

Submission by the Centre for Policy Alternatives

The following is a brief submission made by the Centre for Policy Alternatives (CPA). The present submission is an examination of a few issues and is by no means an exhaustive analysis.

List of issues:

- 1. Constitutional and legal framework within which the Covenant is implemented (art 2)**

Constitution Drafting Process

The president appointed an expert committee to draft a new Constitution as per the promise made in the presidential manifesto *Vistas of Prosperity*. A preliminary report by the expert committee has been submitted to the President on 25th April 2022. The Cabinet then appointed a Sub-Committee consisting of several Ministers to study the contents of the report and make appropriate recommendations to the Cabinet.¹ However, with the resignation of the then Prime Minister Mahinda Rajapaksa and the consequent dissolution of the cabinet, any further progress has stalled.

Constitutional Amendments

The latest amendment to the present Constitution of Sri Lanka, the 20th Amendment, introduced in 2020 has undermined the democratic processes and disrupted the Separation of Powers introduced by the 19th Amendment - which was scrapped by the present government. Appointments made to the judiciary

¹ These Ministers appointed at the time were, Hon. (Prof). G.L. Peiris - Minister of Foreign Affairs (Chairman of Committee), Hon. Dinesh Gunawardena- Minister of Public Administration, Home Affairs, Provincial Councils and Local Government, Hon. Douglas Devananda - Minister of Fisheries, Hon. (Dr) Ramesh Pathirana- Minister of Education and Plantation Industries, Hon. Ali Sabri- Minister of Finance and Justice; 'Report of the Expert Committee appointed to draft a new Constitution', News.lk, 3-May 2022<<https://www.news.lk/news/political-current-affairs/item/33987-report-of-the-expert-committee-appointed-to-draft-a-new-constitution>>

including the Chief Justice², other High Offices³, and Independent Commissions⁴, which were earlier (under the 19th Amendment) made according to the recommendations by the Constitutional Council, are now only to be subjected to the non-binding observations of the new Parliamentary Council.⁵

There were many initiatives put forward by different political parties to remedy this in the present economic and political crisis, including the call for the abolition of the executive presidency. On 21st April 2022, the SJB presented to the Secretary General of Parliament a draft 21st constitutional amendment bill with several proposals with the main proposal being the abolishing of the executive presidential system and replacing it with a system that reinforces constitutional democracy, separation of powers, and checks and balances.⁶

The former Prime Minister Mahinda Rajapaksa, MP noted in his speech at the Parliament in April 2022 that by way of an immediate constitutional remedy, the democratic processes of the 19th Amendment should be brought back with necessary changes and updates.⁷ Such diametrically opposite political and constitutional stances have become the norm during the present crisis in Sri Lanka.

In addition to the SJB proposed 21st amendment bill discussed above, in March 2022, Sri Lanka Podujana Peramuna (SLPP) lawmaker and Member of Parliament (MP), Wijedasa Rajapakshe, on behalf of 40 government MPs who now function

² The Chief Justice and the Judges of the Supreme Court, the President and Judges of the Court of Appeal, the Members of the Judicial Service Commission.

³ The Attorney-General, the Auditor-General, the Parliamentary Commissioner for Administration (Ombudsman), the Secretary-General of Parliament.

⁴ 1. The Election Commission. 2. The Public Service Commission. 3. The National Police Commission. 4. The Human Rights Commission of Sri Lanka. 5. The Commission to Investigate Allegations of Bribery or Corruption. 6. The Finance Commission. 7. The Delimitation Commission.

⁵ 'Summary of Changes Under the Proposed 20th Amendment', Centre for Policy Alternatives, September 2020<<https://www.cpalanka.org/wp-content/uploads/2020/09/Final-doc-Summary-of-Changes-Under-the-Proposed-20th-Amendment.pdf>>

⁶ 'Sri Lanka's opposition SJB presents proposed 21st amendment to constitution', Economy Next, April 21,2022<<https://economynext.com/sri-lankas-opposition-sjb-presents-proposed-21st-amendment-to-constitution-93247>> ;<https://www.newsfirst.lk/2022/04/21/sjb-submits-its-proposals-for-the-21st-amendment-to-the-constitution/>

⁷Press Release by the Prime Minister's Office, Press Release No. 760, 19 April 2022 <<https://www.newswire.lk/wp-content/uploads/2022/04/PMS-special-statement.pdf>>

independently in parliament, presented a 21st Amendment Bill to the Constitution of Sri Lanka as a Private Member's Bill.⁸

After the appointment of Wijedasa Rajapakshe as the Minister of Justice in the cabinet of the new Prime Minister Ranil Wikremesinghe on 20 May 2022,⁹ a further diluted version of his Bill was presented by Rajapakshe to the Cabinet on 23rd May 2022. Copies of the Bill were distributed among all party leaders, with a discussion on the Bill to take place on 27th May 2022. Following this, the amendment will be sent back to Cabinet for final approval.¹⁰ The provisions of this Bill however do not meet the expectations of the private member's bill presented by Wijedasa Rajapakshe MP, or the one presented by the SJB. As opposed to those bills, the present bill currently under scrutiny only attempts to limit the powers of the executive president, rather than abolishing the presidential system.

ICCPR Act

The Sri Lankan Supreme Court has not up to now made any determinations departing from the precedent set in the *Nallaratnam Singarasa* case favouring dualism. However, the ICCPR Act, No. 56 of 2007¹¹ has been able to incorporate certain rights pertaining to preventing propagation of war and hate speech, the entitlements of an alleged offender, rights of a child among other things.

However, the Act's provisions against inciting national and religious hate has been weaponized by the State to take into custody, the writer, Shakthika Sathkumara, who was accused of writing a short story that insults the Buddhist clergy, and arrest a woman who allegedly insulted Buddhism through her attire, as well as against the Attorney-at-Law Hejaaz Hizbullah.¹²

⁸Wijedasa to present 21A to Parliament : Proposes changes to current Presidency', NewsWire <<https://www.newswire.lk/wp-content/uploads/2022/03/21st-Amendment-Wijedasa-Rajapakshe.pdf>>

⁹Sri Lanka appoints nine new cabinet ministers', Economy Next, 20 May 2022 <<https://economynext.com/sri-lanka-appoints-nine-new-cabinet-ministers-94491/>>

¹⁰ Zulfick Farzan, '21st Amendment presented to the Cabinet', News First, 23 May 2022 <<https://www.newsfirst.lk/2022/05/23/21st-amendment-presented-to-the-cabinet/>>

¹¹International Covenant on Civil and Political Rights Act, No. 56 of 2007 <<https://www.lawnet.gov.lk/wp-content/uploads/2016/12/INTERNATIONAL-COVENANT-ON-CIVIL-AND-POLITICAL-RIGHTS-ICCPR-ACT-NO-56-OF-2007.pdf>>

¹² Gehan Gunatilleke, 'Sri Lanka's ICCPR Act: Broken Shield and Weapon of Choice', *The Morning* <<https://epaper.themorning.lk/Home/ShareArticle?OrgId=9985a873&imageview=1>>

ICCPR provides that even under a state of emergency, certain rights including the right to life, and freedom from torture or cruel, inhuman and degrading treatment, are non-derogable.¹³ But under the recently declared State of Emergency on 6th of May, violence ensued on the 9th, after government loyalists¹⁴ attacked peaceful anti-government protesters in the Temple Trees protest site (dubbed *MainaGoGama*) and the Galle Face Green protest site (*GotaGoGama*) in Colombo, resulting in the death of 10 persons and left nearly 200 people injured.¹⁵ Thus despite the Covenant's provisions on non-derogable right to life and prohibition of torture, such violations continue.

2. Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

Cabinet of Ministers in April 2021 approved a proposal to permit Muslims a choice regarding registering their marriage under the general/common law on marriages i.e. the Marriage Registration Ordinance, or under the Muslim Marriage and Divorce Act (MMDA). Former Minister Sabry proposed to amend the Civil Procedure Code accordingly to reflect this.¹⁶

The Cabinet also approved the proposals to increase the marriageable age of Muslims to eighteen (18), allow Muslim women to sign their marriage contract, and do away with Polygamy, and the Quazi court system.¹⁷ A ten-member Advisory Committee on Muslim Law Reforms too was appointed to look in to the necessary

¹³ Article 4(2) of the Covenant.

¹⁴ The government loyalists were at a meeting with then Prime Minister Mahinda Rajapaksa at Temple Trees, before attacking the peaceful protesters.

