance of independence.

The administration has displayed particular hostility to police investigators tasked with identifying and prosecuting those responsible for serious abuses committed under the previous Rajapaksa government from 2005 to 2015. During those years Mahinda Rajapaksa, the current prime minister, was president, and his brother, Gotabaya, the current president, was defense secretary. Thousands of young Tamil men who were suspected LTTE supporters, as well as journalists, activists, and others deemed to be political opponents were abducted, many by armed men operating in white vans, which became a symbol of political terror. Many have never been heard from again.

After Mahinda Rajapaksa was defeated in the 2015 presidential election, a government led by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe adopted some measures to restore rights, including through the Human Rights Council consensus resolution of 2015. The government worked with OHCHR and invited several UN experts to investigate and make recommendations. It held public consultations on justice and reforms, which were led by civil society activists. It took steps to start addressing enforced disappearances and reparations, with the support of donors and international experts. The generalized fear of the post-war Rajapaksa years largely dissipated.

Gotabaya Rajapaksa has denounced these international and domestic efforts to bring those responsible for the serious human rights violations to justice. Activists and the families of victims that had backed efforts towards the resolution have been threatened by security forces. The government’s claim that it is committed to “achieving accountability through the appointment of a domestic Commission of Inquiry” is not plausible. Even as it promised a new inquiry, the government told the Human Rights Council that allegations against senior military officers are “unacceptable” and without “substantive evidence.”

Considering the numerous previous failed commissions under successive Sri Lankan governments, and the government’s own actions since taking office, yet another domestic

inquiry is a hollow promise. As Mangala Samaraweera, who as foreign minister in the previous administration had led the negotiations at the Human Rights Council, wrote in the *Colombo Telegraph* in 2020:

Back-tracking on the [30/1] resolution sends a very clear signal to the people of our country and our partners in the world. The message is that Sri Lanka cares not for reconciliation, accountability, or even democracy. It heralds the dismantling of the institutions that form the bedrock of our nation's progress, the reversal of trust among communities and countries that was earned through much toil, and the embrace of our basest instincts of hate, insecurity, fear, and envy.

In 2019, UN High Commissioner for Human Rights Michelle Bachelet noted that “the risk of new violations increases when impunity for serious crimes continues unchecked.” In 2020, she warned that “the failure to ensure accountability for past violations and to undertake comprehensive security sector reforms to dismantle the structures that facilitated them means that the people of Sri Lanka, from all communities, have no guarantee that violations will not recur.”

Silencing Victim's Families and Critics

Families of victims campaigning for justice have faced threats from state security forces since Gotabaya Rajapaksa became president. For instance, a member of the advocacy group Mothers of the Disappeared, whose son was forcibly disappeared in 2009, told Human Rights Watch that since the presidential election she has been repeatedly visited by members of the police Criminal Investigation Department (CID):

They have come and asked who is going to meetings. And who is going to Geneva [to attend the UN Human Rights Council]. These are children who were taken by white vans from our houses or who surrendered [to the army]. These are the children we are talking about. I want to know what happened to my son, whether he is dead or alive, and if he is not alive, what happened to him and who did it; whether he was beaten, whether they broke a limb.

Activists, particularly those working in the predominantly Tamil northern and eastern parts of the country on behalf of relatives of the forcibly disappeared, told Human Rights Watch that they had observed a rise in government surveillance and intimidation. As one activist explained, the recent constitutional amendment had vested the president with “total power,” leading to increased fear:

Any activity he does not want to tolerate, he will arrest people. So very little is going on among activists and people are in self-censorship mode. The Mothers of the Disappeared have stopped their protests. They are followed by the intelligence services, even some people’s houses are watched.

Authorities have also visited offices of nongovernmental organizations (NGOs). For instance, members of the Terrorism Investigation Department (TID) visited a group in northern Sri Lanka. “It looks like they are keeping tabs really well,” an activist said. “They asked questions from A to Z: school, family.... You can just tell they are trying to wear you out.”

Intelligence agencies also demand to see financial and administrative records of activist groups, and especially details of funding from donors abroad, leading to fear that authorities will allege accounting errors as a pretext to shut them down or to bring criminal charges. Said one activist: “In the investigation they told us, ‘You have used money you received from abroad for terrorist activities in Sri Lanka. You are involved in terrorist activities, that is why you have been called for investigation.’” Some activists reported that their banks have prevented their organizations from making or receiving transfers.

Despite clear evidence of systematic harassment and intimidation of victims and activists, as described in a report by the UN secretary-general in September 2020, the government of Sri Lanka has denied this behavior in statements to the Human Rights Council.

In January 2021 the government of Sri Lanka drew international condemnation for demolishing a monument at Jaffna University which commemorated Tamil civilian victims of the war. Public Security Minister Sarath Weerasekera called the monument a memorial to “dead terrorists,” but protesting students said the action was a “denial of a people’s right to memory.”

Conflict-Era Violations and Failure of Accountability

The LTTE over many years committed numerous atrocities, including suicide bombings and other indiscriminate killings of civilians, torture, the use of child soldiers, forced displacement of ethnic populations, targeted killings, and summary executions. Abuses by government forces included arbitrary arrests and detention, extrajudicial killings, rape and other sexual violence, enforced disappearance, torture and other ill-treatment, and indiscriminate attacks on civilians.

In 2009, government forces defeated the LTTE amid widely documented mass atrocities. The 2011 report of a Panel of Experts, appointed by UN Secretary-General Ban Ki-moon, found that “[t]ens of thousands lost their lives from January to May 2009, many of whom died anonymously in the carnage of the final few days,” and that government forces even “systematically shelled hospitals.”

The government also cracked down on civil society, threatening activists, journalists, and lawyers seeking redress for abuses. Security forces detained Tamil men and women on suspicion that they were LTTE supporters and tortured them in custody. There were numerous enforced disappearances and killings.

In the 2015 presidential election, Mahinda Rajapaksa was defeated by a challenger from his own Sri Lanka Freedom Party, Maithripala Sirisena, who had the support of the political opposition, including the United National Party (UNP). The UNP won the parliamentary election, and party leader Ranil Wickramasinghe became prime minister. This government joined the 2015 consensus resolution of the UN Human Rights Council, pledging truth and reconciliation, reparations, and a justice process including Sri Lankan and international investigators, prosecutors, and judges. During its five-year term, the government made slow progress in meeting these commitments, but eventually established an Office on Missing Persons and an Office for Reparations.

Mahinda Rajapaksa formed a new political party called the Sri Lanka Podujana Peramuna (SLPP), which drew many members of his former party. With his brother Gotabaya as the presidential candidate in 2019, the SLPP campaigned against the prosecution of military officers responsible for war crimes. Gotabaya Rajapaksa became president in November 2019.

In February 2020, the new government withdrew its support from Human Rights Council resolution 30/1 (and the subsequent resolutions 34/1 and 40/1 extending the mandate), claiming it would instead appoint a domestic commission of inquiry.

Protecting and Reinstating Perpetrators

During his presidential election campaign, and repeatedly since, Gotabaya Rajapaksa has stated his determination to protect “war heroes” from prosecution, saying in November 2019 that a large number “are languishing in prisons over false charges and cases.”

In fact, there have been virtually no successful prosecutions of members of the security forces for human rights violations. Gotabaya Rajapaksa himself faces allegations related to his former role as defense secretary and is named in a civil suit filed in the United States for the killing of journalist Lasantha Wickrematunge in January 2009.

In March 2020, the president pardoned Sgt. Sunil Ratnayake of the Special Operations Unit of the 6th Gajaba Regiment, Gotabaya Rajapaksa’s former unit. The Supreme Court had upheld the conviction of Sergeant Ratnayake in April 2019, ruling that “from the nature of the injuries it can be concluded that the injuries were inflicted with the intention of causing their deaths.” Human rights lawyers have challenged the presidential pardon in the Supreme Court. The petitions are currently scheduled to be heard in February 2021.

Between 2015-19, a number of police investigations into conflict-related human rights violations—which were blocked under the previous Mahinda Rajapaksa government—did begin to make progress, and to reveal evidence of official responsibility for killings and enforced disappearances. Many of those investigations have been derailed since Gotabaya Rajapaksa became president.

In November 2019, immediately after the presidential election, Nishantha Silva, an officer in the police Criminal Investigation Department (CID) investigating several cases described in this report, including the “Navy Case,” the Welikada prison massacre, and the disappearance, killing, and torture of journalists under the previous Rajapaksa administration, fled the country following threats. In July 2020, the former director of the CID, Shani Abeysekara, was arrested for allegedly fabricating evidence against a police officer considered close to Gotabaya Rajapaksa. On August 3, 2020, a police sergeant told

a magistrate he was being pressured to give false testimony against Abeysekara. In December 2020, Abeysekara, who contracted Covid-19 in custody, filed a fundamental rights petition in the Supreme Court against his arrest and detention.

In the high profile “Navy Case,” the CID had produced a significant body of evidence and identified 14 suspects in the abduction and disappearance of 10 men and a 17-year-old boy by naval intelligence officers in 2008-9. Among those accused is the former chief of defense staff, Adm. Ravindra Wijegunaratne. The president promoted Commodore D.K.P. Dassanayake, the alleged ringleader, to the rank of rear admiral.

On January 9, 2020, Gotabaya Rajapaksa appointed a three-member presidential commission to look into the supposed “political victimization” of government officials by the previous government. Activists fear that the commission obtained police files related to investigations that have focused on the alleged role of military intelligence and leaked them to the military. In late January 2020, the commission ordered a halt to the trial of naval officers accused in connection with the “Navy Case” abduction and disappearance of the 11 people. The attorney general said the commission had no power to do so. The trial was scheduled to proceed until it was stayed by the Court of Appeal in June 2020.

The Presidential Commission on Political Victimization has also sought to intervene in several other cases, including the abduction and torture of Keith Noyahr, the murder of Lasantha Wikremetunge, and the disappearance of Prageeth Ekneligoda. Several accused testified to the commission that they felt persecuted by investigators, whom they accused of pursuing an agenda against Gotabaya Rajapaksa.

After submitting its report to President Rajapaksa in December 2020, the chairman of the commission, retired Supreme Court judge, Upali Abeyratne, was appointed chair of the Office of Missing Persons (OMP). The OMP was established by the previous government to investigate enforced disappearances. Some victim families said that Abeyratne’s appointment will stall these investigations. As a mother of a disappeared man noted, “Appointing a person who has acted in a way that obstructs the administration of justice to the first seat in an institution related to disappearances, destroys the administration of justice.” Sandhya Ekneligoda, the wife of the disappeared journalist Prageeth Ekneligoda, warned that Abeyratne had “over the last several months, actively colluded with those

accused of enforced disappearance, to undermine and threaten the constitutionally guaranteed rights of families of the disappeared to seek legal redress.”

The findings and recommendations of the Presidential Commission on Political Victimization have not yet been revealed.

In November 2020, police in the United Kingdom opened an investigation into the role played by Keenie Meenie Services (KMS). Established by veterans of a British special forces regiment, the SAS, in the 1980s KMS trained an elite paramilitary unit of the Sri Lanka police called the Special Task Force (STF), which is notorious for atrocities. However, the Gotabaya Rajapaksa administration has ignored the new evidence, despite numerous serious allegations against the STF, including the killing of five students in Trincomalee in January 2006, and the Welikada prison attack in November 2012.

On October 22, Sri Lanka’s parliament adopted the 20th amendment to the constitution, which gives the president sweeping powers, including to appoint senior judges, the attorney general, and members of previously independent bodies, such as the human rights commission. A human rights activist in northern Sri Lanka said:

All those [human rights] cases are now being withdrawn or dismissed by the courts.... When you have these 20th amendment powers bringing the attorney general and courts under the president, what else are they going to do?

On January 13, 2021, the Batticaloa High Court acquitted a pro-government member of parliament, Sivanesanathurai Chandrakanthan (alias Pillayan) and four other suspects of the 2005 murder of an opposition parliamentarian Joseph Pararajasingham, after the attorney general decided to drop charges in the case. Chandrakanthan, who was a member of a pro-government armed group at the time of the killing, had been arrested in connection with the case after Mahinda Rajapaksa lost power in 2015. He was elected to parliament in August 2020 and released on bail in November.

Rajapaksa has appointed or promoted several serving and retired military officers who are credibly accused of grave abuses to senior posts in his government. Defense Secretary Kamal Gunaratne was commander of the 53rd division at the end of the war, and Gen.

Shavendra Silva, the acting chief of defense staff, was the commander of the 58th division, units facing serious allegations of war crimes. On December 28, 2020, Silva was promoted to four-star general.

Prasanna Alwis, an officer of the police Terrorism Investigation Department (TID) accused of suppressing evidence and shielding suspects in the murder of journalist Lasantha Wickrematunge, was appointed director of the CID on May 21, 2020. C.A. Chandraprema, who wrote an effusive account of Gotabaya Rajapaksa's role in defeating the LTTE in his book *Gota's War*, was appointed Sri Lanka's permanent representative to the UN in Geneva. Chandraprema was years earlier a member of an armed group accused of enforced disappearances and unlawful killings to quell the 1980s Sinhala leftist uprising.

Earlier, on November 22, 2018, police inspector Neomal Rangajeewa, then on bail for the alleged murder of inmates in Welikada prison in 2012, was reinstated to the police during the brief period when President Sirisena installed Mahinda Rajapaksa as prime minister.

In September 2020, Michelle Bachelet, the UN high commissioner, expressed concern over the "appointments to key civilian roles of senior military officials allegedly involved in war crimes and crimes against humanity." Sri Lanka responded to the Human Rights Council that the "accusations on crimes or crimes against humanity made against these senior military officials are unacceptable."

Key Recommendations

To the Government of Sri Lanka

- Cease attempts to stifle dissenting voices, including lawyers, journalists, human rights defenders, and the victims of past abuses and their families.
- Implement the recommendations made by UN special rapporteurs and working groups who have visited and reported upon Sri Lanka since 2015, beginning with prosecuting serious crimes of torture, extrajudicial killings and custodial deaths.
- Restore the independence of police investigators and the Attorney General's Office to pursue criminal investigations against alleged perpetrators of grave abuses. End the harassment of officials who are involved in investigations of alleged human rights abuses.

To Foreign Governments

- Support a resolution at the 46th session of the UN Human Rights Council beginning in February 2021 to advance international accountability for international crimes committed in Sri Lanka. The new resolution should include:
 - Continued reporting by the Office of the UN High Commissioner for Human Rights;
 - A mandate to the OHCHR to collect, preserve, and analyze evidence of serious violations of international law committed in Sri Lanka, to identify perpetrators and prosecute those responsible.
 - A mandate for the high commissioner to report to the Human Rights Council on actions needed to advance accountability.
- Impose targeted sanctions on individuals credibly accused of serious human rights abuses and violations of international humanitarian law in Sri Lanka.

Methodology

Human Rights Watch conducted research for this report from January to November 2020.

Field research was conducted in early 2020 in Colombo and in the north and east of Sri Lanka. Following the introduction of travel restrictions due to the Covid-19 pandemic, additional interviews were conducted by telephone throughout the remainder of the research period, alongside extensive desk research and document reviews.

Considering security challenges and the risk of intercepted telecommunications, the inability to conduct in-person interviews has meant that we were unable to include more voices, particularly those of victims of abuses or their families.

Human Rights Watch interviewed 52 members of victims' families, lawyers, experts and human rights activists. We informed all interviewees of the purpose of the interview, its voluntary nature, and provided no remuneration or other inducement. In most cases we have concealed the identity of interviewees due to security concerns within Sri Lanka.

Interviews were conducted in English, and in Sinhala and Tamil through interpreters.

On January 12, 2021, Human Rights Watch wrote to Attorney General Dappula De Livera asking for the government's response so that it could be included in this report, but received no reply.

I. Deteriorating Human Rights Situation in Sri Lanka



Sri Lankan soldiers at a checkpoint during a curfew imposed to stop the spread of Covid-19, Colombo, May 1, 2020. © 2020 AP Photo/Eranga Jayawardena

Since the election of Gotabaya Rajapaksa as president in November 2019, there has been a rapid closing of civic space and freedom of expression in the country. Religious and ethnic minorities are facing discrimination and harassment.

Suppression of Victims and Critics

Perceived opponents of the government, including families of the forcibly disappeared, who had been protesting to know the whereabouts or fate of their missing relatives, human rights activists, journalists, and lawyers are experiencing a marked increase in surveillance, threats, and other forms of intimidation.¹

Data collated by the Sri Lankan human rights group INFORM show incidents of “repression of dissent” averaging over one a day since the beginning of 2020. Incidents include

¹ Human Rights Watch, “Sri Lanka: Security Agencies Shutting Down Civic Space,” March 3, 2020, <https://www.hrw.org/news/2020/03/03/sri-lanka-security-agencies-shutting-down-civic-space>; Human Rights Watch, “Sri Lanka: Families of ‘Disappeared’ Threatened,” February 16, 2020, <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened> (accessed August 10, 2020).

beatings, arbitrary arrests, surveillance, death threats, and hacking of electronic devices.² “It’s a very scary environment to be a dissenter,” an activist from another group said.³

Activists, particularly those working in the northern and eastern parts of the country on behalf of relatives of the forcibly disappeared, said that they had observed an increase in intimidation and surveillance. One activist said that prior to a victims’ meeting, “every one of the mothers got at least six telephone calls from different intelligence agencies asking, ‘Where is the meeting?’ ‘Who is organizing the meeting?’ ‘What is being said?’”⁴ By November, the pressure was so high, one human rights defender said, “very little is going on among activists, and people are in self-censorship mode.”⁵

A member of the advocacy group Mothers of the Disappeared, whose son was forcibly disappeared in 2009, said that members of the police Criminal Investigation Department (CID) had repeatedly visited her since the presidential election.⁶ A person who works with the families of the disappeared said that in the relatively open environment of the previous government many had spoken out about their cases. “Now they [the security forces] know who talked about their crimes, so the victims have fears about their safety,” he said.⁷

Human rights defenders working in different locations around the country also reported such pressure. One activist said: “After the election, military activities including monitoring and inquiries have increased. They are following us. That is a huge threat for human rights groups.”⁸ Another said the authorities came to his office demanding information, but then revealed that “they knew already everything. My personal details, they knew it. This is part of the intimidation.”⁹

“They are desperate to find out what [nongovernmental organizations] are doing on the accountability front,” one activist told Human Rights Watch in June.¹⁰ In the period before

² INFORM, “Repression of Dissent,” See monthly reports, <https://www.inform.lk/category/publications/>

³ Human Rights Watch phone interview, details withheld, September 15, 2020.

⁴ Human Rights Watch interview, details withheld, January 22, 2020.

⁵ Human Rights Watch interview, details withheld, November 23, 2020.

⁶ Human Rights Watch interview, details withheld, January 24, 2020.

⁷ Human Rights Watch interview, details withheld, January 29, 2020.

⁸ Human Rights Watch Interview, details withheld, January 29, 2020.

⁹ Human Rights Watch interview, details withheld, January 26, 2020.

¹⁰ Human Rights Watch interview, details withheld, June 4, 2020.

parliamentary elections, which took place on August 5, several were warned that they were on government “watch lists.” Some went into hiding and others left the country.¹¹ Among those who fled was Dharisha Bastians, a former editor of the *Sunday Observer* and contributor to the *New York Times*. Her telephone records have been publicized and authorities seized her laptop.¹² Others described “rampant self-censorship.”¹³

When one group in northern Sri Lanka opened offices in August 2020 after being closed since March to contain the spread of Covid-19, they were promptly visited by members of the Terrorism Investigation Department (TID). “It looks like they are keeping tabs really well,” said an activist. “They asked questions from A to Z: school, family.... You can just tell they are trying to wear you out.”¹⁴ The intelligence agencies also demanded the financial and administrative records of NGOs, and especially details of funding from donors abroad.

On April 1, the authorities said that anyone “criticizing” the official response to the Covid-19 pandemic would be subject to arrest.¹⁵ Among those detained was Ramzy Razeek, a social media user who espoused religious tolerance.¹⁶ Razeek was held in custody for five months before being released on bail.¹⁷ UN High Commissioner for Human Rights Michelle Bachelet criticized the government for using the pandemic to curtail freedom of expression.¹⁸

¹¹ Aliya Iftikhar, “Sri Lankan journalists turn to self-censorship under Rajapaksas as hope for justice fades,” Committee to Protect Journalists, April 28, 2020, <https://cpj.org/2020/04/sri-lankan-journalists-turn-to-self-censorship-und/> (accessed September 6, 2020).

¹² Joint statement by Amnesty International, Committee to Protect Journalists, Front Line Defenders, Human Rights Watch and Reporters Without Borders, “Sri Lanka: End Persecution of Journalist,” June 24, 2020, <https://www.hrw.org/news/2020/06/24/sri-lanka-end-persecution-journalist>.

¹³ Human Rights Watch interview, details withheld, Colombo, July 2020.

¹⁴ Human Rights Watch interview, details withheld, September 17, 2020.

¹⁵ Meenakshi Ganguly, “Sri Lanka Uses Pandemic to Curtail Free Expression,” April 3, 2020, <https://www.hrw.org/news/2020/04/03/sri-lanka-uses-pandemic-curtail-free-expression>.

¹⁶ Human Rights Watch, “Sri Lanka: Due Process Concerns in Arrests of Muslims,” April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>.

¹⁷ “Ramzy Razeek released on bail after 5 months of Sri Lankan detention,” *Tamil Guardian*, September 18, 2020, <https://www.tamilguardian.com/content/ramzy-razeek-released-bail-after-5-months-sri-lankan-detention> (accessed November 20, 2020).

¹⁸ OHCHR statement, “Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19,” June 3, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920&LangID=E> (accessed September 7, 2020).

Despite clear evidence of systematic harassment and intimidation of victims and activists, as described in a report by the UN secretary-general in September 2020,¹⁹ the government of Sri Lanka has denied this behavior in statements to the Human Rights Council.²⁰

Militarization

The Rajapaksa administration has rapidly expanded the role of the military in the government, including by appointing serving and retired officers to previously civilian leadership roles, and creating special “task forces.”

The “Presidential Task Force to build a Secure Country, Disciplined, Virtuous, and Lawful Society” is composed entirely of military and police officers and has the power to issue instructions to any government official.²¹ Rajapaksa appointed a serving military officer, Suresh Salley, as head of the civilian intelligence agency,²² and a retired general, Kamal Gunaratne, who is implicated as a matter of command responsibility in alleged war crimes and crimes against humanity, as defense secretary.²³ The acting chief of defense staff, Gen. Shavendra Silva, is similarly implicated, and has been banned by the US government from traveling to the United States “due to credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings.”²⁴ He was promoted to four star general on December 28, 2020.²⁵

¹⁹ “Cooperation with the United Nations, its representatives and mechanisms in the field of human rights,” Report of the Secretary General, A/HRC/45/36, September 25, 2020.

²⁰ Statement by Sri Lanka during the General Debate under Agenda Item 2 at the 45th Session of the UN Human Rights Council, Foreign Ministry, Govt of Sri Lanka, September 15, 2020, <https://mfa.gov.lk/statement-by-sri-lanka/> (accessed November 11, 2020).

²¹ International Commission of Jurists, “Sri Lanka: Newly constituted Presidential Task Force threatens rule of law,” June 5, 2020, <https://www.icj.org/sri-lanka-newly-constituted-presidential-task-force-threatens-rule-of-law/> (accessed September 6, 2020).

²² “In a first, Sri Lanka appoints military officer as intelligence chief,” *Business Standard*, December 9, 2019, https://www.business-standard.com/article/pti-stories/in-a-first-sri-lanka-appoints-military-officer-as-spy-chief-119120900910_1.html (accessed September 6, 2020).

²³ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

²⁴ US State Department, Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, February 14, 2020, <https://translations.state.gov/2020/02/14/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/> (accessed September 6, 2020).

²⁵ Zulfick Farzan, “General Shavendra Silva Honoured With Military Salute,” *Newsfirst*, December 31, 2020, <https://www.newsfirst.lk/2020/12/31/general-shavendra-silva-honoured-with-military-salute/> (accessed January 14, 2021).

Over 30 state agencies, including the police and the NGO Secretariat, which regulates civil society groups, have been placed under the Defense Ministry.²⁶

The Defense Ministry also led the government's response to the Covid-19 pandemic. In a little over two months, the authorities arrested over 66,000 people for allegedly violating curfew restrictions. The presence of security forces at checkpoints was particularly severe in the predominantly Tamil Northern Province.²⁷

Presidential Commission of Inquiry on “Political Victimization”

On January 9, 2020, President Rajapaksa established a Commission of Inquiry to Investigate Allegations of Political Victimization by the previous government.²⁸ On February 7, 2020, human rights activists lodged a fundamental rights petition against the commission, arguing that it had been given powers that could impede or prejudice legal proceedings. A first hearing on the petition is scheduled on March 25, 2021.²⁹

The commission quickly set about intervening in cases where Rajapaksa allies and associates were facing police investigations or prosecution for alleged corruption or for human rights abuses. In January 2020, it attempted to order the attorney general to halt the forthcoming trial of naval officers accused in the disappearances of 11 men and boys in the “Navy Case.” The attorney general rejected the intervention.³⁰ The Court of Appeal later suspended the trial.³¹

²⁶ Ministry of Defense, “NGOs circumventing due procedures under scrutiny,” June 2, 2020, http://www.defence.lk/Article/view_article/1673 (accessed September 6, 2020). See also, *Gazette of the Democratic Socialist Republic of Sri Lanka*, December 10, 2019, http://www.documents.gov.lk/files/egz/2019/12/2153-12_E.pdf (accessed September 6, 2020).

²⁷ Human Rights Watch interview, details withheld, June 4, 2020.

²⁸ *Gazette of the Democratic Socialist Republic of Sri Lanka*, January 9, 2020, http://www.documents.gov.lk/files/egz/2020/1/2157-44_E.pdf (accessed November 25, 2020). The powers of the commission were subsequently enlarged, see *Gazette of the Democratic Socialist Republic of Sri Lanka*, January 22, 2020, http://www.documents.gov.lk/files/egz/2020/1/2159-16_E.pdf (accessed November 25, 2020).

²⁹ “FR petition challenging powers of Col on political victimisation to be heard on 25 March,” *Daily FT*, February 25, 2020, <http://www.ft.lk/news/FR-petition-challenging-powers-of-Col-on-political-victimisation-to-be-heard-on-25-March/56-696334> (accessed November 25, 2020).

³⁰ “AG, Col on political victimisation set for showdown over youth abduction case,” *Daily FT*, January 29, 2020, <http://www.ft.lk/front-page/AG-Col-on-political-victimisation-set-for-showdown-over-youth-abduction-case/44-694624> (accessed November 25, 2020).

³¹ Zulfick Farzan, “CA issues interim order on case against Karannagoda,” *Newsfirst.lk*, June 25, 2020, <https://www.newsfirst.lk/2020/06/25/ca-issues-interim-order-on-case-against-karannagoda/> (accessed November 25, 2020).

The commission has intervened in three high-profile cases of attacks against journalists, investigated by the CID and discussed in this report, in which military intelligence officers are accused of abducting and torturing Keith Noyahr in May 2008,³² murdering Lasantha Wickremetunge in January 2009,³³ and forcibly disappearing Prageeth Ekneligoda in January 2010.³⁴ It also supported the reinstatement of a senior police officer who had been suspended for allegedly sheltering a fugitive in a rape and murder case in 2015.³⁵ Although its mandate is to examine cases concerning government officials, the commission entertained a complaint by a private businessman, regarded as close to the president, who is under investigation by the CID.³⁶

While seeking to impede investigations and trials of alleged human rights abusers, the commission has threatened to take action against investigators, including former CID investigators Shani Abeysekara and Nishantha Silva, and officials in the attorney general's office with expertise in combatting money laundering and corruption.³⁷

In a letter to Michelle Bachelet, the UN high commissioner for human rights, Sandhya Ekneligoda, the wife of Prageeth Ekneligoda, wrote, "This Commission ... has provided the space for those who are accused of crimes, including enforced disappearances, to raise complaints before the commission, effectively undermining ongoing judicial processes and intimidating victims and witnesses. In his capacity as chairperson ... Justice Abeyrathne has been an active participant in enabling this type of violence, labelling and intimidation of victims and witnesses."³⁸

³² "Shani Wanted Duminda Executed," *Ceylon Today*, September 28, 2020, <https://ceylontoday.lk/news/shani-wanted-duminda-executed> (accessed November 25, 2020).