¹⁵SL unrest death toll rises to 10', NewsWire, 19 May 2022 <<https://www.newswire.lk/2022/05/19/sl-unrest-death-toll-rises-to-10/>> ; "Death toll in Sri Lanka violence rises to eight", The Economic Times, 10 May 2022 <<https://economictimes.indiatimes.com/news/international/world-news/death-toll-in-sri-lanka-violence-rises-to-eight/articleshow/91460428.cms>>

¹⁶ 'Cabinet nod for permitting Sri Lanka's Muslim marriages, divorces under common law', EconomyNext, 20 July 2021 <<https://economynext.com/cabinet-nod-for-permitting-sri-lankas-muslim-marriages-divorces-under-common-law-84174/>>

¹⁷'It's Time to Free Muslim Women from Their Shackles', Groundviews; <https://economynext.com/cabinet-nod-for-permitting-sri-lankas-muslim-marriages-divorces-under-common-law-84174/>

legal reforms, and the Committee has submitted its report in June 2021 to the Minister.¹⁸

The Land Development Ordinance (LDO) of 1935 contained discriminatory provisions which provided for an order of inheritance giving preference to a male heir ('eldest son') where the original owner (traditionally a man), died intestate.¹⁹ The parliament passed a Land Development (Amendment) Bill on 11 March 2022, which, according to the then Lands Minister S.M. Chandrasena, will ensure gender equality in land inheritance and reduce future disputes.²⁰ However, the LDO doesn't yet recognize the grant of state land in the form of joint and co-ownership.

Similar gender discriminatory provisions of the Thesawalamai law have not been amended. Sections 5 and 8 of the Jaffna Matrimonial Rights and Inheritance Ordinance perpetuates the gender bias by requiring a woman to seek her husband's written consent when disposing of her own immovable property. Similar gender bias and discrimination are enshrined in Kandyan law and Muslim law on inheritance as well.²¹

Sri Lanka's Penal Code criminalizes consensual same-sex relations resulting in abuse, discrimination, and stigma. Section 365 and 365A of the Penal Code, which states that "carnal intercourse against the order of nature" and "acts of gross indecency", respectively, are criminal offences punishable by the law, carrying a sentence of up to 10 years.

There are no laws which specifically criminalise transgender or intersex people in Sri Lanka. However, section 399 of the Penal Code, which bans 'cheating by impersonation', is sometimes used against Transgender persons on the basis that their gender expression does not match the gender stated on their ID.

¹⁸ Mohammed Rasooldeen, 'Advisory Committee on Muslim Law Reforms submits MMDA report', Daily News, 29 June 2021

<<http://www.dailynews.lk/2021/06/29/local/252678/advisory-committee-muslim-law-reforms-submits-mmda-report>>

¹⁹ Schedule three of the Act.

²⁰ 'Sri Lanka parliament passes Land Development (Amendment) Bill; gender equality in inheritance sought', Economy Next, 12 March 2022

<<https://economynext.com/sri-lanka-parliament-passes-land-development-amendment-bill-gender-equality-in-inheritance-sought-91579/>>

²¹ Bansari Kamdar, 'Gendered Land: Sri Lankan Women Battle Unequal Access to Resources', The Diplomat, 9 March 2021 <<https://thediplomat.com/2021/03/gendered-land-sri-lankan-women-battle-unequal-access-to-resources/>>

Women's representation in the parliament has also not recorded any progress. In 2020, only 12 women obtained seats in Parliament (including 4 National List seats).

3. States of emergency and counter-terrorism measures (arts. 2, 7, 9, 10, 14, 18, 19, 21 and 26)

States of Emergency

The President has the sole discretion to declare a state of emergency and such declaration cannot be challenged in court.²² The proclamation of a state of emergency brings into operation the provisions of the Public Security Ordinance including the power of the President to make Emergency Regulations.²³ Such Emergency Regulations may impose restrictions on certain fundamental rights guaranteed by the Constitution and by other laws. There is no requirement that the restrictions be proportionate to the harm sought to be averted and it falls entirely to the good will of the Executive to act responsibly.²⁴

Sri Lankan parliament approved a state of emergency declared by the president on 30 August 2021, claiming the need to control food prices and prevent hoarding amid shortages of some staples. The emergency law enabled authorities to detain people without warrants, seize property, enter and search any premises, suspend laws and issue orders that cannot be questioned in court. Officials who issue such orders are also immune from lawsuits.²⁵

More recently, the President declared a state of emergency with effect from 1st of April 2022 in response to a spate of protests which erupted countrywide including the mass protest and violence outside the President's residence in Mirihana.²⁶ A state of emergency was declared under Section 2 of the Public Security Ordinance,

²²'Understanding Emergency: Easter Sunday Attacks 2019' Centre for Policy Alternatives, 25th April 2019 <https://www.cpalanka.org/wp-content/uploads/2019/04/QA_SoE.pdf>

²³ ibid.

²⁴ ibid.

²⁵'Sri Lanka parliament approves state of emergency' Al Jazeera, 7 September 2021 <[Sri Lanka parliament approves state of emergency | Food News | Al Jazeera](#)>

²⁶'President issues Gazette declaring Public emergency in Sri Lanka', Newswire, 1st April 2022 <[President issues Gazette declaring Public emergency in Sri Lanka - NewsWire](#)>

ostensibly “in the interests of public security, the protection of public order and the maintenance of supplies and services essential to the life of the community.”²⁷ In the aftermath of the Mirihana protest, the police made several arrests and attempted to charge the persons concerned under the PTA but were thwarted due to the massive public outcry.²⁸ In anticipation of further public protest, a blanket closure of social media was imposed at the request of the Ministry of Defence.²⁹ On 5th April 2022 the President revoked the gazette declaring the state of emergency.³⁰

A state of emergency was again declared by the President with effect from 6th May 2022.³¹ But despite these emergency declarations, state-sponsored violence on the peaceful protestors at the Galle Face promenade and retaliatory unrest and violence still took place around the country, beginning 9th May. Emergency regulations dated 6th May 2022 were released on 9th May 2022³² and gave sweeping powers to the police and the armed forces to search and make arrests of “suspects” without due process safeguards.³³ Access to legal representation is subject to conditions.³⁴ The offences are broad and can be used to bar trade union strike actions, and restrict

²⁷ Gazette (Extraordinary) No.2273/86 of 1st April 2022

<http://documents.gov.lk/files/egz/2022/4/2273-86_E.pdf >

²⁸ Azzam Ameen, ‘HRCSL says use of PTA to charge Mirihana protesters not necessary’ The Morning, 1st April 2022 <[HRCSL says use of PTA to charge Mirihana protesters not necessary - The Morning - Sri Lanka News](https://www.morning.lk/news/hr-csl-says-use-of-pta-to-charge-mirihana-protesters-not-necessary)>; ‘Protesters arrested in Mirihana will not be charged under PTA - Police’ Adaderana, 1st April 2022

<<http://www.adaderana.lk/news/81544/protesters-arrested-in-mirihana-will-not-be-charged-under-pta-police>>; Shamindra Ferdinando, ‘Prez Media blames ‘extremists’, HRCSL warns against using PTA’, The Island, 04th April 2022

<<https://island.lk/prez-media-blames-extremists-hrcsl-warns-against-using-pta/>>

²⁹ Zulfick Farzan, ‘Imposing Social Media Ban a violation of Human Rights - SL Human Rights Chief’, News First, 03rd April 2022 <[Imposing Social Media Ban a violation of Human Rights - SL Human Rights Chief](https://www.newsfirst.lk/2022/04/03/imposing-social-media-ban-a-violation-of-human-rights-sl-human-rights-chief)>

³⁰ Sri Lankan President Gotabaya Rajapaksa revokes state of Emergency’, The Hindu, 6 April 2022 <<https://www.thehindu.com/news/international/sri-lankan-president-gotabaya-rajapaksa-revokes-state-of-emergency/article65294425.ece>>; Gazette (Extraordinary) No.2274/10 of 5th April 2022 <http://www.documents.gov.lk/files/egz/2022/4/2274-10_E.pdf >

³¹ Zulfick Frazan, ‘BREAKING : Sri Lankan President declares Emergency’, News First, 6th May 2022 <<https://www.newsfirst.lk/2022/05/06/breaking-sri-lankan-president-declares-emergency/>>