³³ Zulfick Farzan, "CID misled court over Lasantha Wickrematunge killing; Ex-Intelligence Officer," *Newsfirst.lk*, October 28, 2020, <https://www.newsfirst.lk/2020/10/28/cid-misled-court-over-lasantha-wickrematunge-killing-ex-intelligence-officer/> (accessed November 25, 2020).

³⁴ Zulfick Farzan, "PCol witness claims CID officers pressured him to make statement on Ekneligoda," *Newsfirst.lk*, August 25, 2020, <https://www.newsfirst.lk/2020/08/25/pcoi-witness-claims-cid-officers-pressured-him-to-make-statement-on-ekneligoda/> (accessed November 25, 2020).

³⁵ Zulfick Farzan, "No issue in re-instating interdicted SDIG Lalith Anuruddha; says PCol on Political Victimization," *Newsfirst.lk*, August 29, 2020, <https://www.newsfirst.lk/2020/08/29/no-issue-in-re-instating-interdicted-sdig-lalith-anuruddha-says-pcoi-on-political-victimization/> (accessed November 25, 2020).

³⁶ Nirmala Kannangara, "PCol criticised for entertaining complaints from private businessmen," *Daily Mirror*, July 27, 2020, <http://www.dailymirror.lk/opinion/PCol-criticised-for-entertaining-complaints-from-private-businessmen/172-192371> (accessed November 25, 2020).

³⁷ Alan Keenan and K. Mudiyanse, "Sri Lanka: Under Rajapaksas' Watch, Rule of Law Suffers the Onslaught of Politics," *The Wire*, November 13, 2020, <https://thewire.in/south-asia/srilanka-rajapaksa-rule-of-law-suffers-onslaught-politics> (accessed November 25, 2020).

³⁸ Letter from Sandhya Ekneligoda to Michelle Bachelet, 'Appointment of Retired Justice Upali Abeyrathne as Chairperson of the Office of Missing Persons in Sri Lanka,' December 12, 2020, copy on file.

The Presidential Commission of Inquiry on Political Victimization submitted its report to the president on December 9, 2020, but its findings have not yet been revealed.³⁹ Many of the accused told the commission that they felt persecuted, and made allegations of bias against police investigators who are now seeking refuge abroad or are in detention in Sri Lanka.⁴⁰

Abolition of Constitutional Safeguards

On October 22, 2020, parliament adopted the 20th amendment to the constitution, which reverses reforms and limitations to presidential power promulgated by the previous government in 2015 under the 19th amendment.

With this new amendment, the president has the power to make senior appointments that were previously made by the Constitutional Council, including of Supreme Court and Court of Appeal judges, the attorney general, the auditor general, and members of the Human Rights Commission of Sri Lanka, the Election Commission, the Public Service Commission, the Judicial Service Commission, the National Police Commission, and the Commission to Investigate Allegations of Bribery or Corruption.⁴¹

It severely undermines the separation of powers, including the independence of the judiciary, and the ability of previously independent institutions to uphold the rule of law in Sri Lanka. According to Paikiasothy Saravanamuttu, director of the Colombo-based think-tank the Centre for Policy Alternatives, the 20th amendment gives the president “effectively unrestrained powers.”⁴² The amendment was sharply criticized by two United Nations special rapporteurs for undermining the “independence of the judiciary and the separation of powers, as well as on the independence of institutions which are essential to

³⁹ “PCOI report on Political Victimization handed over to President,” *Daily News*, December 9, 2020, <http://www.dailynews.lk/2020/12/09/local/235619/pcoi-report-political-victimisation-handed-over-president> (accessed December 20, 2020).

⁴⁰ Center for Policy Alternatives, “Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive,” January 2021, <https://www.cpalanka.org/wp-content/uploads/2021/01/Revisiting-Ten-Emblematic-Cases-in-Sri-Lanka-final-draft-1.pdf> (accessed January 21, 2021).

⁴¹ Centre for Policy Alternatives, “Statement on the Twentieth Amendment,” and “Summary of Changes Under the Proposed 20th Amendment,” September 4, 2020, <https://www.cpalanka.org/statement-on-the-twentieth-amendment-2/> (accessed September 6, 2020).

⁴² Human Rights Watch interview, Dr. Paikiasothy Saravanamuttu, November 24, 2020. For an analysis of the 20th amendment, see Centre for Policy Alternatives, Summary of Changes Under the Proposed 20th Amendment, September 2020, <https://www.cpalanka.org/wp-content/uploads/2020/09/Final-doc-Summary-of-Changes-Under-the-Proposed-20th-Amendment.pdf> (accessed November 25, 2020).

the establishment of guarantees of nonrecurrence of past gross violations of human rights and serious violations of international humanitarian law.”⁴³

On January 13, 2021, the Batticaloa High Court acquitted a pro-government member of parliament, Sivanesanthurai Chandrakanthan (alias Pillayan) and four other suspects of the 2005 murder of an opposition parliamentarian Joseph Pararajasingham, after the attorney general decided to drop charges in the case.⁴⁴ On November 14 the Court of Appeal had ruled confession evidence inadmissible.⁴⁵ Pararajasingham, a member of the Tamil National Alliance, was shot dead while attending midnight mass at Batticaloa Cathedral on Christmas Eve. Chandrakanthan was a member of a pro-government armed group, the Tamil Makkal Viduthalai Pulikal founded by Colonel Karunna Amman (see box below), at the time of the killing. Chandrakanthan was arrested in connection with the case after Mahinda Rajapaksa lost power in 2015. He was elected to parliament in August 2020 and released on bail in November 2020.⁴⁶

Prevention of Terrorism Act

The Prevention of Terrorism Act (PTA), which was enacted as an emergency measure in 1979,⁴⁷ was made permanent in 1982 and has been in effect ever since. It has facilitated

⁴³ Mandates of the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, OL LKA 9/2020, December 10, 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25762> (accessed December 31, 2020).

⁴⁴ Amnesty International, “Sri Lanka: Collapse of Joseph Pararajasingham murder case a failure of justice,” January 13, 2021, <https://www.amnesty.org/en/latest/news/2021/01/sri-lanka-collapse-of-joseph-pararajasingham-murder-case-a-failure-of-justice/>; “Pillayan acquitted in Pararajasingham murder case,” *Colombo Gazette*, January 13, 2021, <https://colombogazette.com/2021/01/13/pillayan-acquitted-in-pararajasingham-murder-case/>; “AG decides to drop case against Pillayan,” *Colombo Gazette*, January 11, 2021, <https://colombogazette.com/2021/01/11/ag-decides-to-drop-case-against-pillayan/>; “Lanka court acquits child soldier-turned-lawmaker in ethnic Tamil leader’s murder case,” *Outlook*, January 13, 2021, <https://www.outlookindia.com/newscroll/lanka-court-acquits-child-soldierturnedlawmaker-in-ethnic-tamil-leaders-murder-case/2009780> (accessed January 14, 2021).

⁴⁵ “Pillayan released due to CA decision,” *Economy Next*, January 14, 2021 <https://economynext.com/pillayan-released-due-to-ca-decision-lawyer-77804/> (accessed January 20, 2021).

⁴⁶ “Pillayan granted bail in Pararajasingham murder case,” *Colombo Gazette*, November 24, 2020, <https://colombogazette.com/2020/11/24/pillayan-granted-bail-in-pararajasingham-murder-case/> (accessed January 14, 2021).

⁴⁷ Prevention of Terrorism (Temporary Provisions), Act No. 48 of 1979, http://old.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm (accessed September 1, 2020).

numerous and serious human rights violations.⁴⁸ Despite international pledges, the government has not repealed the law.

Ben Emmerson, then-UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said after his July 2017 visit to Sri Lanka that the PTA was used “disproportionately against members of the Tamil community,” and that the “use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds.”⁴⁹ He added that the most senior judge responsible for PTA cases in Colombo informed him that in over 90 percent of his cases so far in 2017, he had been forced to exclude essential confession evidence because it had been obtained through the use or threat of force.⁵⁰

Juan Méndez, then-UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, said after his 2016 visit to Sri Lanka:

Torture and ill-treatment, including of a sexual nature, still occur, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases for those who are perceived to be involved in terrorism or offences against national security. The police resort to forceful extraction of

⁴⁸ Human Rights Watch, *Locked Up Without Evidence: Abuses under Sri Lanka's Prevention of Terrorism Act*, January 29, 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>.

The law allows arrests for unspecified “unlawful activities” without warrant and permits detention for up to 18 months without the authorities producing the suspect before a court. Hundreds of people have been arbitrarily detained, sometimes for many years. The law also provides immunity for government officials responsible for abuses if they are deemed to have been acting in good faith or fulfilling an order under the act, giving broad cover to security forces to engage in torture and other abuses.

⁴⁹ “Human rights and counter-terrorism: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Sri Lanka,” July 14, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E> (accessed September 1, 2020).

⁵⁰ “Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit,” <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/> (accessed September 1, 2020). It states: “During his interviews with current and former PTA detainees, the Special Rapporteur himself heard distressing stories of extremely brutal methods of torture, including beatings with sticks, the use of stress positions, asphyxiation using plastic bags drenched in kerosene, the pulling out of fingernails, the insertion of needles beneath the fingernails, the use of various forms of water torture, the suspension of individuals for several hours by their thumbs, and the mutilation of genitals. In a number of instances brought to the attention of the Special Rapporteur, these allegations had either been supported by independent medical evidence or accepted by the judiciary as the basis for excluding a confession at trial.”

information or coerced confessions rather than carrying out thorough investigations using scientific methods.⁵¹

On April 14, 2020, Hejaaz Hizbullah, a human rights lawyer, was arrested under the PTA.⁵² He was not produced before a magistrate within 90 days, as the PTA requires, and continued to be held arbitrarily without charge at the time of writing. Three children have alleged that the police attempted to coerce them into making false terrorism allegations against Hizbullah.⁵³

On May 16, 2020, Ahnaf Jazeem, 25, was arrested under the PTA in connection with a book of Tamil language poetry he had published three years earlier.⁵⁴ The authorities allege that the poems contain “extremist” messages, although a Tamil language scholar protesting his continued detention in January 2021 said their message is “against extremism, violence, and war.”⁵⁵ Jazeem remains in detention at the time of writing.

Attacks on Minorities

Members of minority communities, including Tamils, Muslims, and Christians, report targeting of them by both Sinhala Buddhist interest groups and government officials has increased in recent years, and especially since the election of Gotabaya Rajapaksa.⁵⁶ In

⁵¹ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka*, A/HRC/34/54/Add.2, December 22, 2016, <https://sangam.org/wp-content/uploads/2017/01/SR-Torture-report-Dec-22-2016.pdf> (accessed September 1, 2020).

⁵² Human Rights Watch, “Sri Lanka: Due Process Concerns in Arrests of Muslims,” April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>, (accessed September 2, 2020).

⁵³ “Children Threatened By CID Following FR Applications,” *Colombo Telegraph*, May 12, 2020, <https://www.colombotelegraph.com/index.php/children-threatened-by-cid-following-fr-applications/> (accessed September 6, 2020).

⁵⁴ “Poetic injustice: Another writer languishes in prison under PTA in Sri Lanka,” *Sri Lanka Brief*, December 14, 2020, <https://srilankabrief.org/2020/12/poetic-injustice-another-writer-languishes-in-prison-under-pta/>; Kamanthi Wickremasinghe, “Suppression of ideas as part of the New Normal,” *Daily FT*, January 12, 2021, <http://www.dailymirror.lk/news-features/Overline-Young-poet-Ahnaf-Jazeem-awaits-justice-Headline-Suppression-of-ideas-as-part-of-the-New/131-203610>; “Complaint Lodged With HRCSL Over Poet Ahnaf Jazeem Detained Under PTA,” *Colombo Telegraph*, December 31, 2020, <https://www.colombotelegraph.com/index.php/complaint-lodged-with-hrcsl-over-poet-ahnaf-jazeem-detained-under-pta/> (accessed January 14, 2021).

⁵⁵ “Arrest of Mannar poet under PTA: Academics, writers and activists cry foul,” *Daily FT*, January 6, 2021, <http://www.ft.lk/news/Arrest-of-Mannar-poet-under-PTA-Academics-writers-and-activists-cry-foul/56-711244> (accessed January 14, 2021).

⁵⁶ Human Rights Watch, “Sri Lanka: Due Process Concerns in Arrests of Muslims,” April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>; Meenakshi Ganguly, “Sri Lankan Officials Stoke Covid-19 Communal Hate,” Human Rights Watch, May 19, 2020, <https://www.hrw.org/news/2020/05/19/sri-lankan-officials-stoke-covid-19-communal-hate>; Human Rights Watch, “Sri Lanka: Muslims Face Threats, Attacks,” July 3,

her update to the Human Rights Council on February 27, 2020, High Commissioner for Human Rights Michelle Bachelet said, “The increasing levels of hate speech, and security and policy measures appear to be discriminately and disproportionately directed against minorities, both Tamil and Muslim.”⁵⁷

Beginning around 2012, Sri Lanka experienced a majoritarian Sinhalese nationalist campaign targeting Muslims, with tactics including economic boycotts, threats, and repeated, violent, organized attacks on mosques and Muslim properties.⁵⁸ In 2018, there was a spate of lethal anti-Muslim mob violence linked to ultra-nationalist Sinhalese Buddhist groups,⁵⁹ which then-Prime Minister Ranil Wickremesinghe called “systemic and organized.”⁶⁰ Many of these hardline Buddhist groups, such as the Bodu Bala Sena, and politicians who are associated with anti-Muslim campaigns, were SLPP supporters or members.

In 2019, following the Islamic State (ISIS)-inspired Easter Sunday bombings in Colombo and several other cities in which about 250 people were killed,⁶¹ authorities arbitrarily arrested and detained hundreds of Muslims under counterterrorism and emergency laws,

2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>; United States Department of State, “2019 Report on International Religious Freedom: Sri Lanka,” 2020, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/sri-lanka/> (accessed October 6, 2020); National Christian Evangelical Alliance Sri Lanka and Verité Research, *Inaction and Impunity: Incidents of Religious Violence Targeting Christians, Muslims and Hindus 2015-2019*, 2020, <https://www.minormatters.org/storage/app/uploads/public/5f4/354/c86/5f4354c86534c161168051.pdf> (accessed October 6, 2020).

⁵⁷ “Oral updates and introduction to country reports of the Secretary-General and the High Commissioner,” Human Rights Council 43rd Session Statement by Michelle Bachelet, February 27, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E> (accessed September 2, 2020). In her update to the Council in 2019, Michelle Bachelet said, “Continuing impunity risks fueling communal or inter-ethnic violence, and instability.” “Presentation of the High Commissioner’s report on Promoting reconciliation, accountability and human rights in Sri Lanka (Item 2),” March 20, 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24371&LangID=E> (accessed September 2, 2020).

⁵⁸ See International Crisis Group, *After Sri Lanka’s Easter Bombings: Reducing Risks of Future Violence*, Report no. 302, September 27, 2019, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>; International Crisis Group, “Buddhist Militancy Rises Again in Sri Lanka”, March 7, 2018, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/buddhist-militancy-rises-again-sri-lanka> (accessed September 2, 2020).

⁵⁹ Meenakshi Ganguly, “State of Emergency Declared in Sri Lanka,” Human Rights Watch, March 7, 2018, <https://www.hrw.org/news/2018/03/07/state-emergency-declared-sri-lanka> (accessed September 2, 2020).

⁶⁰ Michael Safi and Amantha Perera, “Sri Lanka declares state of emergency after communal violence,” *Guardian*, March 6, 2018, <https://www.theguardian.com/world/2018/mar/06/sri-lanka-declares-state-of-emergency-after-communal-violence> (accessed September 2, 2020).

⁶¹ Human Rights Watch, “Sri Lanka: Prosecute Easter Sunday Attackers,” April 22, 2019, <https://www.hrw.org/news/2019/04/22/sri-lanka-prosecute-easter-sunday-attackers> (accessed September 2, 2020).

and imposed discriminatory rules targeting Muslims, particularly Muslim women.⁶² There was renewed anti-Muslim mob violence in which homes and businesses were destroyed and at least one person died.⁶³ An investigation by the Human Rights Commission of Sri Lanka found that: “There appeared to be no preventive measures taken although retaliatory violence against the Muslim communities was a distinct possibility after the terror attacks,” and that police inappropriately released suspects detained for mob violence, concluding that this “clearly prevented equal protection of the law to affected citizens and also to the public at large.”⁶⁴

Hate speech that circulated in mainstream and social media stigmatized Muslims with baseless conspiracy theories, such as the existence of a plot to lower the birth rate of the majority Sinhalese Buddhist community. Authorities even arrested a doctor over false allegations that he had sterilized thousands of Buddhist women.⁶⁵

Anti-Muslim hate speech and discrimination rose again in 2020, during the Covid-19 pandemic. In March, the government published guidelines requiring that the remains of all Covid-19 victims be cremated, which is counter to Islamic tradition. The World Health Organization has not recommended that governments do this, calling it a “common myth” that those who die of a communicable disease should be cremated.⁶⁶ Four United Nations

⁶² Hillary Margolis, “Sri Lanka’s Face-Covering Ban a Wrongheaded Response to Easter Bombings,” Human Rights Watch, May 2, 2019, <https://www.hrw.org/news/2019/05/02/sri-lankas-face-covering-ban-wrongheaded-response-easter-bombings>. Reports from several parts of the country, including Puttalam in the west, and Batticaloa and Trincomalee in the east, described Muslim women being effectively confined to their homes; harassed; or denied access to hospitals, universities, and public places, such as markets and businesses, and places of employment. See Meera Srinivasan, “Focus on women while combating terrorism,” June 8, 2019, <https://www.thehindu.com/news/international/focus-on-women-while-combating-terrorism/article27697738.ece>; Chandni Doulatramani, “Burqa Ban is Pushing Muslim Women Out of Sri Lanka’s Public Spaces,” news18.com, May 9, 2019, <https://www.news18.com/news/buzz/burqa-ban-is-pushing-muslim-women-out-of-sri-lankas-public-spaces-2133933.html> (accessed September 5, 2020).

⁶³ Human Rights Watch, “Sri Lanka: Muslims Face Threats, Attacks,” July 3, 2020, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks> (accessed September 5, 2020).

⁶⁴ Human Rights Commission of Sri Lanka, Letter to Inspector General of Police, May 23, 2019.

⁶⁵ Alexandra Ulmer and Omar Rajarathnam, “Unsubstantiated claims Muslim doctor sterilized women raise tensions in Sri Lanka,” Reuters, June 6, 2019, <https://www.reuters.com/article/us-sri-lanka-doctor-insight/unsubstantiated-claims-muslim-doctor-sterilized-women-raise-tensions-in-sri-lanka-idUSKCN1T71HS> (accessed September 6, 2020).

⁶⁶ World Health Organization, “Infection Prevention and Control for the safe management of a dead body in the context of COVID-19,” March 24, 2020, https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf?sequence=1&isAllowed=y (accessed September 7, 2020).

special rapporteurs and many human rights organizations criticized the requirement as a violation of freedom of religion.⁶⁷

There were calls on social media to boycott Muslim businesses and false allegations of Muslims spreading Covid-19 deliberately, which authorities did not contest.⁶⁸ After senior government figures made public comments falsely implying that the virus was particularly rife among Muslims,⁶⁹ leading activists and civil society organizations wrote to the president raising concerns that this had led to “outpourings of vitriol, and hate speech against Muslims,” to which he did not respond.⁷⁰ The government has continued enforcing cremations, even cremating a Muslim baby in December 2020 over the objections of his parents.⁷¹

Members of the Tamil community, especially in the north and east of Sri Lanka, also face harassment and discrimination. In his report to the Human Rights Council in June 2020, the then-special rapporteur for transitional justice, Pablo de Greiff, wrote:

Psychosocial support is needed throughout Sri Lanka but particularly in the North and East, where trauma and tensions have been exacerbated by official denials of the suffering experienced by Tamil civilians during the civil war, the presence of uniformed personnel and other forms of

⁶⁷ Mandates of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, AL LKA 2/2020, April 8, 2020,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25175> (accessed September 7, 2020); Meenakshi Ganguly, “Covid-19: Sri Lanka forcibly cremates Muslim baby sparking anger,” Human Rights Watch, May 19, 2020, <https://www.hrw.org/news/2020/05/19/sri-lankan-officials-stoke-covid-19-communal-hate>

⁶⁸ Meera Srinivasan, “Muslim organisations in Sri Lanka concerned over ‘hate mongering’,” *The Hindu*, April 13, 2020, <https://www.thehindu.com/news/international/muslim-organisations-in-sri-lanka-concerned-over-hate-mongering/article31334589.ece> (accessed September 7, 2020).

⁶⁹ Tisaranee Gunasekara, “The President and the Pandemic,” *Groundviews*, May 4, 2020, <https://groundviews.org/2020/04/05/the-president-in-the-pandemic/> (accessed September 7, 2020).

⁷⁰ “Disposal of bodies of deceased persons who were infected with and suspected of being infected with COVID-19,” Centre for Policy Alternatives, April 4, 2020, <https://www.cpalanka.org/disposal-of-bodies-of-deceased-persons-who-were-infected-with-and-suspected-of-being-infected-with-covid-19/> (accessed September 7, 2020).

⁷¹ “Covid-19: Sri Lanka forcibly cremates Muslim baby sparking anger,” BBC News, December 26, 2020, <https://www.bbc.co.uk/news/world-asia-55359285> (accessed December 29, 2020).

surveillance, the proliferation of victory monuments and the obstacles to local forms of memorialization.⁷²

His findings echoed those of Clément Voule, the special rapporteur on the right to freedom of peaceful assembly a year earlier, who wrote:

I heard stories that mothers of disappeared persons and activists supporting families of the disappeared have been intimidated against organizing and participating in memorial ceremonies and memorial days for those who disappeared.⁷³

In November 2020, the government took out court orders at several places in the north and east prohibiting the relatives of disappeared people and activists from participating in memorial events.⁷⁴

In January 2021, the government demolished a monument at Jaffna University which commemorated thousands of Tamil civilians killed at Mullivaikkal in 2009.⁷⁵ Public Security Minister Sarath Weerasekera justified the action by saying that "no one will and should be allowed to commemorate dead terrorists".⁷⁶ Protesting students in a statement said, "This act is an insult not only to the university students but also to the entire Tamil people. It is also an act of denial of a people's right to memory,"⁷⁷

⁷² "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence," June 18, 2020, A/HRC/45/45/Add.1, <https://undocs.org/A/HRC/45/45/ADD.1> (accessed September 2, 2020).

⁷³ "End of Mission Statement United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Mr. Clément Nyaletsossi Voule, on his visit to Sri Lanka (18-26 July 2019)," July 26, 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818&LangID=E> (accessed September 2, 2020).

⁷⁴ Example of orders on file with Human Rights Watch.

⁷⁵ "Leaders condemn demolition of Mullivaikkal memorial in Jaffna," *The Hindu*, January 10, 2021, <https://www.thehindu.com/news/national/tamil-nadu/leaders-condemn-demolition-of-mullivaikkal-memorial-in-jaffna/article33540191.ece> (accessed January 14, 2021).

⁷⁶ "Sri Lanka: Tamil war monument to be rebuilt after hunger strike," BBC News, January 12, 2021, <https://www.bbc.co.uk/news/world-asia-55620079> (accessed January 14, 2021).

⁷⁷ "'Denial of a people's right to memory' - Jaffna University Students' Union on Mullivaikkal monument destruction," *Tamil Guardian*, January 10, 2021, <https://www.tamilguardian.com/content/denial-people-s-right-memory-jaffna-university-students-union-mullivaikkal-monument> (accessed January 14, 2021).

II. A History of Conflict and Abuse



Screen shot of a Sri Lankan soldier appearing to summarily execute prisoners in the final days of the civil war in 2009, from footage broadcast in the Channel 4 film “Sri Lanka’s Killing Fields.” Source: Journalists for Democracy in Sri Lanka

Although Sri Lanka has not fought a war against an external enemy in its modern history, its extensive security apparatus has spent decades conducting counterinsurgency warfare against internal opponents, notably the Sinhalese left-wing insurgency of the Janatha Vimukthi Peramuna (JVP),⁷⁸ and the Tamil separatist Liberation Tigers of Tamil Eelam (LTTE).⁷⁹

The government responded to the JVP-led uprising in the south between 1987 and 1989 by first deploying the police and then the military in joint operations that forcibly disappeared

⁷⁸ Initially Marxist in orientation, the JVP emerged increasingly as a Sinhalese ultra-nationalist organization opposing any compromise with the Tamil insurgency. The 1987 uprising was largely fueled by the Indo-Sri Lankan Accord, when the prospect of Tamil autonomy and the presence of Indian troops stirred up a wave of Sinhalese nationalism. During the uprising, the JVP committed numerous abuses, including the use of violence to enforce general strikes (*hartals*), assassinations of civilian officials, and targeting family members of police and army personnel. In recent years, a revamped JVP has been involved in electoral politics.

⁷⁹ The 26-year civil war was punctuated by large-scale and bloody military operations, various ceasefires, and the 32-month presence in the late 1980s of an Indian Peace Keeping Force. In February 2002, under the auspices of the Norwegian government, the Sri Lankan government and the LTTE signed a ceasefire agreement (CFA). The ceasefire brought a respite from hostilities, but not an end to serious abuses. The agreement set up modalities of the ceasefire, measures to restore normalcy, and the Sri Lanka Monitoring Mission (SLMM), https://peacemaker.un.org/sites/peacemaker.un.org/files/LK_020222_CeasefireAgreementGovernment-LiberationTigersTamilEelam.pdf (accessed August 21, 2020).

and extrajudicially executed thousands of people.⁸⁰ While most of these abuses were perpetrated by unidentified death squads, pro-government armed groups also participated in atrocities. Among those implicated in serious abuses was C.A. Chandraprema, who was linked to the killing of two human rights lawyers in 1989 but never prosecuted – and who was recently appointed as Sri Lanka’s permanent representative to the United Nations in Geneva.⁸¹ The military defeated the JVP as an armed insurrection in 1990, reporting that JVP leader Rohana Wijeweera and other JVP leaders had been captured and killed.⁸²

The secessionist war in the north and east stemmed from marginalization and discrimination faced by Tamils. In July 1983, an attack on government troops by a Tamil separatist organization, the Liberation Tigers of Tamil Eelam (LTTE), sparked riots in Colombo and elsewhere, causing several hundred Tamil deaths. The ensuing civil war between the government and the LTTE was marked by widespread violations and abuses of international human rights and humanitarian law by both sides. The war is believed to have cost over 100,000 lives.⁸³

⁸⁰ According to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), 145 cases of enforced disappearances were reported in 1987; 182 in 1988; 5,027 in 1989; and 4,777 in 1990; although the majority of cases reported in 1990 occurred in the north, after the resumption of hostilities between the government and the LTTE. See “Report of the Working Group on Enforced or Involuntary Disappearances,” E/CN.4/2000/64/Add.1, December 21, 1999, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/164/79/PDF/G9916479.pdf?OpenElement> (accessed January 4, 2021)

⁸¹ See dossier compiled by ITJP and JDS Lanka, “Candauda Arachchige Chandraprema,” <https://www.itjpsl.com/assets/press/chandraprema-dossier-final-docx.pdf> (accessed September 27, 2020); “Chandraprema refused bail again,” *The Island*, October 3, 2000, <https://web.archive.org/web/20010219014020/http://www.island.lk/2000/10/03/news05.html>; Chitra Weeraratne, “Chandraprema’s bail application put off for October 17,” *The Island*, October 4, 2000, <https://web.archive.org/web/20010417033240/http://www.island.lk/2000/10/04/news03.htm>; Chitra Werarathne, “Chandraprema’s bail application withdrawn,” *The Island*, October 18, 2000, <https://web.archive.org/web/20030907222727/http://www.island.lk/2000/10/18/news08.html>; “Police mislead parliament to whitewash criminal record of Geneva envoy,” *The Leader*, February 10, 2020, <https://english.theleader.lk/news/653-police-mislead-parliament-to-whitewash-criminal-record-of-geneva-envoy> (accessed November 23, 2020).