³² ‘Sri Lanka: New Emergency regulations and shooting orders threaten human rights’, Amnesty International, 11th May 2022

<<https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/>>

³³ Gazette (Extraordinary) No. No. 2278/23 of 06 May 2022

<http://documents.gov.lk/files/egz/2022/5/2278-23_E.pdf >

³⁴ *ibid.*

the right to freedom of expression including the right to information, freedom of movement and peaceful assembly.³⁵

Further, the Regulations provide powers to use armed force against anyone who does not comply with orders. Persons suspected of having committed an offence under the Regulations, may be admitted to bail only under “exceptional circumstances.”³⁶ Of grave concern for a country in which custodial torture is frequent, the Regulations provide for persons authorised by the commanders of the armed forces to remove suspects from detention for a period of seven days at a time.³⁷

On 10th May 2022, the Defence Ministry issued a notice saying the Armed forces have been ordered to open fire on anyone looting public property or causing harm to others.³⁸ However, the new Prime Minister told parliament on 19th May 2022 that no shoot-on-sight orders were issued to the Defence Ministry causing confusion as to the exact status.³⁹

According to media reports, the state of emergency lapsed on 20th May 2022.⁴⁰

Prevention of Terrorism Act (PTA) and PTA Amendment Act

The draconian PTA (the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, as amended by Act Nos. 10 of 1982 and 22 of 1988),⁴¹ brought in as a temporary provisions Act has been in force for nearly 43 years.

³⁵ ‘Sri Lanka: New Emergency regulations and shooting orders threaten human rights’, Amnesty International, 11th May 2022

<<https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/>>

³⁶ Gazette (Extraordinary) No. No. 2278/23 of 06 May 2022

<http://documents.gov.lk/files/egz/2022/5/2278-23_E.pdf>

³⁷ ‘Sri Lanka: New Emergency regulations and shooting orders threaten human rights’, Amnesty International, 11th May 2022

<<https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/>>

³⁸ *ibid.*

³⁹ ‘PM insists no shoot-on-sight orders given’, Colombo Gazette, 19th May 2022

<<https://colombogazette.com/2022/05/19/pm-insists-no-shoot-on-sight-orders-given>>

⁴⁰ ‘State of emergency in Sri Lanka revoked’, Ada Derana, 21 May 2022

<<http://www.adaderana.lk/news/82571/state-of-emergency-in-sri-lanka-revoked>>.

⁴¹ ‘THE NEED TO REPEAL AND REPLACE THE PREVENTION OF TERRORISM ACT (PTA)’, Centre for Policy Alternatives, 9 May 2013 <[THE NEED TO REPEAL AND REPLACE THE PREVENTION OF TERRORISM ACT \(PTA\) – Centre for Policy Alternatives](#)>

On 27th January 2022, a Bill containing the proposed amendments to the PTA was gazetted. Sri Lanka had promised to replace the PTA with anti-terrorism legislation in line with international best practices and the international human rights law obligations of Sri Lanka, when it co-sponsored UN Human Rights Council Resolution 30/1 in October 2015.⁴² However, the present government withdrew the proposed Counter Terrorism Bill, in December 2019, soon after Gotabaya Rajapaksa's victory at the presidential election.

Some of the pressing concerns with the PTA, such as the admissibility of confessions made to the police, wide powers of the minister, lack of judicial oversight, torture in detention and during interrogation and the 72 hour period after arrest and prior to production before a magistrate are not addressed in what was proposed.

In the Amendment Bill, superfluous changes have been made such as reducing the 18 months' period of imprisonment to 12 months and provisions for bail as a legal right, if the trial has not commenced after the expiration of twelve months from the date of arrest, has been introduced. However, the effectiveness of this clause is undermined by the proviso to the same clause stating that the State has the power to secure an order from the High Court to keep the person in remand custody till the conclusion of the trial. Further, the State can ensure that the suspect cannot make an application for bail by commencing the trial -meaning conduct at least one day of trial within the given 12 months.⁴³

The PTA Amendment Bill was passed by the Parliament on 22 March 2022.

The PTA has been used as a tool to curb dissent against the government and oppress the minority. Notable arrests under the PTA include human rights lawyer Hejaaz Hizbullah, poet Ahnaf Jazeem, and Dr. Shafi Shihabdeen.

Further, the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021 were published on the 12 March 2021. The regulations have the potential to jeopardise the rights and liberties

⁴² A Commentary: Prevention of Terrorism (Amendment) Bill 2022, Centre for Policy Alternatives, January 2022

<<https://www.cpalanka.org/wp-content/uploads/2022/01/Final-PTA-Amendment-2022.docx-1-1.pdf>>

⁴³ *ibid.*

of persons, especially religious and ethnic minorities, and curtail political dissent with no effective due process guarantees.⁴⁴ Whilst the regulations claim to provide for rehabilitation of particular groups, the application of such regulations would result in the deprivation of liberty of individuals for up to two years (an initial order of up to one year which can be extended for up to a year thereafter) without any legal proceedings being conducted before a competent court. Additionally, the vagueness and overbroad nature of these regulations are alarming and can lead to situations of abuse.⁴⁵ The regulations are presently challenged in the Supreme Court.⁴⁶

4. Accountability for serious human rights violations and the right to an effective remedy (arts. 2, 6, 7, 9, 14, 16, 18, 19 and 26)

Sri Lanka has faced grave allegations with regard to violations of human rights during the civil war which ended in 2009. More than a decade after the war ended, governance in Sri Lanka is characterised by a culture of impunity and an absence of impartial institutions.

Allegations of interference in, and obstruction of, the judicial or investigative process, by politicians and members of security forces.

There have been no steps taken to address the allegations of interference in, and obstruction of, the judicial or investigative process, by politicians and members of security forces.

On the contrary, the Presidential Commission of Inquiry to Investigate Allegations of Political Victimisation and Subsequent Action was established by President Gotabaya Rajapakse on 20 January 2020, soon after coming into power. It has been viewed as a delaying tactic which obstructed what little progress was achieved during the Yahapalana government. The report of the Commission recommended that the ongoing criminal investigations and prosecutions in several emblematic

⁴⁴'Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act', Centre for Policy Alternatives, 18 March 2021 <[Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act](#)>

⁴⁵ *ibid.*

⁴⁶ Centre for Policy Alternatives v Attorney General (SC (FRA) 91/2021) <<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fra-91-2021/>>

cases be withdrawn including the case of alleged abductions of 11 persons by Navy officials involving Admiral Wasantha Karannagoda, the assassination of MP Nadaraja Raviraj and former MP Joseph Pararajasingam, the death of Wasim Thajudeen, the murder of Lasantha Wickrematunge, the Welikada prison massacre, the disappearance of journalist Prageeth Ekneligoda and the abduction of journalist Keith Noyahr.⁴⁷ This has seriously hindered ongoing investigations and legal proceedings related to past abuses.⁴⁸

Protection of Victims of Crime and Witnesses Act No. 4 of 2015

It was reported in January 2021, that the Ministry of Justice was planning to amend the Protection of Victims of Crime and Witnesses Act No. 4 of 2015. Accordingly, the provisions which require an offender under the Act to seek bail from the Court of Appeal would be amended so that bail could be obtained from the Provincial High Court.⁴⁹

There are several shortcomings in the Act which have not been addressed. For instance, the Act allows recording of evidence from remote locations through contemporaneous audio-visual linkage.⁵⁰ However, such recording must be done from a location within Sri Lanka. This limitation that an individual must be present within Sri Lanka has adversely affected the process of gaining the testimony of those who have fled abroad and are unwilling to return due to fear.⁵¹

Further, there is a lack of independence in the statutory bodies contemplated by the Act.⁵² The Act establishes a National Authority for the Protection of Victims and

⁴⁷Charya Samarakoon and Kushmila Ranasinghe, 'Commissions of Inquiry: Grave Threat to Democracy and Judicial Independence', Groundviews, 29 April 2021 <[Commissions of Inquiry: Grave Threat to Democracy and Judicial Independence - Groundviews](#)>

⁴⁸Initial Concerns with the Report of the Commission of Inquiry to Investigate Allegations of Political Victimisation and Subsequent Action', Centre for Policy Alternatives, 12 March 2021 <[Initial Concerns with the Report of the Commission of Inquiry to Investigate Allegations of Political Victimisation and Subsequent Action](#)>