⁸² See *Sri Lanka: Extra-judicial Executions, ‘Disappearances’ and Torture, 1987-1990*, Amnesty International, September 1990, at page 11. <https://www.amnesty.org/download/Documents/200000/asa370211990eng.pdf> (accessed December 29, 2020).

⁸³ “Up to 100,000 killed in Sri Lanka’s civil war: UN,” AFP, May 20, 2009, <https://www.abc.net.au/news/2009-05-20/up-to-100000-killed-in-sri-lankas-civil-war-un/1689524>; Louis Charbonneau, “Interview: World may never know Sri Lanka death toll – UN,” Reuters, May 30, 2009, <https://www.reuters.com/article/idUSN29443707> (accessed October 6, 2020).

Colonel Karuna, Implicated in Abuses on Both Sides

On October 14, 2020, Prime Minister Mahinda Rajapaksa appointed Vinayagamoorthi Muralitharan, better known as Col. Karuna Amman, to his personal staff as district coordinator for Batticaloa and Ampara.⁸⁴ As a senior LTTE military commander until 2004, and later as the leader of a pro-government armed group, Karuna is implicated in grave abuses on both sides of the conflict.

As a senior LTTE commander, forces under Karuna's command were responsible for the summary execution of several hundred police officers in June 1990, after they had surrendered to the LTTE. The following month, his forces executed about 75 Muslim travelers. And in August that year, his forces were allegedly responsible for killing more than 200 civilians in Batticaloa district.⁸⁵

After Karuna split from the LTTE, causing a serious blow to group's operations, his forces continued to commit abuses, this time on the government's behalf. The United Nations, Human Rights Watch, and others reported that Karuna's group, known as the Tamil Makkal Viduthalai Pulikal (TMVP), was responsible for enforced disappearances, torture, and child recruitment.⁸⁶

Karuna has never been held accountable for his alleged crimes. In 2007, he was arrested in the United Kingdom for traveling on a false document. He testified that his fake diplomatic passport had been provided by the then-defense secretary, Gotabaya

⁸⁴ "Karuna appointed as District Coordinator in PM's personal staff," *Daily FT*, October 14, 2020, <http://www.ft.lk/news/Karuna-appointed-as-District-Coordinator-in-PM-s-personal-staff/56-707463> (accessed October 20, 2020).

⁸⁵ Human Rights Watch, "Sri Lanka: Probe into LTTE Crimes Should Start with Karuna," March 28, 2013, <https://www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna> (accessed October 21, 2020).

⁸⁶ See OHCHR, "Zeid urges creation of hybrid special court in Sri Lanka as UN report confirms patterns of grave violations," September 15, 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16432&LangID=E>; Human Rights Watch, *Complicit in Crime: State Collusion in Abductions and Child Recruitment by the Karuna Group*, January 23, 2007, <https://www.hrw.org/report/2007/01/23/complicit-crime/state-collusion-abductions-and-child-recruitment-karuna-group>, (accessed October 20, 2020).

Rajapaksa, now Sri Lanka's president.⁸⁷ Mahinda Rajapaksa, during his presidency, subsequently appointed Karuna as a government minister in 2009.⁸⁸

Laws of War Violations

Mahinda Rajapaksa was first elected president in 2005 during a ceasefire with the LTTE from 2002 to 2006, which was overseen by a Nordic-led Sri Lanka Monitoring Mission (SLMM).⁸⁹ He appointed his brother, Gotabaya Rajapaksa, as defense secretary.

Full-fledged fighting between government forces and the LTTE resumed in mid-2006.⁹⁰ Major military operations that began in 2008 pushed LTTE forces from their main positions in the region of northern Sri Lanka known as the Vanni, including their unofficial capital of Kilinochchi. The government ordered most humanitarian organizations and foreign journalists out, making monitoring of the situation difficult.⁹¹

The LTTE forces, along with several hundred thousand Tamil civilians, many of whom were effectively used as human shields, withdrew towards the east coast.⁹² From January 2009 until the conflict's end in May, the Sri Lankan armed forces pounded the LTTE and entrapped civilians with artillery and airpower, including intensive targeting of government-declared no-fire zones and well-marked hospitals.⁹³

⁸⁷ "Renegade Tamil rebel jailed in UK," BBC News, January 25, 2008, http://news.bbc.co.uk/1/hi/world/south_asia/7209415.stm (accessed October 20, 2020).

⁸⁸ "Ex-rebel made Sri Lankan minister," BBC News, March 9, 2009, <http://news.bbc.co.uk/1/hi/7933561.stm> (accessed November 23, 2020).

⁸⁹ The final report of the SLMM is available at http://www.ptsrilanka.org/wp-content/uploads/2017/04/slmm_final_report.pdf (accessed August 21, 2020).

⁹⁰ "Fighting Resumes in Sri Lanka," Al Jazeera, November 28, 2006, <https://www.aljazeera.com/news/2006/11/28/fighting-resumes-in-sri-lanka> (accessed November 5, 2020).

⁹¹ Human Rights Watch, "Sri Lanka: End Detentions and Aid Restrictions," December 23, 2008, <https://www.hrw.org/news/2008/12/23/sri-lanka-end-detentions-and-aid-restrictions>.

⁹² Human Rights Watch, "Sri Lanka: Tamil Tigers Abuse Civilians in Stronghold," December 15, 2008, <https://www.hrw.org/news/2008/12/15/sri-lanka-tamil-tigers-abuse-civilians-stronghold>.

⁹³ See UN Secretary-General, *Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed Aug 4, 2020); *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

The Sri Lankan security forces in the Vanni were headed by Maj. Gen. Jagath Jayasuriya. He reported to Gen. Sarath Fonseka, the army commander, who reported to the president, Mahinda Rajapaksa, and defense secretary, Gotabaya Rajapaksa.

Six major battalions were involved in the army's final offensive. The 53rd Division, commanded by Maj. Gen. Kamal Gunaratne, who is currently the defense secretary, and the 55th Division, commanded by Brig. Prasanna Silva, advanced from the Jaffna peninsula in the north. The 56th Division, commanded by Maj. Gen. H.C.P. Gunalithaka, the 57th Division, commanded by Maj. Gen. Jagath Dias, the 58th Division, commanded by Brig. Shavendra Silva, who is now the chief of defense staff, and the 59th Division, commanded by Maj. Gen. Nandana Udawatta, all advanced from the south and southwest.⁹⁴

Even while the fighting raged in 2008-9, the Rajapaksa government dismissed calls for accountability for war crimes by both sides to the armed conflict, insisting that no civilians had been killed. By the time the LTTE was defeated on May 19, 2009, up to 40,000 civilians had died, according to a study by a UN panel of experts.⁹⁵ The government later concluded that 7,400 civilians had died in the final four months of the war.⁹⁶

Targeting No Fire Zones: Attacks on Civilians and Hospitals

According to the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, "Throughout the final stages of the war, virtually every hospital in the Vanni, whether permanent or makeshift, was hit by artillery."⁹⁷

⁹⁴ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020). The OISL reports noted: "The names provided in the description of the chain of command do not imply criminal responsibility for particular alleged violations listed in this report.... Individual criminal responsibility can only be determined by a court of law with all necessary due process guarantees. The allegations contained in this report must be promptly, thoroughly and independently investigated and those responsible must be brought to justice."

⁹⁵ UN Secretary-General, *Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed August 4, 2020).

⁹⁶ Charles Haviland, "Sri Lanka government publishes war death toll statistics," BBC News, February 24, 2012, <https://www.bbc.co.uk/news/world-asia-17156686> (accessed October 6, 2020).

⁹⁷ *Report of the Secretary-General's panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed August 4, 2020),

On January 21, 2009, the government unilaterally declared a 32-square kilometer No Fire Zone (NFZ) to “provide maximum safety for civilians trapped or forcibly kept by the LTTE.”⁹⁸ However, soon after, shells hit the Vallipunam hospital, which was located within it, killing at least five civilians.⁹⁹ On January 23 and 24, hundreds of shells landed in the NFZ, killing “hundreds” of civilians.¹⁰⁰ In the week between January 29 and February 4, the hospital at Puthukkudiyiruppu (often called PTK), which was packed with hundreds of injured civilians, was hit every day by multi-barreled rocket launchers (MBRLs) and shells, killing over 22 patients and staff, although it was clearly marked and its location had been communicated to the army.¹⁰¹ On February 12, the government declared a second NFZ, covering a 12-kilometer strip of coast.¹⁰² The second NFZ had three makeshift hospitals.¹⁰³ On February 9, shells fell on Putumattalan hospital, killing at least 16 patients.¹⁰⁴

⁹⁸ Ibid.

⁹⁹ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

¹⁰⁰ *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, November 2012, <https://digitallibrary.un.org/record/737299?ln=en> (accessed August 6, 2020). According to the account of a UN staff member, “The scene at first light [on January 24] was devastating; within 20m of our location lay 7 dead and 15 seriously injured. One dead infant was in a tree ... and the 2nd dead infant was hanging from the wire perimeter fence.” The UN’s single light vehicle “was covered with blood and human body parts all over.” On the evening of January 24, there was an “uninterrupted barrage” of shells and continuous calls to the army had no effect. The UN contingent withdrew to the town of Puthukkudiyiruppu, outside the NFZ, on January 25. According to the Report of the Secretary-General’s panel of Experts, “The scene inside the NFZ along the road to PTK, the A35, was one of great destruction, and even the vegetation was shredded. Dead or severely injured civilians lay along the roadsides.... This was in stark contrast to the situation outside the NFZ, across the Yellow Bridge (Manjal Palam), further along the A35, where there were few signs of shelling. Paradoxically, while PTK was outside the Government-designated NFZ, that area did not seem to have been shelled, in spite of the presence of a large number of LTTE and far fewer civilians.”

¹⁰¹ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020). On February 1, 2009, the International Committee of the Red Cross (ICRC) issued a public statement emphasizing that “wounded and sick people, medical personnel and medical facilities are all protected by international humanitarian law. Under no circumstance may they be directly attacked.” International Committee of the Red Cross, “Sri Lanka: Vanni Hospital shelled,” February 1, 2009, <https://www.icrc.org/en/doc/resources/documents/news-release/2009-and-earlier/sri-lanka-news-010209.htm> (accessed August 6, 2020).

¹⁰² According to the Report of the Secretary-General’s Panel of Experts, “From as early as 6 February 2009, the SLA continuously shelled within the area that became the second NFZ, from all directions, including land, air and sea. It is estimated that there were between 300,000 and 330,000 civilians in that small area. The SLA [Sri Lankan Army] assault employed aerial bombardment, long-range artillery, howitzers and MBRLs as well as small mortars, RPGs and small arms fire, some of it fired from a close range. MBRLs are unguided missile systems designed to shell large areas, but if used in densely populated areas, are indiscriminate in their effect and likely to cause large numbers of casualties.”

¹⁰³ *Report of the Secretary-General's panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed August 4, 2020).

¹⁰⁴ Ibid.

Throughout the final phase of the war, the government used deliberately low estimates of the number of civilians in the conflict zone to restrict humanitarian supplies.¹⁰⁵ On April 8, 2009, women and children queueing at a milk powder distribution line organized by local health services were shelled at Ambalavanpokkanai.¹⁰⁶ At the same time, the LTTE prevented civilians from fleeing the conflict zone, shooting at families that tried to do so, and restricted delivery of humanitarian aid.¹⁰⁷

The Sri Lankan government claimed that it pursued a policy of “zero civilian casualties” and characterized its operations as a humanitarian “hostage rescue mission.”¹⁰⁸ The UN, however, concluded that, the government used intense bombardments of heavy weapons and airstrikes until the final moments of the war.

Extrajudicial Killings, Torture, Sexual Violence, and Enforced Disappearances

In the final days of the conflict, around 290,000 civilians as well as a few thousand surrendering LTTE fighters and LTTE members from non-military wings of the organization, crossed over the front lines and entered areas of government control, or came under government control following the capture of the final NFZ on May 18.¹⁰⁹ The army screened the population and removed suspected LTTE cadres, their associates, and relatives. Many of them became victims of enforced disappearance.¹¹⁰

¹⁰⁵ In January 2009, the Ministry of Defense estimated the number of civilians in the Vanni at 75,000 – 100,000. The United Nations Children’s Fund estimated that there were 70,000 school age children alone in the Vanni. On February 2, the Additional Government Agent (AGA, a public official) based in the second NFZ told the Ministry of Public Administration and Home Affairs that there were 330,000 civilians in Mullitivu district. The government threatened him with disciplinary action for providing “wrong information.” The number of IDPs who eventually emerged alive was 290,000, with around 40,000 believed killed. *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*.

¹⁰⁶ Throughout the final months of fighting in the Vanni the Sri Lankan army made extensive use of unmanned aerial vehicles (UAVs), which relayed live imagery of targets and battle damage to commanders. According to the Panel of Experts report, “While individual incidents of shelling and shooting took place on a daily basis, destroying the lives of many individuals or families, the SLA also shelled large gatherings of civilians capable of being identified by UAVs.”

¹⁰⁷ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

¹⁰⁸ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

¹⁰⁹ *Report of the Secretary-General’s panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed August 4, 2020).

¹¹⁰ The OISL report concluded that a “significant” number of people disappeared after this initial screening. “Witnesses (wives, mothers, grandparents) saw their loved ones being taken away, including five children between the ages of two and 10,” the authors wrote.

Photographs and mobile phone videos, seemingly made as trophies by the victorious soldiers, depict summary executions, including surrendering LTTE cadre. Footage broadcast in the UK by Channel 4 News shows soldiers kicking and executing prisoners, whose hands are tied behind their back.¹¹¹ Some of the victims wear military uniform, others are in civilian dress or naked.¹¹²

From around May 13, two prominent members of the LTTE's political wing, Seevaratnam Pulidevan and Balasingham Nadesan, began to negotiate their surrender. Senior UN officials and foreign journalists were involved in these negotiations, which also included the president's brother, Basil Rajapaksa, the defense secretary, and the president.

Pulidevan and Nadesan sought to have international witnesses present at the surrender, but the government refused. Early on May 18, following official instructions, they approached government lines carrying white flags. Witnesses later told the OISL investigators that the leaders surrendered to Sri Lankan army at Mullivaikkal Bridge, along with other cadres, and were later killed. Photographs of their bodies led the OISL investigators to conclude that they had their hands tied when they were shot dead.¹¹³

Another LTTE leader who surrendered on May 18, Colonel Ramesh, was filmed being interrogated in army custody. His body was later photographed "showing clear indications

¹¹¹ Channel 4, "Sri Lanka's Killing Fields," June 14, 2011, <https://www.channel4.com/programmes/sri-lankas-killing-fields> (accessed August 12, 2020).

¹¹² *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020) and *Report of the Secretary-General's panel of Experts on Accountability in Sri Lanka*, March 31 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed August 4, 2020). Among the bodies shown are those of a boy and a woman identified as Isaipriya, a well-known LTTE media anchor. The Ministry of Defense website listed her as killed in a "hostile action" by the 53rd Division on May 18. Other footage shows the same boy and Isaipriya alive in army custody, sitting with other prisoners with their hands tied behind their backs. Some photographs appear to show signs of torture on the bodies of executed prisoners. In many of the photographs and videos shown by Channel 4, dead Tamil women are seen naked or with their underwear pulled aside, and Sri Lankan soldiers are heard making remarks that imply that sexual violence may have occurred before they were killed. The OISL report describes extensive material "showing the outrageous treatment of female bodies, clothes having been removed or bras pulled up and trousers and underwear pulled down to fully expose their breasts and/or genital areas. The case of Isaipriya is a clear example of such desecration and outrage upon personal dignity. OISL reviewed numerous other photos and videos of unidentified dead women ... all having breasts and genitalia exposed. In some cases, the legs had been spread wide. Some also had their hands tied behind their backs indicating they had been detained before their deaths."

¹¹³ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020). OISL also reviewed photographic and video material showing Balachandran Prabhakaran, the 12-year-old son of the LTTE leader Villupillai Prabhakaran, alive in army custody. He was later photographed dead, with five gunshots to his chest, lying beside the dead bodies of five semi-naked men.

that he was extrajudicially executed.”¹¹⁴ The armed forces official website later claimed that Colonel Ramesh, as well as Pulidevan and Nadesan, were killed in fighting with the 58th Division.¹¹⁵

Also, on May 18, a group of LTTE cadres, including at least five children, led by a Catholic priest, Father Francis Joseph, surrendered to the army at Vadduvakal. Witnesses described the group being met by a senior officer with “a lot of security around him and a lot of badges on him.”¹¹⁶ They were driven away in buses and never seen again.

The 2011 report of the government-appointed Lessons Learnt and Reconciliation Commission (LLRC) expressed “grave concern” about the “number of representations concerning alleged disappearances of LTTE cadres who had surrendered to or been arrested by the Sri Lanka Army particularly in the final days.”¹¹⁷ In January 2020, at a meeting with the UN resident coordinator in Colombo, Gotabaya Rajapaksa stated that the disappeared were dead, but offered little explanation.¹¹⁸

Civilians who emerged from the conflict zone were eventually sent to Menik Farm near Vavuniya, which, at its peak, housed around 250,000 people.¹¹⁹ Screening for suspected LTTE cadres continued with paramilitaries and members of the security forces implicated in torture, rape, and enforced disappearances.¹²⁰ Locations at which torture allegedly took place include the camp at Menik Farm, Joseph Camp, which was commanded between

¹¹⁴ Ibid.

¹¹⁵ Cited by the OISL Report. The page is no longer available.

¹¹⁶ Ibid.

¹¹⁷ “Report of the Commission of Inquiry on Lessons Learnt and Reconciliation,” November 2011, <http://slembassyusa.org/downloads/LLRC-REPORT.pdf> (accessed August 25, 2020). “The consistent theme that emerges from these representations is that the last they had seen of their husbands was their surrendering to the custody of the Sri Lanka Army, and had not heard or seen them since then,” the authors wrote.

¹¹⁸ “Sri Lanka civil war: Rajapaksa says thousands missing are dead,” BBC News, January 20, 2020, <https://www.bbc.com/news/world-asia-51184085> (accessed August 12, 2020).

¹¹⁹ *Report of the Secretary-General’s panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed Aug 4, 2020).

¹²⁰ According to the *Report of the Secretary-General’s panel of Experts on Accountability in Sri Lanka*, “Paramilitaries from former Tamil militant groups, often wearing balaclavas, roamed around, often at night, outside the scrutiny of humanitarian organizations, to select and remove people they claimed had links to the LTTE.” Some of those identified as LTTE cadres were transferred to facilities which the government called Protective Accommodation and Rehabilitation Centres. The report noted that the secrecy in which those identified as alleged LTTE cadres were held rendered them “highly vulnerable to violations such as rape, torture or disappearances.” See also, *Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka*, November 2012, <https://digitallibrary.un.org/record/737299?ln=en> (accessed August 6, 2020). Two UN staff members were among those tortured during the screening process.

2009-11 by Maj. Gen. Kamal Gunaratne, the current defense secretary,¹²¹ and security forces headquarters in Vavuniya, commanded by Maj. Gen. Jagath Jayasuriya.¹²²

After the war the government trumpeted what it referred to as its triumph over terrorism and its false claim of no civilian casualties, and sought to dismiss all allegations of war crimes.¹²³ Mahinda Rajapaksa won a second term in office in 2010. Journalists and activists who criticized conflict-related violations came under acute pressure. Numerous suspected LTTE supporters and critics of the government were forcibly disappeared, often in operations using white vans that became a notorious symbol of terror.¹²⁴

After Mahinda Rajapaksa lost the presidential election in January 2015, the repression of basic rights to freedom of speech and association was lifted. The new government joined a consensus resolution at the Human Rights Council. It also established a civil society-led task force to hold public consultations and offer recommendations on accountability and truth mechanisms.¹²⁵ Key among the task force's recommendations was the creation of a special court composed of both international and national judges and other officials.¹²⁶ There was little progress in implementing most of the recommendations.

¹²¹ Athula Vithanage, "Five army top brass named as running torture and rape camp in Sri Lanka," JDSlanka.org, March 16, 2017, <http://www.jdslanka.org/index.php/news-features/human-rights/675-five-army-top-brass-named-as-running-torture-and-rape-camp-in-sri-lanka> (accessed August 12, 2000).

¹²² *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020). The OISL Report found that allegations of torture relating to various facilities at which detainees were held "similar patterns, using similar tools ... reinforcing the conclusion that it was part of an institutional policy within the security forces." Methods of sexual torture that were described to investigators included genitals and breasts being crushed or burned and objects being inserted into the penis, vagina, and anus. Detainees were also shown videos of rape and abuse.

¹²³ Following the end of the war on May 19, 2009, Germany, supported by 16 other member states, requested a special session of the Human Rights Council to discuss the atrocities that were reported to have occurred in Sri Lanka. However, Sri Lanka used the special session to present its own resolution, which was adopted by a majority vote of the Council, commending the Sri Lankan government and omitting any reference to its human rights abuses against civilians. See Human Rights Watch, "Sri Lanka: UN Rights Council Fails Victims," May 27, 2009. During the same period, then-Secretary-General Ban Ki-moon publicly praised the government for "doing its utmost" and for its "tremendous efforts" to protect civilians. A number of seminars were organized to promote Sri Lanka as a successful example of countering terrorism and "the Sri Lankan solution" was cited in several countries as a viable solution for suppressing violent opposition.

¹²⁴ Human Rights Watch, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, February 2, 2020, <https://www.hrw.org/report/2010/02/02/legal-limbo/uncertain-fate-detained-ltte-suspects-sri-lanka>

¹²⁵ *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, November 17, 2016, <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf> (accessed September 21, 2020).

¹²⁶ Human Rights Watch, "Sri Lanka: Adopt Task Force's Justice Proposals," January 12, 2017, <https://www.hrw.org/news/2017/01/12/sri-lanka-adopt-task-forces-justice-proposals> (accessed September 21, 2020). The task force also recommended a countrywide response to disappearances, financial and symbolic reparations, resolution of longstanding land disputes, and attention to psychosocial needs.

The government also began to investigate some emblematic rights violations committed during and after the conflict. However, by the time of the 2019 presidential election, virtually none of those police investigations had led to a verdict at trial.¹²⁷

The Killing of 17 ACF Aid Workers

The killing of 17 humanitarian workers from the Paris-based aid organization Action Contre la Faim (ACF) in the coastal town of Muttur on August 4, 2006, remains one of the most egregious conflict-era violations.¹²⁸ In 2013, ACF said it “has closely followed the domestic investigation only to become convinced that the Sri Lankan justice system is incapable of investigating the case.”¹²⁹

Most of the 17 men and women were lined up inside the ACF compound and shot in the head and neck at close range.¹³⁰ The victims who were all Sri Lankan, and included 16 Tamils and a Muslim, including four women; they were helping communities affected by

¹²⁷ In Sri Lanka’s history, there have been only three noteworthy cases in which investigations into serious human rights violations by security forces have led to prosecutions and convictions. In the first case, following years of investigation into the 1989 abduction and murder of around 50 high-school students in an army camp at Embilipitiya, in southern Sri Lanka, nine suspects were brought to trial in 1994. In February 1999, five military personnel, including the local brigadier, were sentenced to 10 years in prison. The brigadier was later acquitted on appeal. In the second case, nine soldiers were arrested for the 1996 abduction and murder of an 18-year-old Tamil student, Krishanthi Kumaraswamy, and her mother, brother, and a friend in Jaffna. In 1998, five of the soldiers were convicted and sentenced to death. The five convicted soldiers revealed the existence of mass graves in the town of Chemmani, which allegedly contained the bodies of up to 400 people “disappeared” and killed by security forces in 1996, when government troops recaptured the Jaffna peninsula from the LTTE. Ultimately, however, only 15 bodies were discovered, amid political resistance. Initial arrests of several members of the security forces led to no indictments, and by early 2006 the investigation had come to a standstill. See Human Rights Watch, *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, August 27, 2008, <https://www.hrw.org/report/2008/08/27/recurring-nightmare>. Finally, in a case covered in this report, Sgt. Sunil Ratnayake was convicted in 2015 of killing eight civilians at Mirusuvil, in northern Sri Lanka, in 2000. He was granted a presidential pardon by President Gotabaya Rajapaksa on March 26, 2020.

¹²⁸ See University Teachers for Human Rights (Jaffna), “Unfinished Business of the Five Students and ACF Cases,” Special Report no.30, April 1, 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm> (accessed July 30, 2020); Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka’s Criminal Justice System: A Glance at Seven Emblematic Cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 29, 2020); Action Contre la Faim, *Justice for Muttur, the truth about the assassination of 17 aid workers in Sri Lanka*, December 2013, <https://www.actioncontrelafaim.org/publication/the-truth-about-the-assassination-of-17-aid-workers-in-sri-lanka/> (accessed July 30, 2020); James Ross, “Justice for a Sri Lankan Massacre,” *Sunday Leader*, November 15, 2015, <https://www.hrw.org/news/2015/11/15/justice-sri-lankan-massacre> (accessed July 31, 2020).

¹²⁹ Action Contre la Faim, *Justice for Muttur; The truth about the assignment of 17 aid workers in Sri Lanka*, December 2013, <https://www.actioncontrelafaim.org/en/publication/the-truth-about-the-assassination-of-17-aid-workers-in-sri-lanka/> (November 23, 2020).

¹³⁰ The names of the victims are M. Narmathan, I. Muralitharan, R. Arulrajah, T. Pratheeban, A. Jaseelan, G. Kavitha, K. Kovarthani, V. Kokilavathani, S. Romila, M. Ketheswaran, M. Rishikesan, S.P. Anantharajah, G. Sritharan, S. Koneswaran, S. Ganesh, Y. Kodeeswaran, A.L.M. Jawffar. See Action Contre la Faim, “Disregard for the 17 Victims of the Muttur Massacre,” August 3, 2018, <https://www.actioncontrelafaim.org/en/press/indifference-pour-les-17-victimes-du-massacre-de-muttur/> (accessed November 5, 2020).

the December 2004 Indian Ocean tsunami. Local police said they discovered their bodies two days later.