⁴⁹ Zulfick Farzan, 'Witness Protection Act to be Amended; Here's What You Need to Know' News First, 14 January 2021 <[WITNESS PROTECTION ACT TO BE AMENDED; HERE'S WHAT YOU NEED TO KNOW](#)>

⁵⁰ S.31, Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015

⁵¹ Aruni Jayakody, 'Victim and Witness Protection: the Need for Further Reform', South Asian Centre for Legal Studies, 2015
<<https://drive.google.com/file/d/0B8Ja0Q7UL-o0c3FVcmJLb3pNTEE/view?resourcekey=0-ndqDYHQ7xleCcBqvqijjqw>>

⁵² Esther Hoole, 'Victim and Witness Protection and Transitional Justice: The Imperative Need for Urgent Reform', Groundviews, 14 January 2016

Witnesses as well as a Victims of Crime and Witness Assistance and Protection Division. The “Authority” is to be headed by a Board of Management comprising twelve members.⁵³ Seven of them are to be *ex officio* members of ministries and the remaining five are to be appointed at the discretion of the President. This arrangement leaves the Board being virtually controlled by the government of the day, thereby compromising its autonomy.⁵⁴ The “Division”, headed by a Senior Superintendent of Police nominated by the IGP, has the authority to design and implement a Victims and Witness Assistance Programme.⁵⁵ The independence of the Division is also severely compromised by the fact that it is not insulated from the regular police hierarchy.⁵⁶

Progress in emblematic cases

Several emblematic cases have been characterised by acquittals and presidential pardons for the accused or convicted persons if not a complete state of impunity. There is also a lack of will to prosecute and a serious lack of independence on the part of the Attorney General’s Department which has resulted in delay or inaction and sometimes outright withdrawal of charges against perpetrators.⁵⁷

For instance, in August 2021, the Attorney General withdrew the indictment against former Navy Commander Karannagoda in connection with the abduction of 11 persons by Navy personnel for ransom.⁵⁸

<<https://groundviews.org/2016/01/14/victim-and-witness-protection-and-transitional-justice-the-imperative-need-for-urgent-reform/>>

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ ‘Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive’ Centre for Policy Alternatives, January 2021

<<https://www.cpalanka.org/wp-content/uploads/2021/01/Revisiting-Ten-Emblematic-Cases-in-Sri-Lanka-final-draft-1.pdf>>. See also, ‘The Need for Accountability in Sri Lanka’s Criminal Justice System; A Glance at Seven Emblematic Cases’ Centre for Policy Alternatives, March 2019 <<https://www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf>>

⁵⁸ ‘Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive’ Centre for Policy Alternatives, January 2021

<<https://www.cpalanka.org/wp-content/uploads/2021/01/Revisiting-Ten-Emblematic-Cases-in-Sri-Lanka-final-draft-1.pdf>>

In relation to the killing of the 17 ACF humanitarian workers, the then Attorney General Dappula de Livera ordered police to speed up investigations into the incident on 13th June 2019.⁵⁹ However, there are no reports of any progress yet.

Abuse of Presidential Pardon

The misuse of the Presidential Pardon is a continuing grave concern. Under Article 34 of the Constitution, the president is empowered to grant a pardon to prevent a miscarriage of justice. But several additional procedural steps must be followed before pardon is granted to a convict on death row. In any case, the President is required to exercise any power reasonably, and in the public interest.

However, this has been increasingly used for political considerations, such as in the Mirusuvil massacre case where the conviction by a five judge bench of the Supreme Court was completely disregarded, and the convicted Army Staff Sergeant R. M. Sunil Rathnayake who was on death row was granted a presidential pardon by President Rajapaksa in 2020. The grant of pardon is presently challenged in the Supreme Court.⁶⁰

Further, in May 2019, President Sirisena pardoned Galagoda Aththe Gnanasara Thero who was convicted of four contempt of court charges by the Court of Appeal on 8th August 2018.⁶¹ The conviction and sentencing was premised on the Thero's behaviour within court premises which constituted intimidation and unruly behaviour directed towards Sandya Ekneligoda, wife of missing journalist Prageeth Ekneligoda.⁶² The grant of pardon in this particular instance is presently challenged in the Supreme Court.⁶³ Such abuse of this presidential pardon

⁵⁹ 'Sri Lanka: No Progress in Prosecuting Aid Worker Massacre', Human Rights Watch, 1 August 2019 <<https://www.hrw.org/news/2019/08/01/sri-lanka-no-progress-prosecuting-aid-worker-massacre>>

⁶⁰ Centre for Policy Alternatives, 'The Centre for Policy Alternatives v Attorney General ; Fundamental Rights Applications challenging the decision to pardon Sunil Ratnayake', 22 April 2020 <<https://www.cpalanka.org/fundamental-rights-applications-challenging-the-decision-to-pardon-sunil-ratnayake/>>

⁶¹ CPA Statement on the Presidential Pardon of Gnanasara Thero, Centre for Policy Alternatives, 24th May 2019 <<https://www.cpalanka.org/cpa-statement-on-the-presidential-pardon-of-gnanasara-thero/>>

⁶² 'Supreme Court rejects Gnanasara Thero's appeal', Ada Derana, 5th October 2018 <<http://www.adaderana.lk/news/50497/supreme-court-rejects-gnanasara-theros-appeal->>

⁶³ Centre for Policy Alternatives v Attorney General (SC FR 256/ 2019) <<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fr-256-2019/>>

undermines the judicial process, the rule of law and contributes to a culture of impunity.⁶⁴

Reforms in the security sector as part of the transitional justice process

President Rajapaksa pledged to protect military commanders he calls “war heroes” from war crimes prosecutions.⁶⁵

On 7th August 2019, President Maithripala Sirisena of the Yahapalana government promoted Wasantha Karannagoda, to the rank of Admiral of the Fleet.

On 18th August 2019, President Maithripala Sirisena appointed Major General Shavendra Silva as the 23rd Commander of the Sri Lanka Army, in spite of allegations of war crimes against him.⁶⁶ Subsequently, President Gotabaya Rajapaksa, appointed him as the acting Chief of Defence Staff with effect from 01st January 2020.⁶⁷ With the outbreak of the COVID-19 epidemic in Sri Lanka, he was appointed as Head of National Operations Centre for Prevention of COVID-19 Outbreak (NOCPCO) on 16 March 2020. In 2020, Silva was banned from travelling to the United States due to “credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings, by the 58th Division of the Sri Lanka Army during the final phase of Sri Lanka’s Civil War in 2009”.⁶⁸

⁶⁴ ‘The Pardon in the Mirusuvil Massacre’, Centre for Policy Alternatives, 31st March 2020
<<https://www.cpalanka.org/wp-content/uploads/2020/03/The-Pardon-in-the-Mirusuvil-Massacre.pdf>>

⁶⁵ “In a Legal Black Hole”: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act’, Human Rights Watch, February 2022
<<https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>>

⁶⁶ ‘Shavendra Silva appointed Army Commander despite concerns’, Colombo Gazette, 19 August 2019 <<https://colombogazette.com/2019/08/19/shavendra-silva-appointed-army-commander-despite-concerns/>>

⁶⁷ ‘Lt. Gen. Shavendra Silva appointed as Acting Chief of Defence Staff’, Ministry of Defence, 28th May 2021
<<https://www.ocds.lk/content/lt-gen-shavendra-silva-appointed-acting-chief-defence-staff#:~:text=Shavendra%20Silva%20has%20been%20appointed,Army%2C%20on%2018%20August%202021>>

⁶⁸ “In a Legal Black Hole”: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act’, Human Rights Watch, February 2022
<<https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>>

On 24th June 2021, a committee chaired by the Defence Secretary, Gen. (Retd) Kamal Gunaratne, who commanded forces implicated in alleged war crimes and crimes against humanity during the civil war was appointed to work on changes to the PTA. At the end of the war in 2009, General Gunaratne commanded the 53rd Division of the Sri Lankan army.⁶⁹ The OISL report found evidence that soldiers of the 53rd Division were responsible for extra-judicial execution and torturing of prisoners.

Reparations/ Office for Reparations Act No. 34 of 2018

The Office for Reparations was established in terms of the Office for Reparations Act No. 34 of 2018.

However, the independence and the decision making power of the Office is greatly restricted by two factors, which were highlighted by civil society at the time the legislation was brought.⁷⁰ First, the policies and guidelines formulated by the Office must be approved by the Cabinet prior to adoption, and this affects the decision-making powers of the Office. Secondly, policies and guidelines approved by the Cabinet of Ministers and authorising the disbursement of funds must be placed before Parliament for its approval. This adds another unnecessary layer of Parliamentary oversight and thereby further dilutes the Office's input on reparations policies and guidelines.⁷¹

Office on Missing Persons/ Office on Missing Persons Act No. 14 of 2016

The Office on Missing Persons (OMP) is largely functioning as an entity which has failed to win the trust of the affected people in the North and the East.

In December 2020, Justice Abeyratne was appointed as the Chairperson of the OMP. He also chaired the Presidential Commission on Political Victimization which exonerated military officials accused of abduction and murder in several emblematic disappearance cases. A new Chairperson Mahesh Katulanda was appointed recently.⁷² On 28th April 2022, OMP Commissioner Shiraz Noordeen

⁶⁹ *ibid.*

⁷⁰ Civil Society Raises Concerns with the Office for Reparations Bill, Centre for Policy Alternatives, 6 July 2018

<https://www.cpalanka.org/civil-society-raises-concerns-with-the-office-for-reparations-bill/>

⁷¹ *ibid.*

⁷² OMP on Twitter

resigned from the OMP, stating that the OMP is unable to act independently to bring justice to victims.⁷³

In 2021 the OMP opened a new office in the North and announced plans to “verify” the 21,374 cases collated by its former members.⁷⁴ By the end of the year, the OMP’s official caseload stood at 14,988, with no clear explanation for having dropped more than 6,000 missing persons cases.⁷⁵

On 20th May 2021, the Parliamentary Council recommended former Inspector General of Police (IGP) Jayantha Wickramaratne to fill a vacancy in the membership of the OMP. The Government’s decision to appoint a former war-time police chief drew sharp criticism.⁷⁶

There have been continuous protests and campaigns staged by families of the disappeared in the North and the East demanding to know the whereabouts of their missing.⁷⁷ However in 2020, President Gotabaya Rajapaksa acknowledged for the first time that more than 20, 000 people who disappeared during the civil war, are dead.⁷⁸ In March 2022, cabinet approval was given to issue death or missing person certificates to disappeared persons and pay a 100,000 LKR one time allowance to next of kin.⁷⁹

<<https://twitter.com/ompsrilanka/status/1484532624060465153?cxt=HHwWgoDSqcyjj5opAAA>>

⁷³ ‘Missing Persons’ Office chief quits, citing lack of ‘independence’ The Morning, 2nd May 2022

<<https://www.themorning.lk/missing-persons-office-chief-quits-citing-lack-of-independence/>>

⁷⁴ The State of the World’s Human Rights : Amnesty International Report 2021/2022

<<https://www.amnesty.org/en/wp-content/uploads/2022/03/WEBPOL1048702022ENGLISH.pdf>>

⁷⁵ *ibid.*

⁷⁶ ‘Appointment of former IGP to Office of Missing Persons sparks alarm’, Daily FT, 3 June 2021

<<https://www.ft.lk/news/Appointment-of-former-IGP-to-Office-of-Missing-Persons-sparks-alarm/56-718759>>

⁷⁷ Umer Beigh, ‘Families of disappeared persons demonstrate in Sri Lanka’s Mullaitivu’, Peoples Dispatch, 11 July 2021

<<https://peoplesdispatch.org/2021/07/11/families-of-disappeared-persons-demonstrate-in-sri-lankas-mullaitivu/>>

⁷⁸ *ibid.*

⁷⁹ ‘Rs.100,000 payment to a missing person’s closest relative’, The Morning, 16 March 2022

<<https://www.themorning.lk/rs-100000-payment-to-a-missing-persons-closest-relative/>>

5. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person (arts. 6, 7, 9 and 14)

Abuses by Security Forces

Violence and brutality was exercised by the Sri Lanka Police on 19 April at Rambukkana and resulted in the death of Chaminda Lakshan.⁸⁰ Over 12 citizens were injured with two in critical condition as a result of violence by the police.

As part of the military COVID-19 response, on 11 October the Sri Lankan military allegedly conducted a raid on a garment worker hostel and forcibly rounded up workers to take them to an unsanitary military quarantine facility – all of which the trade unions and workers' rights groups allege amounted to cruel, inhumane and degrading treatment.⁸¹

Arbitrary Arrests

Attorney-at-law Hejaaz Hizbullah who was detained for nearly two years was granted bail by the Court of Appeal in February 2022. He was initially arrested over alleged links to the terrorists who carried out the 2019 Easter bombings that killed 269 and injured over 500. However, the lawyer was not charged until 10 months after his arrest. Then he was accused of inciting racial disharmony, under the International Covenant on Civil and Political Rights (ICCPR) Act.⁸²

On 16 May, 2020 Ahnaf Jazeem, a young Sri Lankan Muslim poet and a teacher, was arrested by the Counter Terrorism and Investigation Department (CTID) and imprisoned on allegations of promoting Islamic extremism under the country's draconian Prevention of Terrorism Act (PTA).⁸³ The CTID arrested Jazeem,

⁸⁰<https://www.ft.lk/news/SLCAT-condemns-police-brutality-in-Rambukkana/56-733787>

⁸¹Asia Floor Wage Alliance and Global Labour Justice, *Voices from the Field: Reprisals and Repression of Garment Worker Unions and Workers Organisations During COVID-19 in Sri Lanka*, April 2022, p 15 <https://asia.floorwage.org/wp-content/uploads/2022/04/Voices-from-the-Field_-Reprisals-and-Repression-of-Garment-Worker-Unions-and-Workers-Organizations-During-COVID-19-1.pdf>

⁸²'Sri Lanka's court of appeal grants bail to detained lawyer Hejaaz Hizbullah', *Economy Next*, 7 February 2022 <<https://economynext.com/sri-lankas-court-of-appeal-grants-bail-to-detained-lawyer-hejaaz-hizbullah-90225/>>

⁸³'Sri Lankan poet Ahnaf Jazeem jailed under anti-terror laws speaks with the WSWs', *WSWS*, 20 February 2022 <<https://www.wsws.org/en/articles/2022/02/21/slja-f21.html>; Pramodi

claiming that his poetry book *Navarasam*, written under his pen name Manaramudhu Ahnaf, promoted extremism and falsely accused him of teaching extremism to his students. He was released on bail nineteen months later.⁸⁴

Custodial Deaths

In the last two years alone at least 17 persons have been killed while in the custody of the police, with no genuine accountability for such deaths.⁸⁵ Most recently, in May 2021, alleged gang leader Dharmakeerthi Tharaka Perera Wijesekara alias Kosgoda Tharaka was killed by the police claiming he had died following a shootout. On 11 May Mabulage Dineth Mabula alias Uru Juwa died under similar circumstances.⁸⁶

In November 2021, a suspect, H.L. Lasantha alias Tinker Lasantha, was killed in police custody despite warnings to the authorities from his family and lawyers that his life was in danger.⁸⁷

On 17th December 2019, the Sri Lanka Supreme Court in the case of *Rathmayeke Tharanga Lakmali Vs Niroshan Abeykoon*⁸⁸ (SC FR 577/2010), held that the state had violated the rights accorded under Articles 11 and 13 of the Sri Lankan Constitution by committing a custodial death, and awarded compensation of Rs 2.75 million to the petitioner whose husband had died in police custody.⁸⁹

Prison Violence

Waravita, 'TID officers said I'm a terrorist because I didn't own Buddhist books: Ahnaf Jazeem', The Morning, 18 January 2022

<<https://www.themorning.lk/tid-officers-said-im-a-terrorist-because-i-didnt-own-buddhist-books-ahnaf-jazeem/>>

⁸⁴ Supra, WSWS.