In the days before the killings, Muttur had been the scene of fighting between security forces and the LTTE, and almost all civilians had left the area. The ACF staff, who had been deployed there only days earlier, were instructed by their head office to remain inside the compound and await evacuation. The office was clearly marked, the staff were wearing T-shirts identifying them as humanitarian workers, and ACF and other humanitarian agencies were in contact with the security forces to arrange the evacuation.¹³¹

The government was quick to accuse the LTTE of the killings. However, the Sri Lanka Monitoring Mission (SLMM) said that by August 4 the security forces had gained full control over Muttur.¹³²

The University Teachers for Human Rights (Jaffna) (UTHR(J)) published a detailed investigation of the ACF massacre.¹³³ Their report alleged that some members of the security forces had suspected ACF staff of supporting the LTTE, and named three people—Home Guard Jehangir, and police constables Susantha and Nilantha—for the killings. However, the report says that the perpetrators had the approval of senior officers, Sarath Mulleriyawa and Chandana Senayake, who “may have received an instruction from their superiors in Trincomalee, DIG Rohan Abeywardene and SSP Kapila Jayasekere, that the aid workers should be killed.”¹³⁴

¹³¹ During this period Sri Lanka was among the countries with the highest numbers of humanitarian workers killed in the world. The authors of the OISL Report spoke to witnesses who said there were “explicit threats made by members of the security forces against national humanitarian workers and their relatives.” See Report of the OHCHR Investigation on Sri Lanka (OISL), September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed July 29, 2020); Law & Society Trust, *Under Fire: Persons in Humanitarian Service*, March 7, 2008, <http://www.disappearances.org/reports/srilanka/report012006-122007.pdf> (accessed July 31, 2020).

¹³² Report of the OHCHR Investigation on Sri Lanka (OISL). The SLMM, whose members were drawn primarily from Scandinavian countries, was established on in February 2002 to monitor the ceasefire and investigate reported violations of the ceasefire agreement. Following the formal cancellation of the ceasefire it ceased operations in January 2008.

¹³³ University Teachers for Human Rights (Jaffna), “Unfinished Business of the Five Students and ACF Cases,” Special Report no. 30, April 1, 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm> (accessed July 30, 2020). A US embassy cable noted that “The report’s key conclusions are that government security forces carried out the murders, likely with the complicity or on instructions of superiors, and that the Sri Lankan government has actively sought to cover up these facts for the past two years ... post believes that the facts cited in the report are to a large extent accurate.” See “SRI LANKA: REPORT BLAMES GOVERNMENT FOR ‘TRINCO 5’ AND ACF KILLINGS,” o8COLOMO344_a, April 3, 2008, https://wikileaks.org/plusd/cables/o8COLOMO344_a.html (accessed July 31, 2020).

¹³⁴ University Teachers for Human Rights (Jaffna), “Unfinished Business of the Five Students and ACF Cases,” Special Report no.30, April 1, 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm> (accessed July 30, 2020),

Court proceedings began in August 2006. The government agreed to allow Australian experts to observe and assist in the investigation process and the International Commission of Jurists (ICJ) appointed Michael Birnbaum QC as its observer of the inquest into the killings. In March 2007, the Kantale Magistrate's Court said that there were no leads to those responsible for the murders, accepting "the fact brought to my notice of the prevailing climate of insecurity in the region which inhibits witnesses coming forward to give evidence."¹³⁵ The ICJ observer found "a disturbing lack of impartiality, transparency, and effectiveness of the investigation," including that the police had blamed the LTTE prior to any investigation and had not "interviewed any member of the Sri Lankan security forces, nor any Tamil, apart from the family members of those killed."¹³⁶

Partly due to the outcry over the case, the government appointed a Presidential Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights in November 2006, under the chairmanship of N.K. Udalgama. The commission's full report was not released until September 2015, and, while stating it had insufficient evidence to determine the perpetrators of the ACF killings, it effectively exonerated the security forces and indicated that LTTE forces or Muslim militia carried them out.¹³⁷

The report of the OHCHR Investigation on Sri Lanka (OISL), however, said that the government investigation into the massacre was flawed and lacked independence: "Evidence was either not collected, was tampered with or disappeared from the police investigation."¹³⁸

In 2008, a US embassy cable by then-Ambassador Robert O. Blake, which was subsequently leaked, observed:

The findings of UTHR(J) cannot come as a surprise to the most powerful people in Sri Lanka. Justice T. Sunthevalingam, appointed Special

¹³⁵ Action Contre la Faim, "Killing of 17 ACF aid workers: ACF asks for a ballistics examination conducted by Sri Lankan experts and Australian observers," March 13, 2007, <https://reliefweb.int/report/sri-lanka/killing-17-acf-aid-workers-acf-asks-ballistics-examination-conducted-sri-lankan> (accessed September 1, 2020).

¹³⁶ International Commission of Jurists, "ICJ inquest observer finds flaws in investigation into killing of ACF aid workers," April 23, 2007, <https://www.icj.org/sri-lanka-icj-inquest-observer-finds-flaws-in-investigation-into-killing-of-acf-aid-workers/> (accessed September 1, 2020).

¹³⁷ Human Rights Watch, "Sri Lanka: No Progress in Prosecuting Aid Worker Massacre," August 1, 2019, <https://www.hrw.org/news/2019/08/01/sri-lanka-no-progress-prosecuting-aid-worker-massacre>.

¹³⁸ Report of the OHCHR Investigation on Sri Lanka (OISL), September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed July 29, 2020).

Rapporteur on Extra-Judicial Killings by President Mahinda Rajapaksa, sent a report to the President about a year ago, which was produced in only 15 copies. It covered much the same ground as the UTHR(J) report, naming many of the same names. However, the President, on receiving the report, ordered that no one else was to see it and that all other copies be destroyed. (Post has nevertheless managed to see a copy of it.).¹³⁹

Ambassador Blake's cable concluded that "Sri Lanka's legal apparatus has proven itself over decades as being incapable of bringing most such cases to a successful conclusion."¹⁴⁰

ACF, in 2013, publicly blamed the security forces for the killings saying that "relevant domestic mechanisms have been exhausted, witnesses have been silenced and the internal Sri Lankan investigation has become a farce."¹⁴¹ There has been no known progress in the investigation and no arrests were ever made.¹⁴²

¹³⁹ US embassy cable, "SRI LANKA: REPORT BLAMES GOVERNMENT FOR "TRINCO 5" AND ACF KILLINGS", o8COLOMO344_a, April 3, 2008, https://wikileaks.org/plusd/cables/o8COLOMO344_a.html (accessed July 31, 2020).

¹⁴⁰ Ibid.

¹⁴¹ "Sri Lanka's forces accused of massacring aid workers," BBC News, December 3, 2013, <https://www.bbc.com/news/world-asia-25198856> (accessed September 1, 2020).

¹⁴² Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka's Criminal Justice System: A Glance at Seven Emblematic Cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 29, 2020); Human Rights Watch, "Sri Lanka: No Progress in Prosecuting Aid Worker Massacre", August 1, 2019, <https://www.hrw.org/news/2019/08/01/sri-lanka-no-progress-prosecuting-aid-worker-massacre> (accessed July 31, 2020). In June 2019 the Attorney General ordered the police to expedite the investigation of the case. See Human Rights Watch, "Sri Lanka: No Progress in Prosecuting Aid Worker Massacre," August 1, 2019.

III. Welikada Prison Massacre, November 9, 2012



Soldiers stand guard at the entrance of Welikada prison in Colombo in November 2012.

© 2012 AP Photo/Gemunu Amarasinghe

On the afternoon of November 9, 2012, hundreds of officers from the Special Task Force (STF) of the police arrived at Welikada Prison in Colombo and announced a search operation for illegal mobile phones and recreational drugs.¹⁴³ There was a dispute at the gates when prison officials informed the police that, according to regulations, they were prohibited from entering the prison with firearms.¹⁴⁴ However, the STF insisted that they were acting on the orders of “higher ups,” including Defense Secretary Gotabaya Rajapaksa.¹⁴⁵

¹⁴³ The Sri Lankan police unit called the Special Task Force used ruthless methods during the civil war. In November 2020, police in the United Kingdom opened an investigation into the role played by Keenie Meenie Services (KMS) which was established by veterans of a British special forces regiment, the SAS, in training the Special Task Force (STF). See Phil Miller & Lou Macnamara, *Keenie Meenie, Britain's Private Army*, Yardstick Films, October 8, 2020, <https://www.yardstickfilms.co.uk/keenie-meenie>; “U.K. mercenaries role in Sri Lanka war under lens,” AFP, November 30, 2020, <https://www.thehindu.com/news/international/uk-mercenaries-role-in-sri-lanka-war-under-lens/article33215748.ece> (accessed January 1, 2020).

¹⁴⁴ See Committee for Protecting Rights of Prisoners, *Impunity for killing of 27 inmates of the Welikada prison Colombo in November 2012*, June 20, 2016, <https://www.colombotelegraph.com/wp-content/uploads/2016/08/Welikada-Prison-massacre-report-final-20June2016.pdf> (accessed July 31, 2020).

¹⁴⁵ Joint written statement to the UN Human Rights Council, submitted by Franciscans International and Asian Forum for Human Rights and DevelopmentA/HRC/43/NGO/112, February 10, 2020, <https://undocs.org/pdf?symbol=en/A/HRC/43/NGO/112> (accessed August 24, 2020).

According to prisoner witness accounts, once inside the prison, STF members began assaulting prisoners, including by firing teargas into closed cells.¹⁴⁶ They heard prisoners screaming that they were about to be killed. Some prisoners responded by throwing stones, while others managed to enter the prison armory and brandish weapons.¹⁴⁷

Over the following hours order was restored, with prisoners eventually surrendering the weapons. According to a witness, once control had been regained, police officers began calling out names of inmates to be identified and brought forward.¹⁴⁸ The army arrived around midnight. Later, there were sounds of gunfire. By the time the security forces left the prison the next morning, 27 prisoners had been killed. Initial reports characterized the incident as a search operation that turned into a lethal riot.¹⁴⁹

Two investigations ordered by the government absolved the security forces and blamed the violence on overcrowding of prisons, easy access to narcotics, and resistance by prisoners to search operations.¹⁵⁰

The truth emerged after two prisoners, W. Sudesh Nandimal Silva and Sahan Hewadalugoda (also known as Hewa Dalugodage or Sahan Sri Keerthi), spoke out about the incident after they were released.¹⁵¹ The two men said that members of the security forces, after taking control of the prison, singled out prisoners whose names were on a list, and summarily executed them. Hewadalugoda told the *Colombo Telegraph* in 2018:

There were many such inmates whose names were read out of a list, were subsequently pointed out by the officials, assaulted, and dragged out. We

¹⁴⁶ Ruwan Laknath Jayakody, “I Was An Eyewitness To Kalu Thushara’s Murder At 2012 Welikada Prison Bloodbath,” – Sudesh Nandimal Silva”, *Colombo Telegraph*, February 24, 2018, <https://www.colombotelegraph.com/index.php/i-was-an-eyewitness-to-kalu-thusharas-murder-at-2012-welikada-prison-bloodbath-sudesh-nandimal-silva/> (accessed July 31, 2020).

¹⁴⁷ “Gunfight in Sri Lanka jail leaves dozens dead,” Al Jazeera, November 10, 2012, <https://www.aljazeera.com/news/asia/2012/11/201211916446576678.html> (accessed August 24, 2020).

¹⁴⁸ Ruwan Laknath Jayakody and Kavindya Chris Thomas, “2012 Welikada Prison Massacre,” *Colombo Telegraph*, February 23, 2018, <https://www.colombotelegraph.com/index.php/2012-welikada-prison-massacre/> (accessed August 24, 2020). This is an interview with Sahan Hewadalugoda, a prisoner who was a witness to the massacre.

¹⁴⁹ “Sri Lanka’s Welikada prison clash leaves 27 dead,” BBC News, November 10, 2012, <https://www.bbc.com/news/world-asia-20267735> (accessed July 31, 2020).

¹⁵⁰ Damith Wickremasekara, “Two prison probes tackle reasons for riot,” *Sunday Times*, November 18, 2012, <http://www.sundaytimes.lk/121118/news/two-prison-probes-tackle-reasons-for-riot-21052.html> (accessed October 20, 2020).

¹⁵¹ Committee for Protecting Rights of Prisoners, “Impunity for killing of 27 inmates of the Welikada prison Colombo in November 2012,” June 20, 2016, <https://www.colombotelegraph.com/wp-content/uploads/2016/08/Welikada-Prison-massacre-report-final-20June2016.pdf> (accessed July 31, 2020).

didn't see them being shot but we saw our prison officials witnessing the incident and we heard the gunshots.¹⁵²

During her visit to Colombo in 2013, then-UN High Commissioner for Human Rights Navi Pillay said that custodial deaths of prisoners in the Welikada prison were among the investigations that “remain pending.”¹⁵³ The lack of progress in the investigation has repeatedly been raised in reports to the Human Rights Council.¹⁵⁴ To date, five official or police inquiries have been ordered into the Welikada massacre.¹⁵⁵

2015-2019 Investigations

In 2015, the new government brought before parliament the findings of a three-member panel known as the Committee of Inquiry into the Prison Incident (CIPI), which had been appointed under the previous administration. The *Sunday Times*, after obtaining a copy using a right to information request, said the committee found that 798 armed officers of the STF had been deployed to search two wards of the prison, in violation of procedures, and that these actions led to the riot. It also found that weapons were planted beside the bodies of some of those who were killed to make it appear that their killing was justified.¹⁵⁶

Gotabaya Rajapaksa testified to the committee that he had no prior knowledge of the operation. But retired STF Commandant DIG Chandrasiri Ranawana, in his evidence, told the committee that the operation was carried out on Gotabaya's orders, with the coordination of DIG Chandra Nimal Wakishta, who was at the Terrorist Investigation

¹⁵² Ruwan Laknath Jayakody and Kavindya Chris Thomas, “2012 Welikada Prison Massacre,” *Colombo Telegraph*, February 23, 2018, <https://www.colombotelegraph.com/index.php/2012-welikada-prison-massacre/> (accessed August 24, 2020).

¹⁵³ “Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to Sri Lanka Colombo,” August 31, 2013, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673> (accessed July 31, 2020)

¹⁵⁴ See the High Commissioner's Reports to the UN Human Rights Council in March 2014 and September 2015, A/HRC/25/23, and A/HRC/30/61, and all subsequent reports until 2019 (A/HRC/34/20 February 2017, A/HRC/37/23 January 2018, and A/HRC/40/23 February 2019).

¹⁵⁵ Inquiries to date include: i) Criminal Investigation Department (CID) of the Police (2012); ii) Three-member commission appointed by the former Minister of Rehabilitation and Prison Reforms Chandrasiri Gajadeera (2012); iii) Commission appointed by the Commissioner General of Prisons (2012); iv) Investigation by Human Rights Commission of Sri Lanka (2012); v) The Committee of Inquiry into the Prison Incident 2012 (CIPI, 2015).

¹⁵⁶ Chandani Krinde, “Welikada Prison Massacre: Despite Denial, Gotabhaya Implicated by Ex-STF Chief,” *Sunday Times*, October 15, 2010, <https://srilankabrief.org/2017/10/welikada-prison-massacre-despite-denial-gotabhaya-implicated-by-ex-stf-chief/> (accessed August 25, 2020).

Division (TID) during 2012. The STF was under the control of the defense ministry until 2013. The CIPI recommended a fresh investigation into the massacre.¹⁵⁷

Amid the ongoing failure to prosecute those responsible, in 2017, Silva, one of the two witnesses, sought an order from the Court of Appeal directing the police to commence an investigation. “I was told by a prison officer that the STF came on an order of former Defense Secretary Gotabaya Rajapaksa,” Silva told journalists.¹⁵⁸ Gotabaya denied the allegations, saying: “Those who point fingers at me are blaming me with their neo-liberal mindsets even for finishing the 30-year war.”¹⁵⁹

There were repeated allegations of intimidation and threats against witnesses, journalists, and lawyers acting in the case.¹⁶⁰ In July 2017, there were death threats against Silva and against the lawyer and human rights defender Senaka Perera, the night before Silva was due to make a statement to the CID.¹⁶¹ In September 2017, unidentified gunmen opened fire at Silva’s house.¹⁶²

In March 2018, police arrested Prisons Commissioner Emil Lamahewage and Police Inspector Neomal Rangajeewa of the Narcotics Bureau in connection with the massacre.¹⁶³ On July 19 that year, the two men, along with Prisons Officer Indika Sampath, were indicted for 33 crimes, including eight counts of murder, and released on bail.¹⁶⁴ According to

¹⁵⁷ “Recommendations Of ‘Welikada Prison Riot’ Probe Committee Released,” *Asia Mirror*, June 25, 2015, <http://www.asianmirror.lk/news/item/9646-recommendations-of-welikada-prison-riot-probe-committee-released-full-document> (accessed August 21, 2020).

¹⁵⁸ Piyumi Fonseka, “Delving into Welikada jail riot,” *Daily Mirror*, July 5, 2017, <http://www.dailymirror.lk/expose/Delving-into-Welikada-jail-riot/333-132152> (accessed August 24, 2020).

¹⁵⁹ Ibid.

¹⁶⁰ “Welikada Prison massacre suspect Neomal Rangajeewa threatens journalist, court told,” *Colombo Page*, January 8, 2019, http://www.colombopage.com/archive_19A/Jano8_1546958917CH.php (accessed August 21, 2020).

¹⁶¹ “Death threats to Welikada murders case witness, lawyer,” *Sri Lanka Mirror*, June 13, 2017, <https://srilankamirror.com/news/3920-death-threats-to-welikada-murders-case-witness-lawyer> (accessed August 21, 2020).

¹⁶² “Shots fired at the house of Welikada shooting eyewitness,” *Daily Mirror*, September 5, 2017, <http://www.dailymirror.lk/article/Shots-fired-at-the-house-of-Welikada-shooting-eyewitness-136006.html> (accessed August 21, 2020).

¹⁶³ “Sri Lanka prison chief held for 2012 massacre,” AFP, March 29, 2018, <https://www.thehindu.com/news/international/sri-lanka-prison-chief-held-for-2012-massacre/article23384064.ece> (accessed August 21, 2020); “Prisons Commissioner Emil Ranjan Lamahewage arrested over killing of inmates at Welikada Prison,” *Colombopage*, March 29, 2018, http://www.colombopage.com/archive_18A/Mar29_1522302798CH.php (accessed November 24, 2020).

¹⁶⁴ Farook Thajudeen, “Welikada Prison Massacre Indictment served and accused released on bail,” *Daily FT*, July 19, 2019, <http://www.ft.lk/News/Welikada-Prison-Massacre-Indictment-served-and-accused-released-on-bail/56-682259> (accessed November 23, 2020); Maneshka Borham, “Indictments served on Welikada massacre accused,” *Sunday Observer*, July 21,

evidence gathered by the CID, after the security forces had taken control of the prison on the night of November 9, 2012, eight men whose names appeared on a list were identified by Rangajeewa and summarily executed.¹⁶⁵

The prison was under the control of the army from about midnight, and the killings continued until the morning.¹⁶⁶ Former Assistant Superintendent of Prisons P.W. Kudabandara testified that two army officers at the prison showed him a list of the names of prisoners who were identified and killed, which they referred to as “Gota’s List.”¹⁶⁷ Several of those selected to be killed had earlier filed complaints at the human rights commission against prison officials, including against Inspector Rangajeewa.¹⁶⁸

Current Status

Three men, Inspector Rangajeewa, former Prisons Commissioner Lamahewa, and Prison Officer Sampath, were indicted for their role in the killings in July 2019.

Rangajeewa, who had been suspended from service following his arrest in March 2018,¹⁶⁹ was reinstated as an officer of the Police Narcotics Bureau on November 22, 2018, during the period when Mahinda Rajapaksa was briefly installed as prime minister by the former

2019, <http://www.sundayobserver.lk/2019/07/21/news-features/indictments-served-welikada-massacre-accused> (accessed November 21, 2020).

¹⁶⁵ “The inside story of Welikada jail riot,” *Daily Mirror*, April 11, 2018, <http://www.dailymirror.lk/article/The-inside-story-of-Welikada-jail-riot-148543.html> (accessed August 21, 2018); Maneshka Borham, “Welikada Prison Massacre under whose watch?,” *Sunday Observer*, August 4, 2019, <http://www.sundayobserver.lk/2019/08/04/news-features/welikada-prison-massacre-under-whose-watch> (accessed November 23, 2020).

¹⁶⁶ These eight victims were Kankanamlage Milinda Nilendra Pelpola, Nirmala Atapattu, Gundu Mama alias Vijaya Rohana, Chinthamani Mohottige Thushara Chandana alias Kalu Thushara, Ponna Kapila alias Andupulige Jothipala, Manju Sri alias Harsha Sri Mahakeerthi Perera, Mali Prasanna alias Raigamage Susantha Perera, and Koda Amila alias Mallalage Malith Sameera Perera.

¹⁶⁷ “Witness testimony about ‘Gota’s list’ stuns court,” *Sunday Observer*, October 20, 2019, <http://www.sundayobserver.lk/2019/10/20/news-features/witness-testimony-about-%E2%80%99gotas%E2%80%99list%E2%80%99-stuns-court> (accessed August 21, 2020); “Army men with ‘Gota’s List’ looked for prisoners at Welikada,” *Newshub.lk*, October 17, 2019, <https://newshub.lk/en/2019/10/17/army-men-with-gotas-list-looked-for-prisoners-at-welikada/> (accessed November 23, 2020); Yoshitha Perera, “Welikada prison riot prosecution witness: Army officers blabbed ‘Gota’s List’,” *Daily Mirror*, October 17, 2019, http://www.dailymirror.lk/print/front_page/Welikada-prison-riot-prosecution-witness-Army-officers-blabbed-Gotas-List/238-176295 (accessed November 23, 2020).

¹⁶⁸ “The inside story of Welikada jail riot,” *Daily Mirror*, April 11, 2018, <http://www.dailymirror.lk/article/The-inside-story-of-Welikada-jail-riot-148543.html> (accessed August 21, 2018).

¹⁶⁹ Nathasha De Alwis, “IP Rangajeewa arrested for his role in Welikada prison riot,” *Newsfirst*, March 28, 2018, <https://www.newsfirst.lk/2018/03/28/ip-rangajeewa-arrested-his-role-in-welikada-prison-riot/> (accessed September 23, 2020).

president, Maitripala Sirisena.¹⁷⁰ On July 10, 2020, Rangajeewa assaulted a photojournalist outside the High Court where the trial was in progress, and took him to a police post inside the building where he was forced to delete his camera's memory card.¹⁷¹

On July 15, 2020, Sampath was discharged at the request of the prosecution due to insufficient evidence.¹⁷² The trial continues at the time of writing.

On November 29, 2020, at least eight prisoners were killed and 71 injured when authorities opened fire at Mahara prison on the outskirts of Colombo during a protest against conditions related to the Covid-19 pandemic.¹⁷³

¹⁷⁰ Nathasha De Alwis, "IP Neomal Rangajeewa reinstated," *Newsfirst*, November 22, 2018, <https://www.newsfirst.lk/2018/11/22/ip-neomal-rangajeewa-reinstated/> (accessed September 23, 2020).

¹⁷¹ Reporters Without Borders, "Sri Lanka: Journalist manhandled by notorious police inspector currently on trial," July 15, 2020, <https://rsf.org/en/news/sri-lanka-journalist-manhandled-notorious-police-inspector-currently-trial> (accessed September 23, 2020).

¹⁷² Dilshan Tharaka, "Colombo HC Trial-at-Bar acquits third accused in Welikada Prison riots," *Daily News*, July 16, 2020, <http://www.dailynews.lk/2020/07/16/law-order/223448/colombo-hc-trial-bar-acquits-third-accused-welikada-prison-riots?page=1> (accessed September 23, 2020).

¹⁷³ "Sri Lanka prisoners killed in riot over coronavirus conditions," *The Guardian*, November 30, 2020, <https://www.theguardian.com/world/2020/nov/30/sri-lanka-prisoners-killed-in-riot-over-coronavirus-conditions> (accessed January 4, 2021).

IV. Enforced Disappearance of Prageeth Ekneligoda, January 24, 2010



Sandya Ekneligoda, wife of missing journalist Prageeth Ekneligoda, speaks to reporters during a protest rally outside parliament in Colombo, January 24, 2013. © 2013 AP Photo/Eranga Jayawardena

Prageeth Ekneligoda, a journalist and political cartoonist well known for his opposition to the government of Mahinda Rajapaksa, was abducted on January 24, 2010.¹⁷⁴ This was two days before the 2010 presidential election, in which he was a prominent supporter of Rajapaksa's opponent, Gen. Sarath Fonseka.¹⁷⁵ He was last seen in public boarding a three-wheeler taxi near his office at around 8 p.m.¹⁷⁶ At the time of his disappearance he was working on a book entitled *Pawul Gaha* (The Family Tree), in which he intended to detail allegations of corruption against the Rajapaksa family.¹⁷⁷

¹⁷⁴ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

¹⁷⁵ "More Details Emerge In Eknaligoda Case," *Sunday Leader*, December 25, 2016, <http://www.thesundayleader.lk/2016/12/25/more-details-emerge-in-eknaligoda-case/> (accessed August 19, 2020).

¹⁷⁶ Hana Ibrahim, "Unravelling the Eknaligoda abduction," *Sunday Observer*, August 16, 2015, <http://archives.sundayobserver.lk/2001/pix/PrintPage.asp?REF=/2015/08/16/fea15.asp> (accessed August 19, 2020).

¹⁷⁷ Dharisha Bastians and Aanya Vipulasena, "Prageeth: 'A politically motivated crime,'" *Sunday Observer*, January 20, 2019, <https://www.sundayobserver.lk/2019/01/20/news-features/prageeth-%E2%80%9Cpolitically-motivated>

A day after Ekneligoda's disappearance, his wife, Sandhya, attempted to register the case with the police, but they initially refused to take the complaint.¹⁷⁸ There appeared to be no meaningful investigation in the weeks that followed.¹⁷⁹

On February 19, 2010, Sandhya filed a habeas corpus petition at the Court of Appeal. The authorities repeatedly called for postponements and there was little progress for years.¹⁸⁰ On November 9, 2011, then-Attorney General Mohan Peiris told the United Nations Committee against Torture that "with regard to the journalist Ekneligoda ... we have actually investigated that matter very closely. Our current information is ... that Mr. Ekneligoda ... has taken refuge in a foreign country."¹⁸¹ Peiris subsequently retracted the statement.¹⁸²

2015-2019 Investigations

Police investigations found growing evidence that members of the army were responsible for Ekneligoda's enforced disappearance. On October 19, 2015, the Court of Appeal granted permission to add Army Commander A.W.J.C. de Silva and the director of military intelligence corps as respondents in the habeas corpus case.¹⁸³

crime%E2%80%9D#:~:text=Nine%20years%20after%20journalist%20and,of%20the%20Giritale%20Army%20camp.
(accessed August 19, 2020).

¹⁷⁸ "Govt. responsible' for Prageeth abduction," BBC News, March 5, 2010, https://www.bbc.com/sinhala/news/story/2010/03/100305_sandhya_mahinda.shtml (accessed August 19, 2020).

¹⁷⁹ International Federation of Journalists, "Sri Lankan Journalist Missing for One Month," February 24, 2010, <https://www.ifj.org/media-centre/news/detail/category/europe/article/sri-lankan-journalist-missing-for-one-month.html> (accessed August 19, 2020); Reporters Without Borders, "Cartoonist kidnapped two months ago still missing," March 23, 2010, <https://rsf.org/en/news/cartoonist-kidnapped-two-months-ago-still-missing> (accessed August 19, 2020).

¹⁸⁰ For a timeline of key hearings, see Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka's Criminal Justice System, a glance at seven emblematic cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 23, 2020). See also *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

¹⁸¹ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020). Ekneligoda is an alternative spelling sometimes used.

¹⁸² Mohan Peiris was appointed as the Permanent Representative of Sri Lanka to the United Nations in New York by the Gotabaya Rajapaksa government in September 2020.