⁸⁵ 'Hold the IGP personally responsible', Daily FT, 26 April 2022 <https://www.ft.lk/ft_view_editorial/Hold-the-IGP-personally-responsible/58-733907>

⁸⁶ 'Sri Lanka Human Rights Commission writes to police chief on custodial deaths', Economy Next, 28-May-2021 <<https://economynext.com/sri-lanka-human-rights-commission-writes-to-police-chief-on-custodial-deaths-82078/>>

⁸⁷ 'Custodial deaths: Fundamentals of criminal law being violated: BASL', The Morning, 12 December-2021 <<https://www.themorning.lk/custodial-deaths-fundamentals-of-criminal-law-being-violated-basl/>>

⁸⁸-Judgement available

at:<https://www.supremecourt.lk/images/documents/sc_fr_577_2010.pdf>

⁸⁹ Ishan Kumar, 'Custodial Death Verdict by Sri Lankan Supreme Court: Justice at Last', The Criminal Law Blog, 2 February 2020 <<https://criminallawstudiesnluj.wordpress.com/2020/02/02/custodial-death-verdict-by-sri-lankan-supreme-court-justice-at-last/>>

Covid breakouts in crowded prisons- in November 2020 at least eight prisoners who were Covid-positive were killed and more than 50 injured in clashes with guards at Mahara prison, as authorities tried to quell a protest over rising coronavirus infections in the country's crowded jails.⁹⁰

The then State for Prisons Management Lohan Ratwatte tendered his resignation in September 2021, days after he allegedly threatened to kill two Tamil political prisoners detained under the Prevention of Terrorism Act (PTA), during his visit to the Anuradhapura prison in the country's north central region.⁹¹ Police investigations regarding the incident are underway as well as a probe by the Human Rights Commission of Sri Lanka.⁹²

The Bar Association of Sri Lanka (BASL) has opined that by tendering his resignation, Lohan Ratwatte has thus forfeited his moral right to hold any government office.⁹³ However, he was appointed State Minister of Gem and Jewellery, after his resignation, and once again in March 2022 he was appointed State Minister of Container Warehouse Facilities, Container Yards, Port Supply Facilities and Boats and Shipping Industry.⁹⁴

6. Independence of the judiciary, administration of justice and fair trial (art. 14)

⁹⁰'Sri Lanka coronavirus prison riot leaves eight dead, over 50 wounded', Reuters, 30 November 2020 <<https://www.reuters.com/article/us-health-coronavirus-srilanka-prison-idUSKBN28A0MD>> ; 'Following deadly riot, spotlight on Sri Lanka's prison conditions', The Hindu, 10 December 2020 <<https://www.thehindu.com/news/international/following-deadly-riot-spotlight-on-sri-lankas-prison-conditions/article33302053.ece>>

⁹¹ PTI, 'Sri Lankan prison minister resigns after threatening to kill Tamil prisoners in Anuradhapura prison', The New Indian Express, 15 September 2021 <<https://www.newindianexpress.com/world/2021/sep/15/sri-lankan-prison-minister-resigns-after-threatening-to-kill-tamil-prisoners-in-anuradhapura-prison-2359130.html>>

⁹² 'Ratwatte's alleged threat to kill prisoners: Probe going here and there three months after incident', The Sunday Times, 12 December 2021 <<https://www.sundaytimes.lk/211212/news/ratwattes-alleged-threat-to-kill-prisoners-probe-going-here-and-there-three-months-after-incident-465161.html>>

⁹³ 'Ratwatte has forfeited right to hold any government office says BASL', The Island, 19 September 2021 <<https://island.lk/ratwatte-has-forfeited-right-to-hold-any-government-office-says-basl/>>

⁹⁴ 'Lohan Ratwatte appointed Sri Lanka's State Minister of Container Warehouse Facilities', Economy Next, 10 March 2022 <<https://economynext.com/lohan-ratwatte-appointed-sri-lankas-state-minister-of-container-warehouse-facilities-91503/>>

Judicial Review

Judicial review is an essential ingredient in the separation of powers and independence of the judiciary. However, the discourse on post-enactment review of legislation in Sri Lanka has not progressed further in the last five years. The full impact of this was felt in the committee stage amendments brought to the 20th Amendment Bill which were not reviewed by the Supreme Court. Several last-minute changes to the Bill, impacting the constitution of the superior courts and judicial review of emergency Bills, inter alia, were brought in at the Parliamentary committee stage, bypassing pre-enactment judicial review.⁹⁵

Executive Interference

Executive interference in the independence of the judiciary was exhibited in a purported letter written by the Secretary to the Ministry of Public Security, Major General (Retd) Jagath Alwis to the Chief Justice of Sri Lanka, accusing judges of lower courts of being responsible for the violence which unfolded in Sri Lanka on 9th of May.⁹⁶ General (Retd) Jagath Alwis has since apologised and resigned from his post.^{97 98}

Law's Delays

There are around 750,000 unresolved cases in the Magistrate's Courts, with 3,486 cases pending in the Supreme Court, 4,817 cases pending in the Court of Appeal, 5,870 in the Civil Appellate Court, 16,811 in High Courts, 167,945 in District Courts, 200,000 on pending mediation and in labour tribunals and arbitration trials, with 11 judges per one million.⁹⁹

⁹⁵ 'Sri Lanka's legislative skullduggery without judicial review at 'committee stage' exposed', Economy Next, 25 October 2020 <<https://economynext.com/sri-lankas-legislative-skullduggery-without-judicial-review-at-committee-stage-exposed-75134/>>

⁹⁶ 'Gota's Goon Blasts Chief Justice; AG Refuses To File Contempt Charges', Colombo Telegraph, 18-May-2022 <<https://www.colombotelegraph.com/index.php/gotas-goon-blasts-chief-justice-ag-refuses-to-file-contempt-charges/>>

⁹⁷ Ranjit Padmasiri, 'Maj. Gen. (Retd.) Jagath Alwis again writes to CJ, this time to apologise', The Sunday Times, 22 May 2022 <<https://www.sundaytimes.lk/220522/news/maj-gen-ret-d-jagath-alwis-again-writes-to-cj-this-time-to-apologise-483617.html>>

⁹⁸ 'I did not resign' - Public Security Secretary', News First, 23 May 2022 <<https://www.newsfirst.lk/2022/05/23/i-did-not-resign-public-security-secretary/>>

⁹⁹ Sarath Wijeshinghe, 'Laws delays, lawyers' delays or system delays?', The Sunday Observer, 3 January 2021 <<https://www.sundayobserver.lk/2021/01/03/impact/laws-delays-lawyers%E2%80%99-delays-or-system-delays>>

Digitalisation of systems, serving summons documents and transferring files via email, WhatsApp and virtual courtrooms hearing cases on zoom are all measures which were expeditiously adopted by the Sri Lankan judiciary in the prolonged COVID-19 lockdown period. However, there is still a long way to go in remedying law's delays.

7. Internally displaced persons, refugees and asylum seekers (arts. 2, 7, 12, 13, 17 and 26)

Internal Displacement

According to the statistics by the Internal Displacement Monitoring Centre, as of 31st December 2020, there are 27,000 IDPs due to conflict and violence.¹⁰⁰ This includes those who were displaced due to anti-Muslim sentiment and religious tensions in the country.¹⁰¹

Many people, however, have been living in displacement since the 30 year civil war during which more than a million people were forced to leave their homes especially in the North and the East.¹⁰² The military have taken possession of these lands and adequate and effective measures to return them have not been taken. Many such IDPs have not been told whether their land/ homes will be released by the military.¹⁰³

Land continues to be acquired by the military even after the war. According to the District Secretariats of the North and East, around 30,000 acres of private land continue to be occupied by the Army in Jaffna, Kilinochchi, Mullaitivu, Vavuniya, and Batticaloa.¹⁰⁴ In July 2021, the Navy deployed troops to intimidate land owners protesting against the acquisition of 617 acres of land in Vattucagal, Mullaitivu to

¹⁰⁰ International Displacement Monitoring Centre, Sri Lanka- Country page, <<https://www.internal-displacement.org/countries/sri-lanka>>

¹⁰¹ 'Severity of Internal Displacement', 2021, International Displacement Monitoring Centre <https://www.internal-displacement.org/sites/default/files/publications/documents/2021.11.04_IDMC_SeverityOfDisplacement2021Report.pdf>

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ 'Endless War; The Destroyed Land, Life and Identity of the tamil People in Sri Lanka', 2021, Oakland Institute <<https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/endless-war-web.pdf>>

establish the Gotabhaya Naval Base.¹⁰⁵ On 24 April 2022, it was reported that the Survey Department of Sri Lanka had notified villages of Karampan–West in Kayts that 0.4 hectares of land will be surveyed to build a new Sri Lankan Navy ‘security zone’.¹⁰⁶

More than a decade after the civil war ended in 2009, efforts to demine areas of northern Sri Lanka to permit IDP returns are ongoing.

New land grabs

The Presidential Task Force for Archaeological Heritage Management in the Eastern Province was established by Gazette Extraordinary no. 2178/17 dated 2nd June 2020.¹⁰⁷ There is no provision for the decisions of the task force to be challenged. Further, there is no definition as to what is ‘archaeological’ land and no means of identification on how land will be identified as state or private land. This may lead to further appropriation of land by the State.