¹⁸³ Tharushan Fernando, "Army Commander, Director – Intelligence to be named as parties in Ekneligoda case," *News First*, October 19, 2015, <https://www.newsfirst.lk/2015/10/19/army-commander-director-intelligence-to-be-named-as-parties-in-eknaligoda-case/> (accessed August 19, 2020); "Appeals Court permits to name the army commander and the head of the Intelligence unit as respondents in the Ekneligoda case," *Hiru News*, October 19, 2015, <https://www.hirunews.lk/118722/appeals-court-permits-to-name-army-commander-head-intelligence-unit-as-respondents-in-eknaligoda-case> (accessed November 23, 2020)

In August 2015, police detained Army Sgt. Maj. Jayasundara Mudiyanseelage Ranbanda.¹⁸⁴ Ranbanda confessed that he had interrogated Ekneligoda at Girithale army camp for three days following his abduction about the book he was writing, and on his links to Fonseka.¹⁸⁵ He told police that after three days Ekneligoda was taken away by a senior army officer and that he never saw him again.

In August 2015, four military personnel, including two lieutenant colonels, were arrested.¹⁸⁶ In October, 11 more suspects, most of them soldiers or former soldiers, were arrested.¹⁸⁷

In February 2016, Shani Abeysekera, head of the Criminal Investigation Department, told the Homagama magistrate that officers had received evidence that after being detained at Girithale army camp, Ekneligoda was taken to Akkaraipattu, where he was killed.¹⁸⁸

Current Status

A decade since Prageeth Ekneligoda's enforced disappearance there has been no verdict in the case, and his fate remains unknown. Two trials are currently proceeding.¹⁸⁹ In one, at Homagama High Court, concerning an earlier abduction of Ekneligoda in 2009,¹⁹⁰ the next hearing is scheduled for March 4, 2021. In the second case, in which nine army intelligence

¹⁸⁴ "Ekneligoda Abduction: another suspect in custody," *Sri Lanka Brief*, August 19, 2015, <https://srilankabrief.org/2015/08/ekneligoda-abduction-another-suspect-in-custody/> (accessed August 19, 2020); Dharisha Bastians and Anya Vipulasena, "Prageeth: 'A politically motivated crime,'" *Sunday Observer*, January 20, 2019, <http://www.sundayobserver.lk/2019/01/20/news-features/prageeth-%E2%80%9Cpolitically-motivated-crime%E2%80%9D> (accessed August 19, 2020). Ranbanda is sometimes spelled Ran Banda.

¹⁸⁵ Hana Ibrahim, "Unravelling the Ekneligoda abduction," *Sunday Observer*, August 16, 2015, <http://archives.sundayobserver.lk/2001/pix/PrintPage.asp?REF=/2015/08/16/fea15.asp> (accessed August 19, 2020); "Prageeth Ekneligoda case: Nine army officials indicted," *Daily Mirror*, November 27, 2019, http://www.dailymirror.lk/breaking_news/Prageeth-Ekneligoda-case-Nine-army-officials-indicted/108-178597 (accessed November 23, 2020).

¹⁸⁶ "Update: CID summons four army officers over Journalist Ekneligoda's disappearance," *Newsfirst.lk*, August 25, 2015, <https://www.newsfirst.lk/2015/08/24/cid-summons-four-army-officers-over-journalist-ekneligodas-disappearance/> (accessed November 23, 2019); Tharushan Fernando, "We are facing much hardship – lament wives of jailed military intelligence officers," *Newsfirst.lk*, January 22, 2016, <https://www.newsfirst.lk/2016/01/22/wives-of-jailed-military-intelligence-officers-say-they-are-facing-much-hardship/> (accessed November 23, 2020).

¹⁸⁷ "Sri Lanka detains soldiers in case of missing cartoonist," Reuters, October 23, 2015, <https://news.trust.org/item/20151023093657-akcpw/> (accessed August 19, 2020).

¹⁸⁸ "CID tells Homagama Magistrate: Evidence shows that Ekneligoda was killed in Akkaraipattu," *Daily News*, February 10, 2016, <http://www.dailynews.lk/2016/02/10/security/cid-tells-homagama-magistrate-evidence-shows-ekneligoda-killed-akkaraipattu?page=2> (accessed August 19, 2020).

¹⁸⁹ Human Rights Watch Interview, details withheld, November 25, 2020.

¹⁹⁰ Amnesty International on twitter, December 19, 2019, <https://twitter.com/amnestysasia/status/1207599410923724800> (accessed November 25, 2020).

officers are on trial for Ekneligoda's disappearance in 2010,¹⁹¹ a hearing in October 2020 was postponed due to the Covid-19 pandemic.

In testimony to the the Presidential Commission of Inquiry on Political Victimization in August, Jayasundara Mudiyansele Ranbanda, a key witness reversed his earlier testimony in the case, in which he had incriminated military intelligence officers.¹⁹² In a letter to Michelle Bachelet, the UN high commissioner for human rights, Sandhya Ekneligoda, the wife of Prageeth, wrote, "Major Retd. Ranbanda has already been summoned to provide evidence before the Commission, despite the matter being before Court and a court order prohibiting him from giving evidence before any other forum. With his active involvement, the Commission, took steps to undermine, intimidate and threaten investigators and witnesses in this case, while denying an opportunity for the aggrieved party before the High Court, to be heard or make submissions to protect their interest."¹⁹³

¹⁹¹ "Prageeth Ekneligoda abduction and murder trial on Feb 13," *Colombopage*, February 6, 2020, http://www.colombopage.com/archive_20A/Febo6_1580968232CH.php (accessed November 25, 2020).

¹⁹² Zulfick Farzan, "PCol witness claims CID officers pressured him to make statement on Ekneligoda," *Newsfirst.lk*, August 25, 2020, <https://www.newsfirst.lk/2020/08/25/pcoi-witness-claims-cid-officers-pressured-him-to-make-statement-on-ekneligoda/> (accessed November 25, 2020).

¹⁹³ Letter from Sandhya Ekneligoda to Michelle Bachelet, 'Appointment of Retired Justice Upali Abeyrathne as Chairperson of the Office of Missing Persons in Sri Lanka,' December 12, 2020, copy on file.

V. Tripoli Platoon, Targeting Journalists



A candlelight vigil for journalist Lasantha Wickremetunge in Colombo on January 24, 2017.
© 2017 AP Photo/Eranga Jayawardena

The investigation into the killing of journalist Lasantha Wickrematunge implicated Gotabaya Rajapaksa and exposed the existence of a military intelligence unit called the Tripoli Platoon, which allegedly targeted journalists including Wickrematunge and Keith Noyahr. The investigation by the police CID also uncovered two other killings associated with the alleged conspiracy, while two people related to the enquiry died in suspicious circumstances.¹⁹⁴ In June 2020, a journalist, now in hiding, said he had been targeted in 2008, then again in November 2019. “Every time the Rajapaksas come to power, journalists are threatened,” he said.¹⁹⁵

Abduction of Keith Noyahr, May 22, 2008

Keith Noyahr was the deputy editor of the *Nation* newspaper and a well-known investigative journalist when he was abducted on May 22, 2008. That night he had been dining with colleagues at a Colombo restaurant. His wife found his car empty with the

¹⁹⁴ Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka’s Criminal Justice System, a glance at seven emblematic cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 23, 2020).

¹⁹⁵ Human Rights Watch interview, details withheld, August 31, 2020.

engine running and lights on, and the driver's door hanging open, outside their home at around 11 p.m. The discovery triggered a frantic search for the missing journalist. He was found early the following morning, badly beaten, and suffering from multiple injuries.¹⁹⁶ Noyahr left the country following the attack and the investigation ended.¹⁹⁷

2015-2019 Investigations

The case was reopened in 2015, at the request of detectives investigating the 2009 murder of another journalist, Lasantha Wickrematunge.¹⁹⁸

On the night Noyahr went missing, his editor, Lalith Allahakoon, and the company chairman Krishantha Cooray, telephoned President Mahinda Rajapaksa and the defense secretary, Gotabaya Rajapaksa, setting off a sequence of telephone calls. These calls were later produced in court by CID investigators as evidence that military intelligence was involved, and that Noyahr was eventually released because of orders through the chain of command.¹⁹⁹

Phone records showed that after Allahakoon and Cooray raised the alarm, Gotabaya made two calls, one to the inspector general of police, Jayantha Wickramaratne, and then to the intelligence chief, retired Maj. Gen. Kapila Hendawitharana, at 11:39 p.m. At 11:41 p.m., Hendawitharana called Brig. Amal Karunasekara, the director of military intelligence. Karunasekara then called the commanding officer of the military intelligence unit based at the Tripoli Camp in Colombo, Major Bulathwatta, at 11:48 p.m.²⁰⁰

¹⁹⁶ "Keith Noyahr recounts the harrowing ordeal of being abducted by a white van," *Newsfirst.lk*, August 20, 2018, <https://www.newsfirst.lk/2018/08/20/keith-noyahr-recounts-the-harrowing-ordeal-of-being-abducted-by-a-white-van/> (accessed November 23, 2020).

¹⁹⁷ Tharindu Jayawardene and Bigun Menaka Gamage, "Tracing the abduction of Keith Noyahr," *Daily Mirror*, March 2, 2017, <http://www.dailymirror.lk/article/Tracing-the-abduction-of-Keith-Noyahr-124755.html> (accessed November 23, 2020).

¹⁹⁸ "Suspect in Keith Noyahr abduction once nominated for diplomatic post," *Daily FT*, March 6, 2017, <http://www.ft.lk/article/601547/Suspect-in-Keith-Noyahr-abduction-once-nominated-for-> (accessed August 12, 2020).

¹⁹⁹ Maneshka Borham, "Phone Records Lead CID to Big Arrest in Keith Noyahr Abduction Case," *Sunday Observer*, April 15, 2018, <http://www.sundayobserver.lk/2018/04/15/news-feature/phone-records-lead-cid-big-arrest-keith-noyahr-abduction-case> (accessed August 12, 2020); "Keith Noyahr Abduction And Torture Case Concluded – Charges Awaited," *Colombo Telegraph*, October 19, 2017, <https://www.colombotelegraph.com/index.php/keith-noyahr-abduction-and-torture-case-concluded-charges-awaited/> (accessed November 23, 2020).

²⁰⁰ *Ibid.*

The CID took a statement from Noyahr, who was by then in Australia, which was produced as evidence in court.²⁰¹ Noyahr told the police that his captors had assaulted him and demanded that he identify his sources. He was taken to a house where he was blindfolded and stripped. While they continued to assault him, one of his captors received a telephone call and replied, “Okay sir, okay sir.” After the call, his abductors stopped the beatings and later dumped him in the Dehiwala area of Colombo.²⁰²

Detectives investigating the abduction identified the military intelligence “safe house” at Dompe, outside Colombo, where Noyahr was allegedly taken.²⁰³ In February 2017, they arrested five members of military intelligence including Major Bulathwatta.²⁰⁴ The following month they located the van they believe was used in the abduction.²⁰⁵ Retired Maj. Gen. Amal Karunasekara, who had been director of military intelligence at the time of the abduction, and was later chief of staff of the Sri Lankan army, was arrested on April 5, 2018, on charges of aiding and abetting the abduction.²⁰⁶ In August 2018, detectives took statements in the case from both Mahinda and Gotabaya Rajapaksa.²⁰⁷

Current Status

Nine serving or former members of military intelligence,²⁰⁸ eight of them belonging to the Tripoli Platoon, which is also implicated in other attacks on journalists, have been arrested

²⁰¹ “Keith Noyahr recounts the harrowing ordeal of being abducted by a white van,” *Newsfirst.lk*, August 20, 2018, <https://www.newsfirst.lk/2018/08/20/keith-noyahr-recounts-the-harrowing-ordeal-of-being-abducted-by-a-white-van/> (accessed November 23, 2020).

²⁰² Ibid.

²⁰³ Maneshka Borham, “Phone Records Lead CID to Big Arrest in Keith Noyahr Abduction Case,” *Sunday Observer*, April 15, 2018, <http://www.sundayobserver.lk/2018/04/15/news-feature/phone-records-lead-cid-big-arrest-keith-noyahr-abduction-case> (accessed August 12, 2020).

²⁰⁴ “Sri Lanka arrests soldiers over journalist’s abduction during war,” Reuters, February 18, 2017, <https://www.reuters.com/article/us-sri-lanka-rights-idUSKBN15XoLS> (accessed August 12, 2020); “Van suspect to have been used to abduct Keith Noyahr found,” *Daily News*, March 29, 2017, <http://www.dailynews.lk/2017/03/29/law-order/111883/van-suspect-have-been-used-abduct-keith-noyahr-found?page=44> (accessed November 24, 2017).

²⁰⁵ “Keith Noyahr abduction van seized,” *Daily News*, March 30, 2017, <http://www.dailynews.lk/2017/03/30/local/111985/keith-noyahr-abduction-van-seized> (accessed August 12, 2020).

²⁰⁶ “Ex-military intelligence chief arrested over journalist abduction,” *Ada Derana*, April 5, 2018, <http://www.adaderana.lk/news.php?nid=46750> (accessed August 12, 2020); “Keith Noyahr abduction: Rtd. Major General Karunasekara arrested,” *Daily Mirror*, April 5, 2018, <http://www.dailymirror.lk/article/Keith-Noyahr-abduction-Rtd-Major-General-Karunasekara-arrested-148325.html> (accessed November 25, 2020).

²⁰⁷ “Update: CID records statement from MR at his residence,” *Newsfirst.lk*, August 17, 2018, <https://www.newsfirst.lk/2018/08/17/cid-to-record-a-statement-from-mr-over-keith-noyahr/> (accessed August 12, 2020).

²⁰⁸ Sheain Fernandopulle, “Keith Noyahr abduction case Army Intelligence officer arrested,” *Daily Mirror*, August 24, 2019, http://www.dailymirror.lk/print/front_page/Keith-Noyahr-abduction-case-Army-Intelligence-officer-arrested/238-

and released on bail. Major Bulathwatta, who was arrested in 2017, was reinstated to a military intelligence role by President Sirisena in May 2019 following the Easter bombings.²⁰⁹ In February 2020, he was promoted to lieutenant colonel by President Gotabaya Rajapaksa.²¹⁰

In August 2019, lawyers appearing for the police told a magistrate that the case was ready to be sent for trial.²¹¹ In September 2019, the attorney general complained to the police about delays in submitting files necessary for the case to be submitted for trial.²¹²

The CID's investigation of the case was examined by the the Presidential Commission of Inquiry on Political Victimization, which has submitted its report to the president.

Murder of Lasantha Wickrematunge, January 8, 2009

Lasantha Wickrematunge, one of Sri Lanka's most prominent journalists, and the founder and editor of the *Sunday Leader* newspaper, was murdered while driving to work on the morning of January 8, 2009, allegedly by members of military intelligence.²¹³

173379; "Keith Noyahr Abduction And Torture Case Concluded – Charges Awaited," *Colombo Telegraph*, October 19, 2017, <https://www.colombotelegraph.com/index.php/keith-noyahr-abduction-and-torture-case-concluded-charges-awaited/>; "Lanka court grants bail to 6 army men in scribe assault case," *Outlook*, June 20, 2017, <https://www.outlookindia.com/newscroll/lanka-court-grants-bail-to-6-army-men-in-scribe-assault-case/1080306>; "Keith Noyahr case: Suspects' bail condition removed by Mt. Lavinia Court," *Newsfirst.lk*, June 11, 2019, <https://www.newsfirst.lk/2019/06/11/keith-noyahr-case-suspects-bail-condition-removed-by-mt-lavinia-court/>; Shavini Madhara, "Corporal arrested in Noyahr abduction case granted bail," *Daily News*, August 24, 2019, <http://www.dailynews.lk/2019/08/24/law-order/194905/corporal-arrested-noyahr-abduction-case-granted-bail> (accessed November 23, 2020).

²⁰⁹ "Alleged death squad leader reinstated in special team under Army Chief," *Daily FT*, May 13, 2020, <http://www.ft.lk/news/Alleged-death-squad-leader-reinstated-in-special-team-under-Army-Chief/56-678065> (accessed September 21, 2020).

²¹⁰ "Presidential Commission Aids Criminal Cover-Up: Army Intelligence Secures Files On Key CID Investigations," *Colombo Telegraph*, February 29, 2020, <https://www.colombotelegraph.com/index.php/presidential-commission-aids-criminal-cover-up-army-intelligence-secures-files-on-key-cid-investigations/#:~:text=Major%20Bulathwatte%20was%20promoted%20to,intelligence%20commander%20as%20Rear%20Admiral> (accessed September 21, 2020).

²¹¹ "AG to file indictments against Noyahr's abductors in HC Trial-at Bar," *Daily News*, August 21, 2019, <http://www.dailynews.lk/2019/08/21/law-order/194637/ag-file-indictments-against-noyahr%E2%80%99s-abductors-hc-trial-bar> (accessed November 25, 2020).

²¹² "AG disappointed in the delay of investigations on Keith Noyahr abduction and assault," *Newsfirst.lk*, September 12, 2019, <https://www.newsfirst.lk/2019/09/12/ag-disappointed-in-the-delay-of-investigations-on-keith-noyahr-abduction-and-assault/>; "AG raises concerns into Keith Noyahr abduction and assault investigations," *Daily News*, September 13, 2020, <https://www.dailynews.lk/2019/09/13/local/196865/ag-raises-concerns-keith-noyahr-abduction-and-assault-investigations> (accessed November 25, 2020).

²¹³ Manoj Colombage, "Checkmate: Inside Ahimsa Wickrematunge's Legal Gambit Against Gota," *Sunday Observer*, April 21, 2019, <http://www.sundayobserver.lk/2019/04/22/news-features/checkmate-inside-ahimsa-wickrematunge%E2%80%99s->

Wickrematunge was aware of the danger he was in. His daughter, Ahimsa Wickrematunge, later told the CID that her father believed he was being targeted by Gotabaya Rajapaksa because he was working on an exposé of alleged defense ministry corruption.²¹⁴

The killing was carried out at around 10 a.m. in a high security zone of Colombo, by attackers who arrived on motorcycles and surrounded Wickrematunge's car. Initial reports, and the first autopsy, indicated that he had been shot. His supporters alleged that the autopsy was part of an attempt to conceal or destroy evidence.²¹⁵ The remains were exhumed and reexamined in 2017, and it was determined that Wickrematunge was killed by a puncture wound to the skull.²¹⁶ He died of his injuries several hours later.

There was interference in the investigation from the beginning.²¹⁷ Lasantha's notebook, in which he had recorded license plate numbers on the day of the attack, was recovered from the crime scene, but went missing and is still lost.²¹⁸ Within weeks of the murder, a government minister announced that the authorities knew the identity of the killers, yet no arrests were made.²¹⁹ In December 2009, Lasantha's driver was allegedly abducted and threatened by a military intelligence officer.²²⁰

legal-gambit-against-gota ; "Special Army intel team killed Lasantha: CID," *Daily FT*, March 21, 2017, <http://www.ft.lk/front-page/special-army-intel-team-killed-lasantha-cid/44-604812>; "Evidence unfolding before courts on Lasantha's Murder," *Daily Mirror*, March 28, 2018, <http://www.dailymirror.lk/expose/Evidence-unfolding-before-courts-on-Lasantha-s-Murder/333-147877>; "Sri Lanka arrests army spies over editor's murder, A retired army intelligence officer was found hanging at his home in October," AFP, February 20, 2017, <https://tribune.com.pk/story/1333106/sri-lanka-arrests-army-spies-editors-murder> (accessed August 19, 2020).

²¹⁴ Manoj Colabage, "Checkmate: Inside Ahimsa Wickrematunge's Legal Gambit Against Gota," *Sunday Observer*, April 21, 2019, <http://www.sundayobserver.lk/2019/04/22/news-features/checkmate-inside-ahimsa-wickrematunge%E2%80%99s-legal-gambit-against-gota> (accessed August 13, 2020). For information on the "MiG deal" see for example, "More Bombs Drop on the MiG Deal," *Sunday Observer*, February 3, 2019, <http://www.sundayobserver.lk/2019/02/14/news-features/more-bombs-drop-%E2%80%99s-mig-deal%E2%80%99> (accessed August 13, 2020)

²¹⁵ Ibid.

²¹⁶ "Special Army intel team killed Lasantha: CID," *Daily FT*, March 21, 2017, <http://www.ft.lk/front-page/special-army-intel-team-killed-lasantha-cid/44-604812> (accessed August 19, 2020).

²¹⁷ For an extensive account of the crime and the conduct of the investigation, see Ahimsa Wickrematunge's 2019 United States civil action against Gotabaya Rajapaksa, Case No. 2:19 CV-02577-R-RAO, <https://cja.org/wp-content/uploads/2019/07/First-Amended-Complaint.pdf> (accessed August 10, 2020).

²¹⁸ "Evidence unfolding before courts on Lasantha's Murder," *Daily Mirror*, March 28, 2018, <http://www.dailymirror.lk/expose/Evidence-unfolding-before-courts-on-Lasantha-s-Murder/333-147877> (accessed August 19, 2020).

²¹⁹ "Is the President hiding Lasantha Wickremetunge's killers?" *Groundviews*, March 26, 2009, <https://groundviews.org/2009/03/26/is-the-president-hiding-lasantha-wickremetunges-killers/> (accessed August 14, 2020).

²²⁰ "Breaking: Driver of late Lasantha Wickremetunge identified arrested SL Army Officer," *Newsfirst*, July 27, 2016, <https://www.newsfirst.lk/2016/07/27/breaking-driver-late-lasantha-wickremetunge-identifies-arrested-sl-army-officer-abductor/> (accessed August 18, 2020).

In 2010, CID investigators sought to question a member of the Tripoli Platoon, whom they had identified through cell phone records. However, shortly after this identification was made, the inspector general of police ordered the CID to halt its investigation and hand the case over to the Terrorist Investigation Division (TID).²²¹ Around the same time, Defense Secretary Gotabaya Rajapaksa assigned the leader of the Tripoli Platoon to a diplomatic post in Thailand.²²²

In February 2010, the TID arrested Pitchchai Jesudasan, 40, a motor mechanic whose identity card had been used to buy SIM cards used in the attack. It emerged that he had lost his identity card after a night drinking with a military intelligence officer, before the SIM cards were bought. Jesudasan died in prison on October 13, 2011. According to the police he had suffered a heart attack, although his family rejected the explanation.²²³

2015-2019 Investigations

Following the change of government, the CID was reassigned to the case and began pursuing leads that implicated military intelligence. The investigation also began to reveal connections between Lasantha's killing and attacks on other journalists.²²⁴

In July 2016, Premananda Udalgama, a military intelligence officer, was arrested.²²⁵ On October 14, 2016, a retired soldier, Edirisinghe Jayamanne, was found hanging with a note claiming responsibility for Lasantha's killing and saying that Udalgama should be

²²¹ "TID to handle Lasantha murder," *Daily Mirror*, December 3, 2010, <http://www.dailymirror.lk/article/tid-to-handle-lasantha-murder-8173.html>; Ahimsa Wickrematunge's 2019 United States civil action against Gotabaya Rajapaksa, Case No. 2:19 CV-02577-R-RAO <https://cja.org/wp-content/uploads/2019/07/First-Amended-Complaint.pdf> (accessed August 10, 2020).

²²² Ahimsa Wickrematunge's 2019 United States civil action against Gotabaya Rajapaksa, Case No. 2:19 CV-02577-R-RAO, <https://cja.org/wp-content/uploads/2019/07/First-Amended-Complaint.pdf> (accessed August 10, 2020).

²²³ "Mystery Death of Sole Suspect in Lasantha's Murder – A Sudden Death in Custody or Another Extra Judicial Killing?" *Sri Lanka Brief*, October 22, 2011, <https://srilankabrief.org/2011/10/mystery-death-of-sole-suspect-in-lasanthas-murder-a-sudden-death-in-custody-or-another-extra-judicial-killing/> (accessed August 18, 2020). See also SC. FR. Application No: 458/2010, Kandededara Priyawansa, No. 42/28-B, vs Gotabaya Rajapaksa et al, http://www.supremecourt.lk/images/documents/sc_fr_458_2010.pdf (accessed August 18, 2020).

²²⁴ Tharushan Fernando, "Alleged assassin of journalist Lasantha Wickremetunge returned to remand custody," *Newsfirst*, August 3, 2016, <https://www.newsfirst.lk/2016/08/03/alleged-assasin-journalist-lasantha-wickremetunge-returned-remand-custody/> (accessed August 18, 2020).

²²⁵ Ahimsa Wickrematunge, "10th Death Anniversary of Lasantha Wickrematunge WHAT THEY DID TO MY FATHER AND WHY," *Daily Mirror*, January 8, 2019, <http://www.dailymirror.lk/news-features/th-Death-Anniversary-of-Lasantha-Wickrematunge-WHAT-THEY-DID-TO-MY-FATHER-AND-WHY/131-160794> (accessed August 18 2020); "Army Intelligence Officer Who Assaulted Editor Upali Tennakoon Identified," *Colombo Telegraph*, August 26, 2018, <https://www.colombotelegraph.com/index.php/army-intelligence-officer-who-assaulted-editor-upali-tennakoon-identified/> (accessed November 24, 2020).

released.²²⁶ Telephone records indicated that Jayamanne had been at his home when Wickrematunge was killed.²²⁷

Over the following months, the CID presented a series of evidence in court. On March 20, 2017, they announced that in a witness statement the former army commander, Field Marshal Sarath Fonseka, had claimed that an army intelligence team under the direct command of Maj. Gen. Hendawitharana was responsible for Wickrematunge's murder.²²⁸

The CID also revealed that two of the motorcycles used in the killing were stolen a few days before the attack by blindfolding and abducting their owners, Balraj Ram Prakash and Kumarasingham Vishnukumar, who were killed and their bodies burned.²²⁹ Statements were recorded from senior intelligence officials and Gotabaya Rajapaksa.²³⁰

On January 17, 2019, the CID's lead investigator, Nishantha Silva, told a court that the same group of suspects who carried out the killing of Wickrematunge had also carried out the assaults on journalists Keith Noyahr and Upali Tennakoon.²³¹

In April 2019, Ahimsa Wickrematunge launched civil proceedings in the United States against Gotabaya Rajapaksa, who at that time was a US citizen, arguing that the Sri Lankan legal system had been unable to provide justice for her father's killing.²³² Following

²²⁶ "Sri Lanka arrests army spies over editor's murder, A retired army intelligence officer was found hanging at his home in October," AFP, February 20, 2017, <https://tribune.com.pk/story/1333106/sri-lanka-arrests-army-spies-editors-murder> (accessed August 19, 2020), "Retired army officer commits suicide after claiming responsibility for Lasantha Wickrematunge's murder," *Hiru News*, October 14, 2016, <https://www.hirunews.lk/english/145216/retired-army-officer-commits-suicide-after-claiming-responsibility-for-lasantha-wickrematunges-murder> (accessed August 19, 2020).

²²⁷ Hemantha Randunu, "Lasantha killing: Phone details reveal Sgt Maj was at home at the time of incident," *The Island*, October 21, 2016, https://web.archive.org/web/20161021204424/http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=154141 (accessed August 19, 2020).

²²⁸ "Lasantha Wickrematunge murder – More details uncovered," *Newsfirst*, March 20, 2017, <https://www.newsfirst.lk/2017/03/20/breaking-news-lasantha-wickremetunga-murder-details-uncovered/> (accessed August 19, 2020).

²²⁹ "Evidence unfolding before courts on Lasantha's Murder," *Daily Mirror*, March 28, 2018, <http://www.dailymirror.lk/expose/Evidence-unfolding-before-courts-on-Lasantha-s-Murder/333-147877> (accessed August 19, 2020).

²³⁰ "Lasantha Wickrematunge's murder case postponed until January 17," *Colombopage*, September 28, 2018, http://www.colombopage.com/archive_18B/Sep28_1538106211CH.php (accessed November 23, 2020).

²³¹ "CID presents progress report on Lasantha murder investigation," *Newsfirst*, January 17, 2019, <https://www.newsfirst.lk/2019/01/17/cid-presents-progress-report-on-lasantha-murder-investigation/> <https://www.newsfirst.lk/2019/01/17/cid-presents-progress-report-on-lasantha-murder-investigation/> (accessed January 4, 2020).