Months after the Presidential Task Force for Archaeological Heritage Management in the Eastern Province was established, seven notices were published in the Gazette dated 2nd October 2020 under State Land Regulation No. 21(2), which refers to a total of 340.33 acres of land in 11 different locations in the Kuchchaveli DS Division of Trincomalee District, to be leased out to seven Buddhist organisations for 30 years.¹⁰⁸ Although 11 places in the villages of Tennamarawadi,

¹⁰⁵‘Tensions as Sri Lankan navy deploys troops to intimidate land-grab protesters in Mullaitivu’ Tamil Guardian, 29 July 2021

<<https://www.tamilguardian.com/content/tensions-sri-lankan-navy-deploys-troops-intimidate-land-grab-protesters-mullaitivu>>; Sri Lanka Navy renews efforts to grab 617 acres of Tamil land for ‘Gotabaya Navy Base’ Tamil Guardian, 24 July 2021

<<https://www.tamilguardian.com/content/sri-lanka-navy-renews-efforts-grab-617-acres-tamil-land-gotabaya-navy-base>>;

‘Vadduvakal land grab protestors successfully block surveyors from accessing their lands’, Tamil Guardian, 22 February 2018

<<https://www.tamilguardian.com/content/vadduvakal-landgrab-protestors-successfully-block-surveyors-accessing-their-lands>>

¹⁰⁶‘Sri Lankan military continues lands grabs across North-East’, Tamil Guardian, 24 April 2022
<<https://www.tamilguardian.com/content/sri-lankan-military-continues-lands-grabs-across-north-east>>

¹⁰⁷ The Appointment of the Two Presidential Task Forces, Centre for Policy Alternatives, June 2020
<<https://www.cpalanka.org/wp-content/uploads/2020/06/Commentary-Two-Task-Forces-CPA-Final.pdf>>

¹⁰⁸ Gazette (Extraordinary) No. 2196 of 2nd October 2020

<[http://documents.gov.lk/files/gz/2020/10/2020-10-02\(III-0\)E.pdf](http://documents.gov.lk/files/gz/2020/10/2020-10-02(III-0)E.pdf)>

Thiriyai, Kumburupiddi East, Pulmoddai, notified by the Gazette are mentioned as state lands, some of them are private lands owned by Tamil and Muslim families.¹⁰⁹

Post-war years have seen several sites across Sri Lanka where there has been competing land with a religious dimension including areas in the North and East, Dambulla, Kurugala and others. Several instances also speak to the destruction of religious buildings or historical sites with significance to minorities with other instances where religious buildings located in lands occupied by security forces have been destroyed.¹¹⁰

8. Non-discrimination, prohibition of advocacy of national, racial and religious hatred, freedom of conscience and religious belief, and the rights of minorities (arts. 2, 18, 20, 26 and 27)

Arbitrary arrests and continued misuse of Section 3 of the ICCPR Act –

The International Covenant on Civil and Political Rights (ICCPR) Act of 2007 contains only a few articles from ICCPR and has failed to incorporate key provisions including Article 19 on the freedom of expression. The selective application of the Act has contributed to the curtailment of freedom of expression, especially that of minorities and dissenters. Notably, not one person involved in incitement of violence in Aluthgama, Digana or Kurunegala has been convicted under the law.¹¹¹

Recent arrests under the ICCPR Act included,

- Attorney-at-Law Hejaaz Hizbullah, was arrested on 14 April 2020 and detained under the PTA. He was produced before the court for several charges, under the Prevention of Terrorism Act (PTA) and the International Covenant on Civil and Political Rights (ICCPR) Act, with allegations of

¹⁰⁹ 'Endless War; The Destroyed Land, Life and Identity of the tamil People in Sri Lanka', 2021, Oakland Institute

<<https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/endless-war-web.pdf>>

¹¹⁰ 'Sri Lanka's Vistas of Prosperity and Splendour: A Critique of Promises Made and Present Trends', Centre for Policy Alternatives, 2021

<<https://www.cpalanka.org/wp-content/uploads/2021/07/Sri-Lankas-Vistas-of-Prosperity-and-Splendour-A-Critique-of-Promises-Made-and-Present-Trends.pdf>>

¹¹¹Aanya Wipulasena, 'Abuse of ICCPR Act has 'chilling effect' on fundamental freedoms', Sunday Observer, 16 June 2019 <<https://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-%E2%80%98chilling-effect%E2%80%99-fundamental-freedoms>>

incitement of national, religious, or racial hatred, and incitement to hostility or violence, respectively.¹¹²

- In April 2020, amidst the curfew, Ramzy Razeek was arrested by three CID officers who later claimed that he had violated the ICCPR and Cyber Crimes Legislation in relation to a Facebook post authored by him.¹¹³ He was granted bail by the Colombo High Court in September 2020.¹¹⁴
- Shakthika Sathkumara¹¹⁵ was arrested on 1 April 2019 under the ICCPR Act and held in detention for over four months before being released on bail. In February 2021, he was discharged from the case.¹¹⁶ Proceedings related to the fundamental rights petition filed by the author are ongoing.
- On 17 May 2019, police arrested Abdul Raheem Masaheena for wearing a dress with a pattern that resembled the dharmachakra, a Buddhist symbol. She was reportedly charged under the ICCPR Act and was later released.¹¹⁷

Lack of meaningful action taken to prevent hate speech/disinformation:

Amidst the first wave of the COVID-19 crisis, unethical reporting highlighted the ethnicity of Muslim patients, to insinuate that Muslims were to blame for the spread of COVID-19.¹¹⁸ Other instances also included a television interview in early March 2020, where the head of the National Operations Centre for Prevention of

¹¹²'AG charges Hejaaz Hizbullah under PTA and ICCPR Act', Ada Derana, 17 February 2021 <<http://www.adaderana.lk/news/71639/ag-charges-hejaaz-hizbullah-under-pta-and-iccpr-act> >

¹¹³ZL Mohamed, 'Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a Police arrest', Daily FT, 9 May 2020 <<https://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917> >

¹¹⁴'Ramzy Razeek released on bail after 5 months of Sri Lankan detention', Daily Express, 19 September 2019 <<https://dailyexpress.lk/glocal/2183/> >

¹¹⁵Uwin Lugoda, 'International Covenant on Civil and Political Rights: A tool of oppression?', The Morning, 7 February 2021 <<https://www.themorning.lk/international-covenant-on-civil-and-political-rights-a-tool-of-oppression/> >

¹¹⁶Shakthika Sathkumara discharged days ahead of UNHRC sessions', Economy Next, 9 February 2021 <<https://economynext.com/shakthika-sathkumara-discharged-days-ahead-of-unhrc-sessions-78661/> >

¹¹⁷Aanya Wipulasena, 'Abuse of ICCPR Act has 'chilling effect' on fundamental freedoms', Sunday Observer, 16 June 2019 <<https://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-%E2%80%98chilling-effect%E2%80%99-fundamental-freedoms> >

¹¹⁸ Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's accelerated democratic decay amidst a pandemic' in Pradeep Peiris (ed) *Is the Cure Worse than the Disease?: Reflections on COVID Governance in Sri Lanka* (Centre for Policy Alternatives, 2021) <https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

COVID-19 Outbreak (NOCPCO) General Shavendra Silva claimed that persons from Puttalam (with a predominantly Muslims population) had the highest number of persons returning from overseas territories who avoided registering themselves at the local police stations.¹¹⁹

Moreover, the appointment of divisive Buddhist monk Galagodaaththe Gnanasara as head of the Presidential Task Force to implement 'One Country One Law,' established by Gazette (Extraordinary) No. 2251/30 of 26 October 2021, is a cause for concern.¹²⁰ Gnanasara Thera is linked to incitement of violence and attacks against religious minorities, notably in Aluthgama in 2014.¹²¹

Violence and discrimination against the Muslim community:

- Forced cremation: Regulations issued by Gazette Extraordinary No. 2170/8 of 11 April 2020 made it mandatory to cremate the body of a person who has died or is suspected to have died of COVID-19. These regulations prevented the Muslim community from exercising their religious burial rites. In February 2021, the regulations were amended to include burial,¹²² and burials were later allowed at the remote Oddamavadi area under military supervision. On 2 March 2022, the Ministry of Health issued new guidelines allowing burial at any cemetery or burial ground.¹²³
- Proposal for Madrasa ban: In March 2021, the Minister of Public Security, Sarath Weerasekera made a statement about the intention to close more than