²³² Center for Justice and Accountability, "ASSASSINATION OF SRI LANKAN JOURNALIST, Wickrematunge v. Rajapaksa" <https://cja.org/what-we-do/litigation/wickrematunge-v-rajapaksa/> (accessed August 19, 2020).

Gotabaya's election as president, the US Ninth Circuit Court of Appeals dismissed the US suit without prejudice, clearing the way for it to be revived after he leaves office and no longer enjoys sovereign immunity as head of state.²³³

Current Status

In December 2020 the regular judicial hearing into the progress of the investigation was postponed until June 2021.²³⁴ There is no known activity in the case.

The CID's lead investigator, Nishantha Silva, has fled the country fearing retaliation for identifying the role of senior military officers. Prasanna Alwis, who as an officer of the TID was accused of suppressing evidence and shielding suspects in the case, was appointed director of the CID on May 21, 2020.²³⁵ In July 2020, CID investigators interrogated Srilal Priyantha, the editor of a monthly news magazine, *Eethalaya*, for several hours over a 2017 article on Lasantha's killing. He was asked to reveal his sources.²³⁶

In October 2020, Premananda Udalgama, a former army intelligence officer who had been arrested in connection with the case, testified to the Presidential Commission of Inquiry on Political Victimization that the police investigation had been used to target Gotabaya Rajapaksa.²³⁷

On January 8, 2021, Lasantha's daughter, Ahimsa Wickrematunge, made a complaint to the Human Rights Committee seeking assistance in securing justice.²³⁸

²³³ Ibid.

²³⁴ Zulfick Farzan, "Lasantha Wickrematunge Homicide Cases Postponed," *News First*, December 4, 2020, <https://www.newsfirst.lk/2020/12/04/lasantha-wickrematunge-homicide-cases-postponed/> (accessed January 14, 2021).

²³⁵ "Ahimsa's objections on CID Director's appointment; Constitutional Council wants NPC's observations," *Economy Next*, June 25, 2020, <https://economynext.com/ahimsas-objections-on-cid-directors-appointment-constitutional-council-wants-npcs-observations-71410/> (accessed September 21, 2020).

²³⁶ "Journalist Interrogated by CID About 2017 Article on Lasantha Wickrematunge Murder," *Colombo Telegraph*, July 15, 2020, <https://www.colombotelegraph.com/index.php/journalist-interrogated-by-cid-about-2017-article-on-lasantha-wickrematunge-murder/> (accessed January 14, 2021).

²³⁷ Zulfick Farzan, "CID misled court over Lasantha Wickrematunge killing; Ex-Intelligence Officer," *Newsfirst.lk*, October 28, 2020, <https://www.newsfirst.lk/2020/10/28/cid-misled-court-over-lasantha-wickrematunge-killing-ex-intelligence-officer/> (accessed November 25, 2020).

²³⁸ Center for Justice and Accountability, "Daughter of Slain Sri Lankan Journalist Seeks Relief From the UN," January 8, 2021, <https://cja.org/daughter-of-slain-sri-lankan-journalist-seeks-relief-from-the-un/> (accessed January 14, 2021).

VI. “Disappearance” of 11 People by the Navy, 2008-2009



Police officers take away then-chief of defense staff Admiral Ravindra Wijegunaratne from a court in Colombo, November 28, 2018. © 2018 AP Photo/Rukmal Gamage

Ten men and a 17-year-old boy were forcibly disappeared by naval intelligence officers between 2008 and 2009. Those abducted included six Tamils, three Muslims, and two Sinhalese. Most of the victims were students.²³⁹

Police indicted 14 navy officers for offenses including abduction, torture, extortion, and conspiracy to murder—among them, former Chief of Defense Staff Adm. Ravindra Wijegunaratne.

²³⁹ The first to be abducted, on August 9, 2008, was Kasthuri Arachchige John Reid, 21, who was detained in the Wattala suburb of Colombo. Two weeks later, on August 25, father and son Amalan Leon, 50, and Roshan Leon, 21, (alternatively Lyon) were abducted from Kotahena, also on the outskirts of Colombo. On September 17, a group of four men, Rajiv Naganathan, 21, Pradeep Viswanathan, 21, Mohamed Sajid (alternatively Sajith or Saajith), 21, Mohamed Jamaldeen Dilan (age unknown), and Thilakeswaran Ramalingam, 17, were abducted from Dehiwela in Colombo. On October 10, Kasthuri Arachchige Anton, 48, the father of John Reid who had been abducted earlier, was also kidnapped. Thyagarajah Jegan, 32, was picked up separately. Finally, Mohamed Ali Anver (age unknown) was abducted on February 9, 2009. See Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka’s Criminal Justice System, a glance at seven emblematic cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 23, 2020); International Truth and Justice Project, *The Sri Lankan Navy: a collective blind eye*, October 2019, https://itjpsl.com/assets/press/ITJP_navy_reportfinal-2-SINGLES.pdf (accessed July 23, 2020).

In the early days of their detention—according to evidence that later emerged—the victims were held at the Parakrama Navy base at Chaitya Road, Colombo.²⁴⁰ During this period, the families of the victims received ransom demands, and some made payments of between Rs. 500,000 and Rs. 1 million (then around US\$4,350 to \$8,700).²⁴¹ Some of the victims were able to speak to their families by telephone and said they were being held by the navy. The mother of Rajiv Naganathan, one of those missing, wrote down the names of some of the men her son said were holding him.²⁴² Witnesses later told police that they saw the victims in navy custody in Colombo.²⁴³ Naganathan made his last call in May 2009, and all communication between the victims and their families ceased around that time.²⁴⁴

The investigation into the case began in 2009 when the commander of the navy, Adm. Wasantha Karannagoda, ordered that his subordinate Lt. Cmdr. Sampath Munasinghe be investigated in an unrelated matter. During a search of Munasinghe's quarters, however, national identity cards belonging to four of the victims, as well as SIM cards, live ammunition, and over Rs 1 million in cash, were discovered. This evidence was brought to the police triggering a CID investigation.²⁴⁵

2015-2019 Investigations

There was little progress in the investigation until after President Mahinda Rajapaksa was defeated in 2015, whereupon CID investigator Nishantha Silva was put on the case.

According to CID evidence submitted in court, the vehicle belonging to John Reid, one of the missing men, in which he had been travelling at the time of his abduction, was used by

²⁴⁰ Anurangi Singh, "Story of an abduction: Tracing 5 missing sons," *Sunday Observer*, October 30, 2016, <http://www.sundayobserver.lk/2016/10/30/features/story-abduction-tracing-5-missing-sons> (accessed July 23, 2020).

²⁴¹ "Police prevented from arresting accused Navy men!" *Sri Lanka Mirror*, February 14, 2017, <https://srilankamirror.com/news/1878-police-prevented-from-arresting-accused-navy-men> (accessed July 24, 2020).

²⁴² Maneshka Borham, "Diary entry, et al lead to Commodore's arrest," *Sunday Observer*, July 23, 2017, <https://www.sundayobserver.lk/2017/07/23/features/diary-entry-et-al-lead-commodore%E2%80%99s-arrest> (accessed July 24, 2020).

²⁴³ International Truth and Justice Project, *The Sri Lankan Navy: a collective blind eye*, October 2019, https://itjpsl.com/assets/press/ITJP_navy_reportfinal-2-SINGLES.pdf (accessed July 23, 2020).

²⁴⁴ Maneshka Borham, "Diary entry, et al lead to Commodore's arrest," *Sunday Observer*, July 23, 2017, <https://www.sundayobserver.lk/2017/07/23/features/diary-entry-et-al-lead-commodore%E2%80%99s-arrest> (accessed July 24, 2020); Maneshka Borham, "'They are bringing young boys and girls here and shooting them dead'," *Sunday Observer*, October 13, 2019, <http://www.sundayobserver.lk/2019/10/13/news-features/%E2%80%99they-are-bringing-young-boys-and-girls-here-and-shooting-them-dead%E2%80%99> (accessed November 23, 2020).

²⁴⁵ "CID on Collision course with CDS over the fugitive," *Daily Mirror*, June 19, 2018, <http://www.dailymirror.lk/expose/CID-on-Collision-course-with-CDS-over-the-fugitive/333-151466> (accessed July 24, 2020).

the navy with a forged license plate, and the mobile phone of another of the victims was used by a navy intelligence officer, Lt. Cmdr. Sedililage Don Sumedha Sampath Dayananda for several months after its owner went missing.²⁴⁶

In November 2015, the UN Working Group on Enforced or Involuntary Disappearances visited the secret detention site on the Trincomalee naval base where the victims had allegedly been held. They found that although only 11 disappearances were being investigated, “it is very clear than many more people were detained at the centre.”²⁴⁷

In 2017, former navy spokesman Commodore D.K.P. Dassanayake was arrested on charges of aiding and abetting the abductions of the 11 victims.²⁴⁸ He was later released on bail along with five other suspects.²⁴⁹ Former navy commander Wasantha Karannagoda, who had sparked the original investigation, was also implicated and the CID alleged that he had been aware that the victims were tortured and killed at the Trincomalee naval base.²⁵⁰

However, one of the key suspects, an intelligence officer, Lt. Cmdr. Chandana Prasad Hettiarachchi, known as “Navy Sampath,” remained missing.²⁵¹ Police alleged that the then-navy commander, later chief of defense staff, Adm. Ravindra Wijegunaratne, had

²⁴⁶ “Abduction of 11 Tamil youths Twists and turns in the investigations,” *Daily Mirror*, August 21, 2019, <http://www.dailymirror.lk/expose/Abduction-of-Tamil-youths-Twists-and-turns-in-the-investigations/333-154315> (accessed July 24, 2020); “Police arrest Sri Lanka navy officer over disappearances,” Associated Press, October 25, 2018, <https://uk.news.yahoo.com/police-arrest-sri-lanka-navy-officer-over-disappearances-191457604.html> (accessed November 23, 2020).

²⁴⁷ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 2016A/HRC/33/51/Add.2, July 1, 2016, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/51/Add.2 (accessed July 24, 2020). The working group found that “Although the criminal investigation was launched in 2009, the investigation team was only allowed to enter the navy base in 2015.... It is also possible that detainees may have been protected from disappearance or torture if access had been provided earlier as, apparently, the detention centre was functioning up to at least July 2010.... It was clear to the Working Group that the area around the detention sites had not been thoroughly investigated, all possible evidence had not been fully and professionally collected and other similar facilities in the area had not been completely searched.”

²⁴⁸ Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka’s Criminal Justice System, a glance at seven emblematic cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 23, 2020); “Wimal condemns arrest of ex-Navy spokesman,” *Daily Mirror*, July 5, 2017, <http://www.dailymirror.lk/article/Wimal-condemns-arrest-of-ex-Navy-spokesman-132871.html> (accessed November 24, 2020).

²⁴⁹ “Sri Lanka court grants bail to Commodore D.K.P. Dassanayake and others arrested for abducting 11 youths,” *Colombo Page*, January 9, 2018, http://www.colombopage.com/archive_18A/Jan09_1515508626CH.php (accessed July 24, 2020).

²⁵⁰ “Karannagoda to be arrested!” *Sri Lanka Mirror*, August 12, 2017, <https://srilankamirror.com/news/4395-karannagoda-to-be-arrested> (accessed July 24, 2020); “Karannagoda files FR against arrest,” *Daily Mirror*, February 25, 2019, http://www.dailymirror.lk/top_story/Karannagoda-files-FR-against-arrest/155-162890 (accessed November 23, 2020).

²⁵¹ *Ibid.*

sheltered the suspect then helped him escape from Sri Lanka in a naval vessel.²⁵² The CID also alleged that former officials of the attorney general's department had interfered with the investigation.²⁵³

On August 13, 2018, police arrested Hettiarachchi, who had returned to Sri Lanka and was living under a false identity, on suspicion of the abduction, torture, extortion, and murder of all 11 victims.²⁵⁴ On November 28, 2018, Wijegunaratne surrendered to the Colombo Fort Magistrate's Court and was arrested for his alleged role in helping Hettiarachchi evade justice.²⁵⁵ He was later released on bail, despite allegations of witness intimidation.²⁵⁶

Although the investigating authorities suspect that all 11 victims have been killed, their fate has not been revealed.²⁵⁷ In November 2019, days before the presidential election, the attorney general asked the chief justice to send the case against all 14 suspects for trial.²⁵⁸

Current Status

In January 2020, President Gotabaya Rajapaksa promoted Cmdr. Dassanayake, the alleged ringleader in the case, to the rank of rear admiral.²⁵⁹ The same month, the Presidential

²⁵² Shamindra Ferdinando, "CID: A Navy chief helped wanted man flee in FAC," *Island*, April 29, 2018, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=183895 (accessed July 24, 2020).

²⁵³ "CID Director reveals how top AG's official impeded probe on Navy abduction case," *Sunday Observer*, August 5, 2018, <https://www.sundayobserver.lk/2018/08/05/news/cid-director-reveals-how-top-ag%E2%80%99s-official-impeded-probe-navy-abduction-case> (accessed July 24, 2020).

²⁵⁴ "Navy Sampath Arrested and Detained," *Daily News*, August 15, 2018, <http://www.dailynews.lk/2018/08/15/local/159770/%E2%80%98navy-sampath%E2%80%99-arrested-and-detained> (accessed July 25, 2018); Michael Safi, "Sri Lanka's most senior military official in court over civil-war abductions," *The Guardian*, November 29, 2018, <https://www.theguardian.com/world/2018/nov/29/sri-lankas-most-senior-military-official-in-court-over-civil-war-abductions> (accessed November 24, 2020).

²⁵⁵ "CDS Arrested!" *Sri Lanka Mirror*, November 28, 2018, <https://srilankamirror.com/news/11742-cds-arrested> (accessed July 24, 2020); Meera Srinivasan, "Sri Lanka's top military officer Ravindra Wijegunaratne detained," *The Hindu*, November 28, 2018, <https://www.thehindu.com/news/international/sri-lankas-top-military-officer-ravindra-wijegunaratne-detained/article25616497.ece> (accessed November 24, 2020).

²⁵⁶ "CDS released on bail," *Daily News*, December 6, 2018, <http://www.dailynews.lk/2018/12/06/law-order/170515/cds-released-bail> (accessed July 24, 2020).

²⁵⁷ Meenakshi Ganguly, "Sri Lanka Still Hunting for Its 'Disappeared,'" *The Diplomat*, December 20, 2018, <https://thediplomat.com/2018/12/sri-lanka-still-hunting-for-its-disappeared/> (accessed July 24, 2020).

²⁵⁸ "Trial-at-bar to be appointed in 11 youth abduction case," *Colombo Gazette*, November 11, 2019, <https://colombogazette.com/2019/11/11/trial-at-bar-to-be-appointed-in-11-youth-abduction-case/> (accessed July 24, 2020).

²⁵⁹ "Former Navy spokesman accused over abductions promoted," *Colombo Gazette*, January 16, 2020, <https://colombogazette.com/2020/01/16/former-navy-spokesman-accused-over-abductions-promoted/#:~:text=Former%20Navy%20spokesman%20D.K.P%20Dassanayake,the%20rank%20of%20Rear%20Admiral.&ext=He%20played%20a%20key%20role,a%20sailor%20and%20Navy%20spokesman.> (accessed September 21, 2020).

Commission of Inquiry on Political Victimization ordered the attorney general to halt the forthcoming trial.²⁶⁰ However, the attorney general did not recognize the order.

On June 25, the Court of Appeal issued an interim injunction requested by Admiral Wijegunaratne, which prevented the trial from proceeding.²⁶¹

²⁶⁰ “Presidential Commission orders AG to halt investigations into former navy Chief and Spokesperson in abduction case,” *Colombo Page*, January 27, 2020, http://www.colombopage.com/archive_20A/Jan27_1580147045CH.php (accessed July 24, 2020).

²⁶¹ “Court issues interim injunction on 11 youth abduction case,” *Colombo Gazette*, June 25, 2020, <https://colombogazette.com/2020/06/25/court-issues-interim-injunction-on-11-youth-abduction-case/> (accessed July 24, 2020).

VII. “Trinco Five,” January 2, 2006



Members of Sri Lanka's Special Task Force during a passing-out ceremony at a training school in Kalutara, August 2008. © 2008 AP Photo/Gemunu Amarasinghe

On the evening of January 2, 2006, the beach at Trincomalee was crowded with people meeting friends on the second day of the new year. Among them was a group of nine students, all Tamil men around 20 years old, who sat near a statue of Mahatma Gandhi. The area was secured by the navy, who were operating checkpoints along the main road. At around 7:35 p.m., a green auto-rickshaw taxi came along the road. As it passed the group beside the statue a grenade was thrown from the vehicle, which exploded injuring several people.²⁶² According to a witness, the auto-rickshaw continued down the road, through an

²⁶² See University Teachers for Human Rights (Jaffna), “The Five Students Case in Trincomalee,” Special Report no. 24, April 19, 2007, <http://www.uthr.org/SpecialReports/spreport24.htm>; University Teachers for Human Rights (Jaffna), “Official Secrets and Blind Justice,” Special Report No. 35, January 2, 2010, <http://www.uthr.org/SpecialReports/spreport35.htm> (accessed July 28, 2020); Report of the OHCHR Investigation on Sri Lanka (OISL), September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>; James Ross, “Awaiting Justice For Trinco Five” *Sunday Leader*, November 22, 2015, <https://www.hrw.org/news/2015/11/22/awaiting-justice-trinco-five>; Human Rights Watch, “No Justice for Trinco Five,” July 8, 2019, <https://www.hrw.org/news/2019/07/08/sri-lanka-no-justice-trinco-5>; Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka's Criminal Justice System: A Glance at Seven Emblematic Cases*, March

army checkpoint, and entered Fort Frederick, the army headquarters in Trincomalee.²⁶³

Immediately after the blast the navy closed the area, preventing anyone from entering or leaving. Yoganathan Poongulalon, one of the injured survivors of the attack, later said that following the blast, navy personnel approached the group by the statue, asked the injured for identification, but offered no help.²⁶⁴ Around 10 minutes after the grenade exploded, a jeep carrying members of the police Special Task Force (STF) arrived at the scene, traveling with its lights off in the dark. The street lighting around the statue had been turned off.

Dr. Kasippillai Manoharan, whose son Manoharan Ragihar was among the group at the Gandhi statue, received a phone call from his son, in which Ragihar said he was surrounded by security forces. Minutes later, Ragihar sent a text message that simply said, “DAD.”²⁶⁵ That was his last message. Dr. Manoharan arrived at the scene soon after the blast but was prevented from going further by navy personnel manning a checkpoint. From where he was standing, he then heard the young men begging for their lives, followed by gunshots.

The brother of another of the victims, Yogarajah Hemachandran, also frantically tried to get through on the telephone during these few minutes. According to the report of the nongovernmental organization University Teachers for Human Rights (Jaffna), Hemachandran’s mobile phone was answered by a man who spoke Sinhalese, asked the caller’s name and address, and said mockingly that Hemachandran was with him.²⁶⁶

Poongulalon, the injured survivor, said that masked STF men who arrived in the jeep lifted the injured victims into the vehicle and beat them with rifle butts, before putting them back on the road and shooting them dead at point-blank range. Poongulalon survived by

1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 29, 2020).

²⁶³ “12 years on and still no justice - Trinco 5 killings,” *Tamil Guardian*, January 2, 2018,

<https://www.tamilguardian.com/content/12-years-and-still-no-justice-trinco-5-killings> (accessed August 32, 2020).

²⁶⁴ University Teachers for Human Rights (Jaffna), “The Five Students Case in Trincomalee,” Special Report no.24, April 19, 2007, <http://www.uthr.org/SpecialReports/spreport24.htm> (accessed July 29, 2020).

²⁶⁵ Kasippillai Monharam, “They Killed My Son,” *Amnesty International*, August 15, 2015,

<https://www.amnesty.org/en/latest/campaigns/2013/08/they-killed-my-son/> (accessed July 29, 2020).

²⁶⁶ University Teachers for Human Rights (Jaffna), “The Five Students Case in Trincomalee,” Special Report no.24, April 19, 2007, <http://www.uthr.org/SpecialReports/spreport24.htm> (accessed July 29, 2020). See also University Teachers for Human Rights (Jaffna), “Unfinished Business of the Five Students and ACF Cases,” Special Report no.30, April 1, 2008, <http://www.uthr.org/SpecialReports/Spreport30.htm> (accessed July 30, 2020).

pretending to be dead. Another injured student who survived, Pararajasingham Kokularaj, later said that he saw his friend, Rohan, being shot.²⁶⁷

Those who died in the massacre were Manoharan Ragihar, Yogarajah Hemachandran, Lohitharajah Rohan, Thangathurai Sivananda, and Shanmugarajah Gajendran.²⁶⁸ The two witnesses—Pararajasingham Kokularaj and Yoganathan Poongulalon—were seriously injured but survived.

That evening the authorities released a statement claiming that the victims were members of the LTTE who had been killed by an explosion while preparing a grenade attack.²⁶⁹ Although the bodies of the victims had gunshot wounds, which were confirmed as the cause of death by the post-mortem, the authorities initially attempted to cover up the fact that any shots had been fired.²⁷⁰ Dr. Manoharan testified at a magistrate's inquest into the deaths. He told the court that government forces were responsible:

A bomb went off at the scene of the incident at 7:35 p.m. The gun shots I heard and the flashes I saw with my own eyes were at 8:15 p.m. All this time the area was ringed and controlled by the security forces. Therefore no one else could have done the deed.²⁷¹

Soon after, he and the families of the other victims, as well as numerous other witnesses, started receiving threats.²⁷² An auto-rickshaw driver named Balachandran, who came forward with information linking the security forces to the green auto-rickshaw that was used in the attack, was abducted from his home on August 24, 2006, by men in a white

²⁶⁷ University Teachers for Human Rights (Jaffna), "The Five Students Case in Trincomalee," Special Report no.24, April 19, 2007, <http://www.uthr.org/SpecialReports/spreport24.htm> (accessed July 29, 2020).

²⁶⁸ An alternative spelling is Shanmugarajah Sajendran.

²⁶⁹ Report of the OHCHR Investigation on Sri Lanka (OISL), September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed July 29, 2020).

²⁷⁰ University Teachers for Human Rights (Jaffna), "Official Secrets and Blind Justice," Special Report No. 35, January 2, 2010, <http://www.uthr.org/SpecialReports/spreport35.htm> (accessed July 28, 2020).

²⁷¹ University Teachers for Human Rights (Jaffna), "The Five Students Case in Trincomalee," Special Report no.24, April 19, 2007, <http://www.uthr.org/SpecialReports/spreport24.htm> (accessed July 29, 2020).

²⁷² University Teachers for Human Rights (Jaffna), "Official Secrets and Blind Justice," Special Report No. 35, January 2, 2010, <http://www.uthr.org/SpecialReports/spreport35.htm> (accessed July 28, 2020).

van, and shot dead.²⁷³ Subramaniam Sugirdharajan, a journalist who covered the case,²⁷⁴ and Handungamuwa Nandarathana, a Buddhist monk who sympathized with the victims,²⁷⁵ were also shot and killed by unknown gunmen. In December that year, after months of death threats, Dr. Manoharan and his family left the country and found asylum abroad.²⁷⁶ The families of the other victims were also terrorized into moving away, and some witnesses, including the two survivors, fled the country.

Basil Rajapaksa, presidential advisor and brother of President Mahinda Rajapaksa, told the US ambassador on October 4, 2006:

We know the STF did it, but the bullet and gun evidence shows that they did not. They must have separate guns when they want to kill someone. We need forensic experts. We know who did it, but we can't proceed in prosecuting them.²⁷⁷

The Trinco Five case was included in the mandate of the Commission of Inquiry chaired by retired Supreme Court judge, N.K. Udalgama, established by President Mahinda Rajapaksa in 2006 to investigate 15 emblematic human rights cases. The commission concluded that “there are strong grounds to surmise the involvement of uniformed personnel in the commission of crime.”²⁷⁸ The commission had been supported by an International Independent Group of Eminent Persons (IIGEP), who arranged for witnesses who had fled the country to testify by video conferencing. However, the president blocked

²⁷³Ibid.

²⁷⁴ Reporters Without Borders, “Tamil journalist gunned down in Trincomalee after covering paramilitary abuses,” January 24, 2006, <https://rsf.org/en/news/tamil-journalist-gunned-down-trincomalee-after-covering-paramilitary-abuses> (accessed July 29, 2020).

²⁷⁵ Centre for Policy Alternatives, *The Need for Accountability in Sri Lanka's Criminal Justice System: A Glance at Seven Emblematic Cases*, March 1, 2019, <https://www.cpalanka.org/the-need-for-accountability-in-sri-lankas-criminal-justice-system/> (accessed July 29, 2020).

²⁷⁶ Kasippillai Monharam, “They Killed My Son,” *Amnesty International*, August 15, 2015, <https://www.amnesty.org/en/latest/campaigns/2013/08/they-killed-my-son/> (accessed July 29, 2020).

²⁷⁷ Wikileaks, “Sri Lanka: Presidential Advisor Basil Rajapaksa Speaks Frankly About Human Rights and Karuna Faction,” October 4, 2006, https://wikileaks.org/plusd/cables/o6COLOMBO1622_a.html (accessed November 26, 2020).

²⁷⁸ T. Ramakrishnan, “Panel blames LTTE for killing of 51 girls,” *The Hindu*, October 22, 2015, <https://www.thehindu.com/news/international/panel-blames-ltte-for-killing-of-51-girls/article7793001.ece> (accessed July 30, 2020).

this procedure,²⁷⁹ and the witnesses refused to testify from inside Sri Lankan embassies abroad citing fear that they would be killed by government forces.²⁸⁰

In 2006, in a rare development, 12 Special Task Force police officers were arrested in connection with the killings. However, they were soon released for lack of evidence. In July 2013, following representations made by Dr. Manoharan and Yaiyamuttu Shanmugarajah, the father of another victim, Shanmugarajah Gajendran, at the UN Human Rights Council in Geneva, the 12 STF members were rearrested, but then released again on bail three months later.²⁸¹

Kapila Jayasekera,²⁸² who was the senior superintendent of police commanding of the STF in Trincomalee at the time of the massacre, and who was named by the University Teachers for Human Rights (Jaffna) investigation as being present at the scene of the killings and as a leading suspect in the case, was never arrested or charged.²⁸³

The trial finally concluded over five years after the inquiry was relaunched in 2013. On July 3, 2019, 13 men, including the 12 STF members and a policeman, were discharged by Trincomalee magistrates' court due to lack of evidence, after several witnesses failed to appear due to a lack of confidence in the process according to human rights lawyers.²⁸⁴

²⁷⁹ University Teachers for Human Rights (Jaffna), "Official Secrets and Blind Justice," Special Report No. 35, January 2, 2010, <http://www.uthr.org/SpecialReports/spreport35.htm> (accessed July 28, 2020). See also US embassy cable "SRI LANKA: GOVERNMENT BLOCKS VIDEO TESTIMONY TO THE COMMISSION OF INQUIRY," o8COLOMBO551_a, June 5, 2008, https://wikileaks.org/plusd/cables/o8COLOMBO551_a.html (accessed July 31, 2020).

²⁸⁰ In 2008 the IIGEP resigned because they had "not been able to conclude ... that the proceedings of the Commission have been transparent or have satisfied basic international norms and standards. Among other concerns, they cited a lack of effective victim and witness protection. See International Independent Group of Eminent Persons, "Public Statement," April 15, 2008, <https://web.archive.org/web/20081230174539/http://www.iigep.org/prelease/estatement8.pdf> (accessed July 30, 2020).

²⁸¹ Easwaran Rutnam, "Trinco-5 massacre: A father's cry for justice," *The Morning*, January 14, 2019, <http://www.themorning.lk/pg6lead-2/> (accessed July 30, 2020); "STF men arrested for Trinco-5 murders granted bail," *Daily FT*, October 15, 2013, <http://www.ft.lk/article/201532/STF-men-arrested-for-Trinco-5-murders-granted-bail> (accessed July 30, 2020), Human Rights Watch, "Sri Lanka: No Justice for 'Trinco 5'," July 8, 2019, <https://www.hrw.org/news/2019/07/08/sri-lanka-no-justice-trinco-5>.

²⁸² Alternate spellings are Jayasekara or Jayasekera.

²⁸³ "Trinco-5 Operations Commander Reappointed To Trinco As DIG Ahead Of Northern Election," *Colombo Telegraph*, July 9, 2013, <https://www.colombotelegraph.com/index.php/trinco-5-operations-commander-reappointed-to-trinco-as-dig-ahead-of-northern-election/> (accessed September 21, 2020).

²⁸⁴ "STF men acquitted in Trinco students murder case," *Daily News*, July 4, 2019, <http://www.dailynews.lk/2019/07/04/law-order/190200/stf-men-acquitted-trinco-students-murder-case> (accessed July 30, 2020); Maneshka Borham, "Dead end in Trinco-5 case?," *Sunday Observer*, July 14, 2019, <http://www.sundayobserver.lk/2019/07/14/news-features/dead-end-trinco-5-case> (accessed September 21, 2020). The names of the 13 suspects are Inspector Sarath Chandra Perera, Inspector Rohitha Vijithakumara, Sgt. M.G. Jayalath, Sgt. A.P.

Current Status

Soon after the trial ended, Dr. Manoharan told Human Rights Watch that although the attorney general had asked him to testify over Skype, he was afraid to enter the Sri Lankan high commission and was not allowed to speak from a neutral office. He said the court never formally summoned him and that he could “never trust Sri Lankan judicial service and I strongly need [an] international inquiry.”²⁸⁵

Amal Pradeep, and PCs R.K. Ratnayake, M. Chaminda Lalitha, R.M. Udhaya Mahinda Bandara, M.G.H. Sanjeewa, K.A. Tharaka Ruwansiri, J.M. Nimal Bandara, J.M. Senarath Dissanyake, S.J. Indika Thushara of the STF and SI (Retired) P.G. Ananda Bulanawewa of the Police (email communication, details withheld, December 31, 2020).

²⁸⁵ Human Rights Watch electronic mail interview with Dr. Kasippillai Manoharan, October 12, 2020.

VIII. Mirusuvil Massacre, March 26, 2000



President Gotabaya Rajapaksa gives a speech while flanked by senior military officers and his brother Prime Minister Mahinda Rajapaksa in Colombo, November 22, 2019. © 2019 AP Photo/Eranga Jayawardena

On December 19, 2000, nine displaced Tamil villagers cycled to visit their abandoned houses in the village of Mirusuvil, in Jaffna district.²⁸⁶ The people of Mirusuvil had been forced to flee their homes earlier that year, after fighting between the Sri Lankan army and the LTTE led to shelling in the area, but they would occasionally return to maintain their property and collect produce after receiving permission from the army.²⁸⁷

The group included Ponnadurai Maheshwaran, who would be the sole survivor, Raviwarman, Thaivakulasingham, Nadesu Jayachandran, Wilvarasa and his two sons—5-year-old Prasad and 13-year-old Pradeepan Jayachandran, Gnanachandran, and his 15-year-old son Shanthan.²⁸⁸

²⁸⁶ Rathnayake Mudiyansele Sunil Ratnayake vs Hon. Attorney General in the Supreme Court of the Democratic Socialist Republic of Sri Lanka, SC TAB 01/2016, Decided on March 25, 2019, http://www.supremecourt.lk/images/documents/sc_tab_1_2016.pdf (accessed September 21, 2020).

²⁸⁷ Bhavani Fonseka and Nipunika Rajakaruna, "The Pardon in the Mirusuvil Massacre: Sri Lanka's Elusive Quest for Justice," Centre for Policy Alternatives, April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/03/The-Pardon-in-the-Mirusuvil-Massacre.pdf> (accessed July 31, 2020).

²⁸⁸ Amnesty International, "Amid Pandemic, Sri Lanka Pardons Soldier Convicted of Massacre," April 30, 2020, <https://www.amnesty.org/download/Documents/ASA3722472020ENGLISH.pdf> (accessed July 31, 2020).

One day before their visit, a Special Operations Unit of the 6th Gajaba Regiment, including a reconnaissance team, had been deployed in the Mirusuvil area. When the Tamil group was leaving Mirusuvil, according to the testimony of Maheshwaran, they were confronted by two soldiers, one of whom was armed with a rifle, the other with a knife. Four more soldiers soon arrived. The villagers were made to kneel, questioned, and beaten.

Maheshwaran testified that he was blindfolded and lost consciousness due to the beating. He regained consciousness to find that his blindfold had come off and he had been separated from his companions. He was taken to a cesspit, where he saw patches of blood on the ground and was aware of movements coming from inside the pit. He managed to escape and later informed his relatives.

On December 23, Maheshwaran was questioned by army officials investigating the incident after family members had sought the help of a Tamil political party, the Eelam People's Democratic Party (EPDP). The following day a group including military policemen, Maheshwaran, EPDP officials and others, visited the scene. Maj. Sydney de Soyza, who led the investigation, testified that while at the scene he had observed a building about 50 meters away, which he found was occupied by about 20 members of the Gajaba Regiment. While they were questioning the soldiers, Maheshwaran identified two men who had detained the group, including Lance Cpl. (later Sgt.) Sunil Ratnayake.²⁸⁹

The accused were arrested and later led the investigators to a place from which eight bodies were exhumed on December 25. An autopsy determined that they had been killed by having their throats slit.²⁹⁰ Five soldiers were indicted based on witness testimony.

The case was ordered to be heard before a trial-at-bar of the Colombo High Court in 2003, but it suffered repeated delays for a variety of reasons, including the case being transferred between courts.²⁹¹ While the four others were acquitted, Sgt. Sunil Ratnayake was ultimately convicted of the eight murders by the Colombo High Court in 2015 and

²⁸⁹ Rathnayake is sometimes also spelled Ratnayake. He was later promoted to sergeant.

²⁹⁰ Supreme Court of Sri Lanka, *Rathnayake Mudiyansele Sunil Ratnayake vs Hon. Attorney General*, April 25, 2019, http://www.supremecourt.lk/images/documents/sc_tab_1_2016.pdf (accessed August 31, 2020).

²⁹¹ Kishali Pinto-Jayawardena, *Post-War Justice in Sri Lanka*, International Commission of Jurists, January 2010, https://www.icj.org/wp-content/uploads/2010/01/srilanka_impunity_18_01_20102.pdf (accessed July 31, 2020).

sentenced to death.²⁹² Rathnayake appealed to the Supreme Court, where a five-judge bench unanimously upheld the murder convictions in 2019.²⁹³

Current Status

On March 26, 2020, President Gotabaya Rajapaksa granted a presidential pardon to Rathnayaka.²⁹⁴

A spokesperson for Michelle Bachelet, the UN high commissioner for human rights, condemned the pardon as “an affront to victims” and “yet another example of the failure of Sri Lanka to fulfil its international human rights obligations to provide meaningful accountability for war crimes, crimes against humanity and other gross violations of human rights.” The high commissioner’s office underlined that “[p]ardoning one of the sole convicted perpetrators of atrocities committed during the Sri Lankan conflict further undermines the limited progress the country has made towards ending impunity for mass human rights abuse.”²⁹⁵

The Human Rights Commission of Sri Lanka said in a statement:

The granting of a presidential pardon to a person convicted of such a heinous offence and whose conviction was upheld unanimously by the Supreme Court sends a negative message that reinforces allegations of impunity and lack of justice for victims of violations in Sri Lanka. The Supreme Court judgment in the Mirusuvil case was considered a landmark judgment.... There have been very few such convictions. The granting of a

²⁹² Center for Human Rights and Development, “Army Sergeant found guilty and sentenced in the Mirusuvil massacre case,” <https://srilankachrd.org/la-mirusuvil.php> (accessed August 31, 2020).

²⁹³ Supreme Court of Sri Lanka, *Rathnayake Mudiyansele Sunil Ratnayake vs Hon. Attorney General*, April 25, 2019, http://www.supremecourt.lk/images/documents/sc_tab_1_2016.pdf (accessed August 31, 2020).

²⁹⁴ Human Rights Watch, “Sri Lanka: Justice Undone for Massacre Victims,” March 27, 2020, <https://www.hrw.org/news/2020/03/27/sri-lanka-justice-undone-massacre-victims>; Bhavani Fonseka and Nipunika Rajakaruna, “The Pardon in the Mirusuvil Massacre: Sri Lanka’s Elusive Quest for Justice,” Centre for Policy Alternatives, April 2020, <https://www.cpalanka.org/wp-content/uploads/2020/03/The-Pardon-in-the-Mirusuvil-Massacre.pdf> (accessed July 31, 2020). The only other notable case where a soldier has been convicted in Sri Lanka is for the 1996 rape and murder of Krishanti Kumaraswamy. See Bhagavadas Sriskanthadas, “Remembering the Krishanthi Kumaraswamy case,” *Groundviews*, January 1, 2016, <https://groundviews.org/2016/09/01/the-krishanthi-rape-and-four-murders/> (accessed July 31, 2020).

²⁹⁵ Spokesperson for the UN High Commissioner for Human Rights, “Press briefing note on Sri Lanka,” March 27, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25752&LangID=E> (accessed July 31, 2020).

presidential pardon to the convict of such a judgment sets a very negative precedent.”²⁹⁶

An appeal against the presidential pardon by human rights lawyers is scheduled to be heard in February 2021.²⁹⁷

²⁹⁶ Human Rights Commission of Sri Lanka, “Granting of a Presidential Pardon to Former Army Corporal Sunil Ratnayake,” March 29, 2020, <http://www.hrcsl.lk/wp-content/uploads/2020/02/Granting-of-a-Presidential-Pardon-to-Former-Army-Corporal-Sunil-Ratnayake.pdf> (accessed July 31, 2020).

²⁹⁷ “Petitions challenging presidential pardon to Sunil Ratnayake fixed for support,” *Daily News*, September 24, 2020, <http://www.dailynews.lk/2020/09/24/law-order/229658/petitions-challenging-presidential-pardon-sunil-ratnayake-fixed-support> (accessed November 25, 2020).

IX. UN Engagement with International Crimes in Sri Lanka



Chief of Defense Staff Gen. Shavendra Silva speaks in Colombo, August 26, 2019. © 2019 Krishan Kariyawasam /Pacific Press/Sipa USA

Sri Lanka has emerged as a litmus test of the UN's ability to advance accountability for international crimes.

In May 2009, days after the end of the war, then-UN Secretary General Ban Ki-moon visited Sri Lanka and in a lengthy joint statement on May 26, celebrated the “close cooperation between Sri Lanka and the United Nations.”²⁹⁸ Only in the last few lines did the statement raise the issue of human rights, saying:

The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.²⁹⁹

²⁹⁸ Joint Statement by United Nations Secretary-General, Government of Sri Lanka, May 26, 2009, <https://www.un.org/press/en/2009/sg2151.doc.htm> (accessed August 21, 2020).

²⁹⁹ Ibid.

On May 27, 2009, the UN Human Rights Council held a special session on the human rights situation in Sri Lanka. This was co-opted, however, by the government of Sri Lanka, which presented a resolution, “Welcoming the conclusion of hostilities and the liberation by the Government of Sri Lanka of tens of thousands of its citizens.”³⁰⁰ The resolution, which the majority of the council adopted, did not mention the government’s abuses against civilians.³⁰¹

Sri Lankan Peacekeepers Sex Abuse in Haiti, 2004-2007

In 2007, 114 Sri Lankan peacekeeping troops were sent home from the UN’s mission in Haiti following allegations of the sexual abuse of children.³⁰² An investigation by the UN Office of Internal Oversight Services (OIOS) identified 134 Sri Lankan soldiers alleged to have sexually exploited nine Haitian boys and girls from late 2004 to mid-2007. It found that “the acts of sexual exploitation and abuse were frequent, occurred usually at night, and at virtually every location where Sri Lankan military were deployed.”³⁰³ The perpetrators were never publicly identified, but in 2016 Sri Lanka made a one-time payment of US\$45,243 for a child fathered by a Sri Lankan commander, leading the UN to praise Sri Lanka³⁰⁴ for “best practices.”³⁰⁵

Under the terms on which UN peacekeepers operate, it is the sole responsibility of the soldiers’ own government to investigate and prosecute allegations of abuse. None of the accused Sri Lankan abusers appear to have faced any consequences, and the Sri

³⁰⁰ 11th special session of the Human Rights Council, S-11/1 Assistance to Sri Lanka in the promotion and protection of human rights, UN Doc A/HRC/RES/S-11/1, May 27, 2009, <https://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session11/Pages/11thSpecialSession.aspx> (accessed August 21, 2009).

³⁰¹ Amendments to introduce some balance to the text, presented by Germany on behalf of a number of states, were struck out through a procedural tactic by Cuba known as a “no action motion”.

³⁰² Nimmi Gowrinathan and Kate Cronin-Furman, “UN Peacekeepers: Keeping the peace or preventing it?,” Al Jazeera, May 2, 2007, <https://www.aljazeera.com/indepth/opinion/2017/04/peacekeepers-keeping-peace-preventing-170430102118379.html> (accessed August 21, 2020).

³⁰³ International Truth and Justice Project and Journalists for Democracy in Sri Lanka, *Sri Lanka’s UN Peacekeepers Let the Punishment Fit the Crime*, November 13, 2017, <https://itjpsl.com/assets/press/haiti-FINAL.pdf> (accessed August 21, 2020).

³⁰⁴ “UN commends SL’s decision to pay victims raped by peacekeepers,” *Daily Mirror*, May 14, 2016, <http://www.dailymirror.lk/109481/-UN-commends-SL-s-decision-to-pay-victims-raped-by-peacekeepers?platform=hootsuite>. (accessed August 21, 2020).

³⁰⁵ Katy Daigle and Paisley Dodds, “UN Peacekeepers: How and Haiti child sex ring was whitewashed,” AP, May 26, 2017, <https://apnews.com/96f9ff66b7b34d9f971edfoe92e2082c> (accessed August 21, 2020).

Lankan government has provided contradictory accounts of how it handled the cases.³⁰⁶

Within a few months of the war's end in 2009, Sri Lankan soldiers were nominated by the government for peacekeeping duties and were again deployed by the United Nations to Haiti, where they had been implicated in child sexual abuse two years earlier, seemingly without safeguards to prevent renewed abuse.

In 2013, another rape allegation was made against Sri Lankan peacekeepers in Haiti. The Sri Lankan army sent Maj. Gen. Jagath Dias, who is himself accused of war crimes, to Haiti to investigate. He dismissed the allegation without interviewing the victim or the medical staff who examined her.³⁰⁷

In 2019, the United Nations announced restrictions on the use of Sri Lankan soldiers as peacekeepers because of the appointment of Shavendra Silva – whose forces were implicated in war crimes during the civil war – as chief of staff of the Sri Lankan army. But Sri Lanka continues to provide peacekeepers despite ongoing impunity for grave abuses committed in Sri Lanka, as well as under the UN flag in Haiti.³⁰⁸ The number of

³⁰⁶ According to the US State Department, the Sri Lankan Ministry of Defense provided an update in 2009 on the status of 23 Sri Lankan UN peacekeepers who it said were convicted of sexually abusing children in Haiti in 2007. Twenty of them were apparently discharged, demoted, formally reprimanded, or otherwise punished, and the remaining three were killed in action. See US State Department, *2010 Country Reports on Human Rights Practices*, <https://2009-2017.state.gov/j/drl/rls/hrrpt/2010/wha/154509.htm> (accessed August 25, 2020). Sri Lanka's submission to the UN Committee against Torture states that in June 2015 the UN Secretariat noted the outcome of its military court process and confirmed the matter "closed." However, responding to a Right to Information request in 2017, the Sri Lankan Army wrote that "only 3 peacekeepers had been involved." See Redress and CRIN, *Litigating Peacekeeper Child Sexual Abuse*, January 2020, <https://redress.org/wp-content/uploads/2020/01/LitigatingPeacekeeperChildSexualAbuseReport.pdf> (accessed August 25, 2020).

³⁰⁷ Katy Daigle and Paisley Dodds, "UN Peacekeepers: How and Haiti child sex ring was whitewashed," AP, May 26, 2017, <https://apnews.com/96f9ff66b7b34d9f971edfoe92e2082c> (accessed August 21, 2020).

³⁰⁸ "U.N. suspends Sri Lankan troops from peacekeeping over army chief appointment," Reuters, September 25, 2019, <https://www.reuters.com/article/us-sri-lanka-un-peacekeepers/un-suspends-sri-lankan-troops-from-peacekeeping-over-army-chief-appointment-idUSKBN1WA2SL> (accessed August 21, 2020); "UN award Sri Lanka's peacekeeping force despite human rights violations," *Tamil Guardian*, June 10, 2020, <https://www.tamilguardian.com/content/un-award-sri-lanka%E2%80%99s-peacekeeping-force-despite-human-rights-violations> (accessed August 21, 2020).

Sri Lankan peacekeepers deployed by the UN is almost unchanged since before the restrictions were announced.³⁰⁹

Report of Secretary-General's Panel of Experts on Accountability in Sri Lanka

Facing severe criticism for the UN's failures to help protect civilians during the last phase of the war, the secretary-general in June 2010 appointed a three-member panel of experts to advise him. The report of the Secretary General's Panel of Experts provided a comprehensive account of the final months of the conflict.³¹⁰ The report found numerous laws of war violations by both government forces and the LTTE that could have led to "as many as 40,000 civilian deaths."³¹¹

The report concluded that violations committed may have amounted to war crimes. It recommended that the secretary-general establish an "independent international mechanism" to conduct investigations, as well as to collect and safeguard evidence.

The Panel of Experts also found that the UN "did not adequately invoke principles of human rights that are the foundation of the UN but instead appeared to do what was

³⁰⁹ On October 31, 2020, 668 Sri Lankan peacekeepers were on UN missions, compared to 679 on December 31, 2018. See United Nations Peacekeeping, Troop and Police Contributors, <https://peacekeeping.un.org/en/troop-and-police-contributors> (accessed November 24, 2020).

³¹⁰ UN Secretary-General, *Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/un-documents/document/poc-rep-on-account-in-sri-lanka.php> (accessed Aug 4, 2020).

³¹¹ The main findings included:

- "The Government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilian population to concentrate ... It shelled the United Nations hub, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches. It shelled in spite of its knowledge of the impact."
- "All hospitals in the Vanni were hit by mortars and artillery, some of them were hit repeatedly, despite the fact that their locations were well-known to the Government."
- "The Government also systematically deprived people in the conflict zone of humanitarian aid, in the form of food and medical supplies, particularly surgical supplies, adding to their suffering. To this end, it purposefully underestimated the number of civilians who remained in the conflict zone."
- "Screening for suspected LTTE took place without any transparency or external scrutiny. Some of those who were separated were summarily executed, and some of the women may have been raped. Others disappeared."
- "Despite grave danger in the conflict zone, the LTTE refused civilians permission to leave, using them as hostages, at times even using their presence as a strategic human buffer between themselves and the advancing Sri Lanka Army. It implemented a policy of forced recruitment throughout the war, but in the final stages greatly intensified its recruitment of people of all ages, including children as young as fourteen."
- "From February 2009 onwards, the LTTE started point-blank shooting of civilians who attempted to escape the conflict zone."

necessary to avoid confrontation with the government.”³¹² It therefore recommended that the secretary-general conduct “a comprehensive review of actions by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates.”³¹³

Report of the Secretary-General's Internal Review Panel on UN Action in Sri Lanka—the Petrie Report

To examine the failure of the UN to respond to the crisis in Sri Lanka, the secretary-general established an Internal Review Panel on United Nations Actions in Sri Lanka.³¹⁴ The findings, which became known as the Petrie Report after the panel’s chair, Charles Petrie, identified “a sustained and institutionalized reluctance” by UN staff members in Sri Lanka “to stand up for the rights of the people they were mandated to assist.”³¹⁵

The Petrie Report concluded that the government of Sri Lanka pursued a “stratagem of UN intimidation,” which included declaring several resident coordinators *persona non grata*, withholding or threatening to withhold visas, and resisting the UN’s efforts to adjust its staffing capacity. It also said that to appease the government, the UN failed to publish estimates of civilian deaths, or to confront the government with data that showed that “most casualties were caused by Government fire and included attacks on UN premises and hospitals.” In the final months of the war “the UN almost completely omitted to explicitly mention Government responsibility for violations of international law.”³¹⁶

³¹² Memorandum of 12 April 2011 from the Panel of Experts to the Secretary-General, *Report of the Secretary-General's Internal Review Panel on United Nations Actions in Sri Lanka*, November 2012, <https://digitallibrary.un.org/record/737299?ln=en>, (accessed August 21, 2020).

³¹³ Ibid.

³¹⁴ *Report of the Secretary-General's Internal Review Panel on United Nations Actions in Sri Lanka*, November 2012, <https://digitallibrary.un.org/record/737299?ln=en> (accessed August 21, 2020).

³¹⁵ Robert Mackey, “Report Says U.N. Failed in Sri Lanka,” *New York Times*, November 13, 2012, <https://www.nytimes.com/2012/11/14/world/asia/report-says-un-failed-in-sri-lanka.html?searchResultPosition=2>; Lyse Doucet, “UN ‘failed Sri Lankan civilians’, says internal probe,” BBC News, November 13, 2012, <https://www.bbc.com/news/world-asia-20308610> (accessed August 21, 2020).

³¹⁶ The Petrie Report was an indictment of the entire United Nations system, including the Security Council, the General Assembly, and the Human Rights Council, as well as the UN Secretariat and UN office in Sri Lanka, saying:

- “Throughout the final stages of the conflict, Member States did not hold a single formal meeting on Sri Lanka, whether at the Security Council, the Human Rights Council or the General Assembly.”
- “the UN’s planning papers and projects did not reflect a full understanding of Sri Lanka’s violent past or the realities of protection risks ... [it] did not appear to fully recognize the scope of its responsibility to respond to Government violations and did not realize until very late that its protection actions were largely empty.”

The Petrie Report was accepted in full by then-Secretary-General Ban Ki-moon and became the basis of the policy of Human Rights up Front, which requires human rights to be integrated into all UN programs and policies.³¹⁷

Report of the OHCHR Investigation on Sri Lanka (OISL Report)

In 2012, the Human Rights Council adopted a resolution calling on Sri Lanka to implement the recommendations of its Lessons Learnt and Reconciliation Commission report (LLRC), while also noting that the LLRC did not adequately address alleged violations of international law. It called upon Sri Lanka to accept technical advice from the OHCHR to initiate a credible and independent truth and accountability process.³¹⁸ The government did not respond.

In August 2013, Navi Pillay, then-UN high commissioner for human rights, visited Sri Lanka and expressed alarm at the harassment and intimidation of civil society groups, the media, and religious minorities. She found that the country seemed to be heading in an “increasingly authoritarian direction.”³¹⁹

The UN Human Rights Council responded to government intransigence on accountability, and continuing rights violations, by passing a resolution in March 2014 calling on the OHCHR to independently investigate allegations of wartime violations and ongoing human

- “Decisions at UNHQ and in the field were affected by an institutional culture of trade-offs. The tendency to see options for action in terms of dilemmas frequently obscured the reality of UN responsibilities.”

- “The Government asked the UN to help build and maintain camp infrastructure, but it rejected UN appeals for freedom of movement for IDPs in camps and imposed severe restrictions on the UN’s access to the camps and on communication with IDPs.” The International Organisation for Migration built camps where alleged members of the LTTE were confined.

- The UN system “lacked an adequate and shared sense of responsibility for human rights violations.”

- “The single most effective UN action to protect civilians from gross human rights violations is early and robust political consensus among UN Member States in favour of protection.”

- “The UN’s failure to adequately respond to events like those that occurred in Sri Lanka should not happen again. When confronted by similar situations, the UN must be able to meet a much higher standard in fulfilling its protection and humanitarian responsibilities.”

³¹⁷ See Office of the United Nations Secretary-General, “Deputy Secretary-General’s remarks at interactive dialogue with the General Assembly on Human Rights Up Front,” January 27, 2016, <https://www.un.org/sg/en/content/dsg/statement/2016-01-27/deputy-secretary-generals-remarks-interactive-dialogue-general> (accessed October 6, 2020).

³¹⁸ Resolution 19/2, Promoting reconciliation and accountability in Sri Lanka, A/HRC/19/L.2, March 8, 2012, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/19/2&Lang=E> (accessed October 6, 2020).

³¹⁹ “Sri Lanka heading in ‘authoritarian direction’, says UN human rights chief,” *UN News*, August 12, 2013, <https://news.un.org/en/story/2013/08/447932> (accessed August 21, 2020).

rights abuses.³²⁰ The Mahinda Rajapaksa government refused any cooperation with the investigative team and tightened its oppressive rule.

The report mandated by the 2014 Human Rights Council resolution was released in September 2015.³²¹ It detailed horrific wartime abuses committed by both sides to the conflict. Known as the OISL Report, it covers the period from February 2002 to November 2011 and identifies patterns of persistent and large-scale violations and abuses of international human rights and humanitarian law. It corroborates previous independent accounts of wartime abuses, including those of the Secretary-General's Panel of Experts.³²²

The OISL Report found that “if established before a court of law, many of these allegations would amount, depending on the circumstances, to war crimes and/or crimes against humanity.” It said that “there must be profound institutional changes to end the decades of repressive and persecutory attitudes, practices and structures to prevent their recurrence,” and called for a comprehensive transitional justice process including

³²⁰ Resolution 25/1, Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/25/1, March 26, 2014, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/1 (accessed August 21, 2020).

³²¹ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

³²² Key findings include:

- “[T]he Government mounted a campaign of intimidation, harassment, surveillance, detention and other violations against human rights defenders and others, which was clearly intended - directly or indirectly - at deterring engagement with OISL.”
- “[L]aws of war violations by both the Sri Lankan armed forces as well as the Liberation Tigers of Tamil Eelam (LTTE) led to death of an estimated 40,000 civilians in the final months of the war in 2009.”
- “[T]here are reasonable grounds to believe the Sri Lankan security forces and paramilitary groups associated with them were implicated in unlawful killings carried out in a widespread manner against civilians and other protected persons.”
- There are “reasonable grounds to believe that the LTTE also unlawfully killed Tamil, Muslim and Sinhalese civilians.”
- “Thousands were detained, tortured in custody, or became victims of enforced disappearances.”
- “Family members of the disappeared persons - whether Sinhala, Tamil or Muslim - were also subjected to reprisals, harassment, and detention in response to their search for information.”
- “Torture has long been prevalent in Sri Lanka, both in relation to the armed conflict and the regular criminal justice system. OISL documented particularly brutal use of torture by the Sri Lankan security forces, particularly in the immediate aftermath of the armed conflict when former LTTE members and civilians were detained en masse.”
- “The information gathered by OISL provides reasonable grounds to believe that rape and sexual violence by security forces personnel was widespread against both male and female detainees, particularly in the aftermath of the war.”
- “Multi-Barreled Rocket Launchers (MBRLs) appears to have been a part of a consistent practice when firing towards the NFZs. Such weapons are area weapons not designed for hitting a point target, and cannot be precisely targeted at military objectives in densely populated areas.”
- A government policy of “depriving the civilian population in the Vanni of adequate basic foodstuffs and medical supplies essential for their survival ... has been well documented.”
- “[M]any of the structures responsible for the violations and crimes remain in place, ready to be reactivated when necessary as well as to prevent any progress in terms of addressing accountability.”
- “[T]here are reasonable grounds to believe that the IDPs were treated as suspects and detained because of their Tamil ethnicity and because they had come out of LTTE-controlled territory.”

individual prosecutions, reparations, truth-seeking, institutional reform, and vetting of public employees and officials.

Importantly, the OISL Report concluded that “for accountability to be achieved in Sri Lanka, it will require more than a domestic mechanism,” noting the “total failure of domestic mechanisms credibly to investigate, establish the truth, ensure accountability and provide redress to victims of the serious human rights violations and abuses described.”³²³

In support of this conclusion, the report pointed to a number of factors including:

- “the absence of any reliable system for victim and witness protection, particularly in a context where the risk of reprisals is very high”;
- the “inadequacy of the State’s domestic legal framework to deal with international crimes of this magnitude”;
- Sri Lanka’s “fail[ure] to recognize the gravity of the crimes committed, their international character, or to duly acknowledge the harm caused to the victims”;
- the “degree to which the State’s security sector and justice system have been distorted and corrupted by decades of emergency, conflict and impunity,” describing political interference by the executive with the judiciary as “routine”;
- the need for any mechanism to have the confidence of all Sri Lankans, in particular the victims, in the independence and impartiality of the process, “particularly given the politicization and highly polarized environment in Sri Lanka.”

The OISL Report instead called for an independent international justice process:

Sri Lanka should draw on the lessons learnt and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators . . . It will be important that the international community supports these initiatives and that they also continue to monitor these developments, to take further

³²³ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, “Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka,” A/HRC/30/61, September 28, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed October 14, 2020).

actions that may be required at the international level should there not be concrete results.³²⁴

Human Rights Council Resolution 30/1

Following the publication of the OISL report, the UN Human Rights Council adopted by consensus a landmark resolution known as 30/1 on October 1, 2015, which set out a detailed set of steps for Sri Lanka to pursue accountability and reconciliation, as well as security sector reform, to prevent future abuses.³²⁵

The new Sri Lankan government, following Mahinda Rajapaksa's defeat in the presidential election earlier that year, supported the resolution.³²⁶ In subsequent years, states at the Human Rights Council expressed concern at the government's slow progress towards establishing the four transitional justice mechanisms envisaged by resolution 30/1, and in public statements the government appeared to reject setting up a judicial mechanism with "participation of international judges, prosecutors, lawyers and investigators," as the resolution requires.

However, the government reaffirmed its commitments by co-sponsoring two further consensus resolutions, known as 34/1 in 2018 and 40/1 in 2019, the latter of which

³²⁴ *Report of the OHCHR Investigation on Sri Lanka (OISL)*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed August 21, 2020).

³²⁵ Resolution adopted by the Human Rights Council on 1 October 2015, A/HRC/RES/30/1, October 14, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf?OpenElement> (accessed July 24, 2020).

³²⁶ Resolution 30/1 contained 20 commitments, including:

- "the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations";
- "the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable";
- "the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defense lawyers and authorized prosecutors and investigators";
- "the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant to violations and abuses of human rights and violations of international humanitarian law";
- "effective security sector reforms as part of its transitional justice process";
- "ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process in serious crimes involving human rights violations or abuses or violations of international humanitarian law, including members of the security and intelligence units";
- "the commitment of the Government of Sri Lanka to review the Public Security Ordinance Act and to review and repeal the Prevention of Terrorism Act."

underlined “the need for further significant progress” and urged the adoption of a “time-bound implementation strategy.”³²⁷

At the Human Rights Council in February 2020, the newly elected government of Gotabaya Rajapaksa repudiated these commitments. Although resolution 40/1 remains in effect until February 2021, Rajapaksa said:

If any international body or organization continuously targets our country and our war heroes, using baseless allegations, I will also not hesitate to withdraw Sri Lanka from such bodies or organizations.³²⁸

Reports by UN Special Procedures

After the consensus resolution of the Human Rights Council in 2015, the government agreed to allow a number of UN experts to visit Sri Lanka. Many of them reported similar findings, although few—if any—of their recommendations have been implemented.

In 2016, the Working Group on Enforced or Involuntary Disappearances presented its report noting that “Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter-terrorist activities or in the internal armed conflict,” and had “left profound wounds on society and a deep sense of mistrust among relatives.”³²⁹

The Working Group also noted that at least 13 presidential commissions of inquiry, with mandates to investigate serious violations including enforced disappearances, had been characterized by “ineffectiveness and biases,” a “lack of independence and

³²⁷ Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/34/1, April 3, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/082/56/PDF/G1708256.pdf?OpenElement> (accessed October 6, 2020); Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/40/L.1, March 13, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/065/61/PDF/G1906561.pdf?OpenElement> (accessed July 24, 2020).

³²⁸ Meera Srinivasan, “Sri Lanka will not tolerate targeting of war heroes: Gotabaya Rajapaksa,” *The Hindu*, May 19, 2020, <https://www.thehindu.com/news/international/sri-lanka-will-not-tolerate-targeting-of-war-heroes-gotabaya-rajapaksa/article31626767.ece> (accessed August 20, 2020).

³²⁹ Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, A/HRC/33/51/Add.2, July 8, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/146/63/PDF/G1614663.pdf?OpenElement> (accessed September 21, 2020).

transparency,” and that their recommendations were “never followed up in a systematic manner.”³³⁰

In 2017, the special rapporteur on torture and other cruel, inhuman or degrading treatment presented his report.³³¹ The report concluded that, even after the end of the war, a “culture of torture” persisted, and was especially severe when a detainee faced national security allegations.³³² The special rapporteur found that the legal framework and structure of the security forces perpetuate the practice of torture. His recommendations included repealing the Prevention of Terrorism Act, a policy that the previous government was committed to, but which President Gotabaya Rajapaksa rejected in 2020.

The special rapporteur on the independence of judges and lawyers also presented her report in 2017.³³³ She found that “more tangible reforms are expected and necessary before the country can be considered to be on a stable and sustainable path towards democracy and to be governed by the rule of law,” and recommended that “urgent measures should be adopted by the authorities to give effect to all the rights protected in international human rights treaties that have been ratified and are therefore in force.”³³⁴

In 2018, the report of the Working Group on Arbitrary Detention on its visit to Sri Lanka found “systemic problems within the criminal justice system which placed defendants at a high risk of arbitrary detention,” and recommended that Sri Lanka “establish, without delay, a truth and reconciliation commission, a reparations programme and a special accountability mechanism, as outlined in Human Rights Council resolution 30/1.”³³⁵

³³⁰ Ibid.

³³¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, A/HRC/34/54/Add.2, December 22, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf?OpenElement> (accessed September 21, 2020).

³³² The report included accounts of “extremely brutal methods of torture, including burns; beatings with sticks or wires on the soles of the feet (falanga); stress positions, including suspension for hours while handcuffed; asphyxiation using plastic bags drenched in kerosene and hanging of the person upside down; application of chili powder to the face and eyes; and sexual torture, including rape and sexual molestation, and mutilation of the genital area.”

³³³ Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka, A/HRC/35/31/Add.1, March 23, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/074/80/PDF/G1707480.pdf?OpenElement> (accessed September 21, 2020).

³³⁴ Ibid.

³³⁵ Report of the Working Group on Arbitrary Detention on its visit to Sri Lanka, A/HRC/39/45/Add.2, July 23, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/231/56/PDF/G1823156.pdf?OpenElement> (accessed September 21, 2020).

The following year the report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism “observed a pervasive and insidious form of stigmatization of the Tamil community,” and found that a “pervasive climate of impunity and the lack of accountability for serious human rights violations that occurred both during the conflict and in the aftermath requires immediate redress.”³³⁶

In 2020, the report of the special rapporteur on the rights to freedom of peaceful assembly and of association found that “ethnic and religious discrimination, mistrust in State authorities and the heavy militarization of certain areas must be immediately tackled in order to fully realize the enjoyment of human rights in the country.”³³⁷

Most recently, the report of the special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, presented in September 2020, found that “Despite having been presented with important opportunities for genuine change and reform starting in early 2015, the Sri Lankan authorities have failed to adopt and implement a comprehensive transitional justice policy,” and that “the actual record of the criminal justice system in dealing with emblematic cases or cases relating to system crimes continues to be dismal.”³³⁸

Sri Lankan Government Commissions of Inquiry

Since 1977, the Sri Lankan government’s default response to international criticism of its human rights record has been to establish national commissions of inquiry or other *ad hoc* bodies to investigate human rights violations. The work of many of these commissions has been tainted with political interference and mainly served to exonerate the government security forces.³³⁹ Recommendations are rarely if ever implemented, and

³³⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/40/52/Add.3, December 14, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/365/91/PDF/G1836591.pdf?OpenElement> (accessed September 2020).

³³⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/44/50/Add.1, May 5, 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/109/54/PDF/G2010954.pdf?OpenElement> (accessed September 21, 2020).

³³⁸ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/45/45/Add.1*, June 18, 2020, <https://undocs.org/A/HRC/45/45/ADD.1> (accessed September 21, 2020).

³³⁹ On Sri Lanka’s commissions of inquiry, see, for example, Amnesty International, *Twenty Years of Make Believe, Sri Lanka’s Commissions of Inquiry*, June 2009, <https://www.amnesty.org/download/Documents/48000/asa370052009eng.pdf>; Kishali Pinto-Jayawardena, *Post-War Justice in Sri Lanka, The Rule of Law, The Criminal Justice System, and Commissions of Inquiry*, International Commission of Jurists, January 2010, https://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full_Report.pdf (accessed September 21, 2020).

sometimes the report is not published until many years later or not at all. Except for a handful of low-level members of the security forces, no perpetrators have been prosecuted and the victims have seen no redress.³⁴⁰

The 2006 Presidential Commission of Inquiry, which is also known as the Udalagama Commission, was established to investigate 15 emblematic incidents of killings, enforced disappearances, and other serious abuses by both sides to the conflict. It was supported by an International Independent Group of Eminent Persons (IIGEP) to oversee the commission's work to ensure independence and legitimacy.

However, in March 2008, the IIGEP members withdrew because “the proceedings of inquiry and investigation have fallen far short of the transparency and compliance with basic international norms and standards.”³⁴¹ The government allowed the Udalagama Commission's mandate to expire in June 2009, although it had only investigated 7 of its mandated 15 cases.

The Presidential Commission to Investigate Complaints Regarding Missing Persons,³⁴² which was known as the Paranagama Commission,³⁴³ was appointed by President Mahinda Rajapaksa and presented its report under the new government in 2015. The commission was criticized for a lack of witness and victim protection, intimidation, and surveillance of participants, “inherent bias,” and insensitivity to the families of the disappeared.³⁴⁴ No accountability resulted from the process, nor did the relatives of the disappeared learn the fate of their loved ones.³⁴⁵

³⁴⁰ Human Rights Watch, “Letter on Sri Lanka to Permanent Representatives of Human Rights Council Member and Observer States,” February 2, 2012, <https://www.hrw.org/news/2012/02/02/letter-sri-lanka-permanent-representatives-human-rights-council-member-and-observer> (accessed September 21, 2020).

³⁴¹ International Independent Group of Eminent Persons, “Public Statement,” March 6, 2008, <http://www.iataj.org/iipeg.pdf> (accessed September 21, 2020).

³⁴² See “Maxwell Paranagama Commission Report: Full Text,” *Colombo Telegraph*, October 22, 2015, <https://www.colombotelegraph.com/index.php/maxwell-paranagama-commission-report-full-text/> (accessed September 21, 2020).

³⁴³ James Ross, “Sri Lankan Justice Has No Place for ‘Accountable Amnesties,’” Human Rights Watch, August 22, 2016, <https://www.hrw.org/news/2016/08/22/sri-lankan-justice-has-no-place-accountable-amnesties>.

³⁴⁴ Centre for Policy Alternatives, “The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications,” December 2014, <https://s3.amazonaws.com/f.cl.ly/items/ou1koo3T2jod343ZogoM/Dissappearances%20COI%20Dec%202014%20FINAL.pdf> (accessed September 21, 2020).

³⁴⁵ Tharushan Fernando, “Udalagama, Paranagama Commission Reports explained,” *Newsfirst*, October 21, 2015, <https://www.newsfirst.lk/2015/10/21/udalagama-paranagama-commission-reports-explained/> (accessed September 21, 2020).

The Lessons Learnt and Reconciliation Commission (LLRC), was established by President Mahinda Rajapaksa in 2010 following international pressure. Given the general climate of impunity and the continued military presence in the north and east, witnesses who came forward to tell their stories did so with great bravery.³⁴⁶ The LLRC report, released in December 2011, contained some useful recommendations on reconciliation and called for investigations in a handful of specific incidents. However, it disregarded the worst abuses by government forces and offered no realistic pathway for accountability. In the face of overwhelming evidence, it concluded that there were considerable civilian casualties, but ended up largely exonerating government forces, blaming the casualties either directly or indirectly on the LTTE.³⁴⁷ Its recommendations were never implemented.

The Gotabaya Rajapaksa government is once again claiming to the Human Rights Council that it will deliver justice through “a domestically designed and executed process in line with the Government’s policy framework.” However, a statement delivered in September 2020, went on to denounce allegations of war crimes against senior military officials as “unacceptable,” stating that domestic processes “have not found substantive evidence against any of the senior military officials.”³⁴⁸

In opening the 43rd session of the UN Human Rights Council in February 2019, Secretary-General Antonio Guterres issued his “Call to Action for Human Rights,” framed as both a commitment and the “highest aspiration,” and underscoring “during the 75th anniversary year of the United Nations ... the centrality of human rights in all the UN does.”³⁴⁹

The Human Rights Council’s engagement, when the Sri Lanka resolution next arises for consideration at its 46th session, will be the test of that commitment.

³⁴⁶ Human Rights Watch, “Sri Lanka: New Panel Doesn’t Satisfy US Concerns,” May 27, 2010, <https://www.hrw.org/en/news/2010/05/27/sri-lanka-new-panel-doesn-t-satisfy-us-concerns>.

³⁴⁷ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, <https://reliefweb.int/sites/reliefweb.int/files/resources/FINAL%2520LLRC%2520REPORT.pdf> (accessed September 21, 2020).

³⁴⁸ Statement by Sri Lanka during the General Debate under Agenda Item 2 at the 45th Session of the UN Human Rights Council, September 15, 2020, <https://srilankahc.uk/2020/09/16/statement-by-sri-lanka-during-the-general-debate-under-agenda-item-2-at-the-45th-session-of-the-un-human-rights-council-was-made-by-ms-dayani-mendis-actg-permanent-representative-of-s/> (accessed September 21, 2020).

³⁴⁹ Secretary-General's remarks to the UN Human Rights Council: “The Highest Aspiration: A Call to Action for Human Rights,” February 24, 2020, <https://www.un.org/sg/en/content/sg/statement/2020-02-24/secretary-generals-remarks-the-un-human-rights-council-%E2%80%9Cthe-highest-aspiration-call-action-for-human-rights-delivered-scroll-down-for-all-english> (accessed November 24, 2020).

Recommendations

To the Government of Sri Lanka

- Cooperate with the UN Human Rights Council on a new resolution to create an independent international mechanism to secure evidence and investigate allegations of grave human rights abuses, war crimes, and crimes against humanity, and to prosecute those responsible.
- Abide by international commitments on the four transitional justice systems including a truth and reconciliation mechanism; an office on missing persons; an office for reparations; and a special criminal court with international participation.
- Strengthen the Office of Missing Persons and Office for Reparations to make them independent and fully functional.
- Cease attempts to stifle dissenting voices, including lawyers, journalists, human rights defenders, and the victims of past abuses and their families.
- Restore the independence of police investigators and the Attorney General's Office to pursue criminal investigations against alleged perpetrators of grave abuses.
- End the harassment of officials who are involved in investigations of alleged human rights abuses.
- Restore and protect the independence of the judiciary and the Human Rights Commission.
- Do not adopt any recommendation by the Presidential Commission of Inquiry on Political Victimization which would interfere in the proper functioning of the courts, the Attorney General's Office, and in police investigations.
- Ensure that court hearings in cases of human rights abuses can precede without any political interference or delay.
- Publish a list of all those who surrendered to the military in 2009 and conduct credible and independent investigations into enforced disappearances.
- Counter hate speech targeting minorities by publicly addressing libellous or incendiary misinformation, promoting tolerance, conducting public education, and strengthening security to protect threatened populations.
- Repeal the Prevention of Terrorism Act, which facilitates abuses including torture and arbitrary detention, and replace it with rights-respecting legislation. Investigate and set aside all confessions obtained under torture or other coercive measures or without the presence of legal counsel.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- Remove the authority of the military over civilian affairs.
- Implement the recommendations made by UN special rapporteurs and working groups who have visited and reported on Sri Lanka since 2015.

To the Office of the Attorney General

- Proceed with prosecutions in human rights cases where there is sufficient evidence of responsibility for criminal offenses, irrespective of political considerations and disregarding political pressure.
- Ensure that evidence in rights cases is protected and preserved.
- Uphold the principle that the Office of the Attorney General should be impartial and fully independent of the government. To the extent that that is no longer possible under the 20th amendment to the constitution, publicly acknowledge that limitation and do not take politically compromised positions.

To the Sri Lanka Police

- End the use of torture and other ill-treatment against people in police detention.
- End the excessive use of force during police operations.
- Respect the right of everyone in Sri Lanka to freedom of association, and that any limitations for reasons of public health must be limited to what is necessary to protect public health.
- Provide equal protection of the law to everyone equally, irrespective of their community.
- End the harassment of human rights activists and the victims of past abuses and their families. Investigate all allegations of harassment and intimidation and take appropriate action against those responsible.
- Investigate allegations of human rights abuses impartially and credibly. Suspend officers who are accused of abuses, intimidating witnesses, or obstructing investigations, until enquiries into their conduct can be completed, and further action taken as appropriate.

To the Human Rights Commission of Sri Lanka

- Uphold the principle that the commission should be impartial and fully independent of the government. To the extent that that is no longer possible under the 20th amendment to the constitution, publicly acknowledge that limitation and do not take politically compromised positions.

- Ensure the security of all material held by the commission that may place individuals at risk of harassment or abuse if it is divulged to the government or others.

To the United States, United Kingdom, Germany, Canada, Japan, China, India, and Other Governments with Influence in Sri Lanka

- Support a resolution at the 46th session of the UN Human Rights Council beginning in February 2021 to advance international accountability for international crimes committed in Sri Lanka. The new resolution should include continued reporting by the Office of the UN High Commissioner for Human Rights, a mandate to the OHCHR to collect, preserve, and analyse evidence of serious violations of international law committed in Sri Lanka, to identify perpetrators and prosecute those responsible. The high commissioner should be mandated to report to the Human Rights Council on actions needed to advance accountability.
- Impose targeted sanctions on individuals credibly accused of serious human rights abuses and violations of international humanitarian law in Sri Lanka.
- Speak out in public and private against attempts to stifle civil space and dissent.
- Pursue criminal investigations against credibly alleged perpetrators of crimes committed in Sri Lanka who are subject to universal jurisdiction, and prosecute where the evidence is sufficient.
- Condemn in public and private hate speech and discrimination against minorities in Sri Lanka, especially by ruling party leaders and supporters.
- Call upon Sri Lanka to meet its international human rights commitments to continue to enjoy privileged trading access.
- Work in coordination with partner governments to support and uphold the values of post-conflict reconciliation and equal respect for the rights of all communities in Sri Lanka in public and private interactions with the government of Sri Lanka and in development programming.
- Establish and implement guidelines for development partners to ensure that international aid is not used in programs or projects that disadvantage minorities, including their land rights, and that the military does not benefit from foreign aid until it implements commitments to accountability and security sector reform.
- Suspend military cooperation with the Sri Lankan armed forces until commitments to accountability and security sector reform are implemented.

To the European Union

- Raise concerns over the rapid deterioration of Sri Lanka's human rights situation, including on the benchmarks identified by the European Commission in its most recent GSP+ report, and publicly and privately inform the Sri Lankan government that persistent failure to meet its human rights obligations under the scheme risks withdrawal of the tariff preferences.
- Support a strong successor resolution to 30/1 at the 46th session of the Human Rights Council in February 2021 that would maintain monitoring by the Office of the UN High Commissioner for Human Rights and advance the process of accountability for international crimes through the collection, preservation, and analysis of evidence, to identify perpetrators and prosecute those responsible. The high commissioner should be mandated to report to the Human Rights Council on actions needed to advance accountability.
- Consider the adoption of targeted measures, including asset freezes and travel bans, against senior Sri Lankan officials implicated in serious violations of international law, or those playing an active role in obstructing justice for human rights crimes.
- Work with other development partners to set up a common set of guidelines and safeguards to ensure that assistance and programs are conflict sensitive, in particular that they do not disadvantage minorities, including minorities' land rights in the north and east of Sri Lanka. The Sri Lankan military should not be a partner in development programming without implementing security sector reform and a credible vetting process to identify alleged perpetrators of serious violations.

To International Financial Institutions and Multilateral Donors

- Ensure that all economic and development assistance to Sri Lanka complies with rigorous conflict sensitivity and human rights guidelines, including by ensuring that it does not disadvantage minority groups, including their land rights and environmental rights, and that it does not benefit the military until a credible process of security sector reform has been completed. Publish regular assessments of compliance with those guidelines.

To the United Nations

- Ensure that the Office of the High Commissioner for Human Rights continues to monitor and report on the human rights situation in Sri Lanka, and provides recommendations to the Human Rights Council on actions needed to advance

accountability, and collect, preserve and analyse evidence of human rights violations and international crimes, with a view to providing justice for victims and accountability for perpetrators.

- Seek access for UN special procedures to visit Sri Lanka, monitor and report on the human rights situation in the country, and urge implementation of their recommendations.
- Ensure that the UN resident coordinator and country team act on the recommendations of the Petrie Report, which were accepted in full by the secretary-general, including by speaking out clearly and strongly on ongoing abuses and impunity, and giving human rights standards priority in all programmatic work.
- Clearly articulate, through the secretary-general's office the UN's commitment to upholding human rights and accountability in Sri Lanka in accordance with the "Call to Action for Human Rights."
- Address all cases of reprisals at the UN included in the secretary-general's report to the Human Rights Council.
- Meaningfully implement the UN decision to bar non-essential Sri Lankan soldiers from UN peacekeeping missions until the Sri Lankan military implements commitments to accountability and security sector reform. Recognize that Sri Lankan vetting of security forces personnel for UN peacekeeping is not currently credible.

To the UN Human Rights Council

- Adopt a resolution to maintain scrutiny of the human rights situation in Sri Lanka, establish an independent international mechanism or process to investigate allegations of serious human rights abuses, war crimes and crimes against humanity, secure evidence, and identify perpetrators for future prosecution.

Acknowledgments

This report was researched and written by Human Rights Watch staff, and edited by Meenakshi Ganguly, South Asia director. It was reviewed by James Ross, legal and policy director; John Fisher, Geneva advocacy director; and by Joseph Saunders, deputy program director. Production and editorial assistance were provided by Seashia Vang, Senior Coordinator, with the Asia Division; and Travis Carr, photo and publications coordinator.

Human Rights Watch would like to thank our external reviewers, and all the experts, activists, and affected families who kindly agreed to speak with us. For security reasons, most of those who helped with the report have chosen to remain anonymous. We acknowledge all the critical work conducted by Sri Lankan organizations, activists, and lawyers to demand truth and accountability and struggle for an open society in Sri Lanka. Our greatest gratitude is to the relatives of victims, who spoke with us about their long fight for justice.

Appendix: Letter from Human Rights Watch to Attorney-General Dappula De Livera

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January 12, 2021

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Re: Investigations and prosecutions of human rights cases in Sri Lanka

Dear Attorney-General,

I write on behalf of Human Rights Watch concerning the government's progress investigating and prosecuting several cases of alleged violations of international human rights and humanitarian law in Sri Lanka, as well as current obstacles to the administration of justice, which will be the subject of a forthcoming report.

Human Rights Watch monitors human rights issues involving state and non-state actors in over 100 countries. We have worked on human rights in Sri Lanka for over 30 years, including police reform, freedom of expression, and the rights of children and LGBT people. For many years we documented abuses during the armed conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lanka government, and violations that continued after the LTTE's defeat.

In order to ensure the accuracy and fairness of our reporting, we would appreciate your responses to the following questions and any supporting material you can provide. Responses received by **January 22, 2021** will be reflected in our report.



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1. What is the legal status of the Presidential Commission to Investigate Political Victimization? Has its report affected the functioning of your office? Have actions by the commission had an impact on legal proceedings, including by intimidating or threatening investigators and witnesses in any case?
2. What is the status of proceedings relating to the enforced disappearance of Prageeth Ekneligoda after the intervention of the Presidential Commission to Investigate Political Victimization?
3. Has your office conducted any investigations of alleged enforced disappearances related to the armed conflict with the LTTE that would support President Gotabaya Rajapaksa's assertion that those who went missing at the end of the war in 2009 are no longer alive? If so, what is the current status of those investigations?
4. What is the current status of the case relating to the killing of 17 aid workers of Action Contre la Faim in Muttur in 2006?
5. What is the current status of the case relating to the abduction and torture of Keith Noyahr, which was reportedly ready to go to trial in 2019?
6. What is current status of the proceedings in the case of Lasantha Wickrematunge?
7. Is there currently litigation to resume the trial of 14 naval officers in relation to the abduction of 11 men between 2008-9, which the Court of Appeal had suspended?
8. What is the current status of the 2006 "Trinco Five" case since a magistrate in 2019 acquitted 12 members of the police Special Task Force and a police officer due to a "lack of evidence"?
9. What actions, if any, is your office taking with respect to the detention of lawyer Hejaaz Hizbullah and poet Ahnaf Jazeem under the Prevention of Terrorism Act?

Thank you for your attention to these matters.

As noted, to reflect your comments in our report, we will need your response by **January 22, 2021**. Please do not hesitate to contact to me through my colleague Seashia Vang on vangs@hrw.org.

Yours sincerely,

Brad Adams
Asia Executive Director



OPEN WOUNDS AND MOUNTING DANGERS

Blocking Accountability for Grave Abuses in Sri Lanka

The Sri Lankan government led by President Gotabaya Rajapaksa has since taking office in November 2019 waged a campaign of fear and intimidation against human rights activists, journalists, lawyers, and others challenging government policy. It has adopted policies and practices hostile to ethnic and religious minorities. And it has repressed those seeking justice for abuses committed during the country's 26-year civil war, which ended in 2009. Fundamental democratic freedoms and post-war reconciliation efforts are in jeopardy.

Open Wounds and Mounting Dangers details the Rajapaksa administration's efforts to block accountability for past violations of human rights, examining seven cases in particular. In February 2020, the government repudiated commitments to the United Nations to provide truth and accountability for serious abuses committed during and after Sri Lanka's civil war. While families wait in vain to learn what happened to missing loved ones, the government has interfered in domestic legal processes to prosecute the worst atrocities. The Rajapaksa administration celebrates abusive generals as "war heroes" and has promoted them to senior positions. No one has been brought to justice.

Sri Lanka is at a turning point. The risk of further serious rights violations is growing. To protect Sri Lanka's beleaguered civil space and marginalized populations, it is crucial that foreign governments, donors, and international institutions now reinforce efforts to promote accountability, starting with a resolution at the UN Human Rights Council in February 2021 to maintain scrutiny of Sri Lanka's human rights situation.

(above) Sri Lankan soldiers at a checkpoint during a curfew imposed to stop the spread of Covid-19, Colombo, May 1, 2020.

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(front cover) Sri Lankan President Gotabaya Rajapaksa at a campaign rally in Homagama, on the outskirts of Colombo, Sri Lanka, November 13, 2019.

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