¹¹⁹Sakina Moinudeen, 'Ethno-centric pandemic governance: The Muslim community in Sri Lanka's COVID Response' in Pradeep Peiris (ed) *Is the Cure Worse than the Disease?: Reflections on COVID Governance in Sri Lanka* (Centre for Policy Alternatives, 2021)

<https://www.cpalanka.org/wp-content/uploads/2021/08/09-Chapter-5.pdf>

¹²⁰ Gazette (Extraordinary) No.2251/30 of 26 October 2021

<http://www.documents.gov.lk/files/egz/2021/10/2251-30_E.pdf >

¹²¹ Tisaranee Gunasekara, 'Horror in Aluthgama: Their Crime, Our Shame', Groundviews, 16 June 2014 <<https://groundviews.org/2014/06/16/horror-in-aluthgama-their-crime-our-shame/> >

¹²²Bhavani Fonseka and Kushmila Ranasinghe, 'Sri Lanka's accelerated democratic decay amidst a pandemic' in Pradeep Peiris (ed) *Is the Cure Worse than the Disease?: Reflections on COVID Governance in Sri Lanka* (Centre for Policy Alternatives, 2021) <https://www.cpalanka.org/wp-content/uploads/2021/08/06-Chapter-2.pdf>

¹²³'Sri Lanka ends widely condemned Muslim burial policy', France 24, 3 March 2022<<https://www.france24.com/en/live-news/20220303-sri-lanka-ends-widely-condemned-muslim-burial-policy> >

1,000 Islamic schools known as madrassas, saying they are not registered with the authorities and do not follow the national education policy.¹²⁴

- Proposal for ban of burqa: In March 2021, the Minister of Public Security, Sarath Weerasekara, said he had signed a paper seeking the approval of the Cabinet of Ministers to ban burkas.¹²⁵ The Minister has stated that the underlying rationale for this policy is the protection of national security.
- Meanwhile, Fathima Famitha Rameez, along with three other teachers, were prohibited from wearing the abaya by the management committee of Sri Shanmuga Hindu Ladies College, Trincomalee. In response to a complaint regarding the incident, the Human Rights Commission of Sri Lanka (HRCSL) recommended in February 2019 that the complainants be allowed to wear the dress of their choice and continue their work without hindrance. Rameez who later attempted to resume her duties was allegedly threatened and assaulted over wearing an abaya to school. A writ application was filed by Rameez with the Court of Appeal in 2021.¹²⁶

9. Rights to freedom of expression, peaceful assembly and freedom of association (arts. 19, 21 and 22)

Harassment, intimidation and surveillance of journalists:

Recent incidents include:

- On 31 March 2022, several journalists covering the protest in Mirihana were assaulted and at least six were taken into custody by police personnel from the Special Task Force (STF).¹²⁷

¹²⁴'Sri Lanka to ban burqa and close 1,000 Islamic schools', The Guardian, 13 March 2021 <<https://www.theguardian.com/world/2021/mar/13/sri-lanka-to-ban-burka-and-close-1000-islamic-schools>>

¹²⁵ibid

¹²⁶ Pamodi Waravita, 'Teacher allegedly threatened, assaulted for wearing abaya', The Morning, 3 February 2022 <<https://www.themorning.lk/teacher-allegedly-threatened-assaulted-for-wearing-abaya/>>

¹²⁷'Sri Lanka: Several journalists assaulted and detained during Mirihana protests', International Federation of Journalists, 4 April 2022 <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sri-lanka-several-journalists-assaulted-and-detained-during-mirihana-protests.html>>

- In February 2022, officers of the Criminal Investigation Department (CID) visited the house of journalist and Batticaloa Press Club Secretary Selvakumar Nilanthan twice, ordering him to go to Eravur police station for questioning over his alleged links to the Tamil diaspora. He was later interrogated by CID officers.¹²⁸
- Television journalist Chamuditha Samarawickrama's residence was stormed on 14 February 2022 by three armed men who arrived in a white van.¹²⁹ An application was filed under The Victims and the Witnesses Protection Act in the Magistrate's Court of Kesbewa, and the Magistrate ordered the police to give adequate protection to the journalist.¹³⁰
- Journalist Vishvalingham Vishvachandran was attacked by four army soldiers for taking a photo of a Mullivaikkal road sign on 27 November 2021.¹³¹ The military initially denied the allegations, but the four soldiers later confessed to committing the assault and apologised to the victim.¹³²
- On 9 June 2020, officials from the Criminal Investigation Department raided journalist Dharisha Bastians' home and seized her laptop in connection to an investigation over the alleged abduction of a Swiss embassy staffer.¹³³

¹²⁸'Sri Lanka's Criminal Investigation Department interrogates Tamil journalist', Tamil Guardian, 13 February 2022 <<https://www.tamilguardian.com/content/sri-lankas-criminal-investigation-department-interrogates-tamil-journalist> >

¹²⁹'Gunmen attack high-profile Sri Lanka TV journalist', France 24, 14 February 2022 <<https://www.france24.com/en/live-news/20220214-gunmen-attack-high-profile-sri-lanka-tv-journalist> >

¹³⁰Chitra Weerathne, 'Chamuditha's counsel to move court to order CID to take over probe into attack on his client's residence', The Island, 9 April 2022 <<https://island.lk/chamudithas-counsel-to-move-court-to-order-cid-to-take-over-probe-into-attack-on-his-clients-residence>>

¹³¹'Sri Lankan soldiers attack Tamil journalist with barbed wire', Tamil Guardian, 27 November 2021 <<https://www.tamilguardian.com/content/sri-lankan-soldiers-attack-tamil-journalist-barbed-wire> >

¹³²'Sri Lankan soldiers apologise to attacked Tamil journalist after initially denying the assault', Sri Lanka Brief, 6 December 2021 <<https://srilankabrief.org/sri-lankan-soldiers-apologise-to-attacked-tamil-journalist-after-initially-denying-the-assault/> >

¹³³ Several UN special rapporteurs wrote to the Sri Lankan Government in July 2020 raising concerns about the continued harassment of Bastians. See 'Harassment Of Journalist Dharisha Bastians May Be Aimed At Stopping Her Reporting On Sri Lanka: 5 UN Special Rapporteurs Write To Govt.', Colombo Telegraph, 15 September 2021 <<https://www.colombotelegraph.com/index.php/harassment-of-journalist-dharisha-bastians-may-be-aimed-at-stopping-her-reporting-on-sri-lanka-5-un-special-rapporteurs-write-to-govt/> >

'Fake news' legislation:

- In April 2021, the cabinet of ministers reportedly approved a proposal to draft legislation to combat false and misleading statements on the internet.¹³⁴ However, the potential for misuse of such legislation to compromise freedom of expression and media freedom and contribute to a climate of repression and surveillance, remain a concern.

Continued impunity for past violations:

- Ongoing legal proceedings related to the disappearance of Prageeth Eknaligoda were subjected to delays¹³⁵ and the intimidation of victims and witnesses.¹³⁶ Concerns were also raised about the parallel inquiries conducted by the Presidential Commission of Inquiry (CoI) on Political Victimisation. The CoI recommended the release of army intelligence officers linked with the ongoing proceedings. The wife of missing journalist Sandhya Eknaligoda filed a Fundamental Rights petition in the Supreme Court challenging the recommendations.¹³⁷ In August 2021, the Court of Appeal issued an interim order staying the operation of the recommendations of the CoI.¹³⁸
- Meaningful justice has not been achieved within the domestic legal system in the case of the assassination of journalist Lasantha Wickrematunge. The People's Tribunal on Murdered Journalists in The Hague commenced its hearing in the assassination and the prolonged failure with justice.¹³⁹

¹³⁴Sri Lanka cabinet nod for laws against "false propaganda" online', Economy Next, 20 April 2021 <<https://economynext.com/sri-lanka-cabinet-nod-for-laws-against-false-propaganda-online-80943> >

¹³⁵Amnesty International Report 2020/21; The State of the World's Human Rights; Sri Lanka 2020' ecoi.net, 7 April 2021 <<https://www.ecoi.net/en/document/2048760.html>>

¹³⁶Sandya claims witnesses in case intimidated', The Morning, 31 December 2019 <<https://www.themorning.lk/sandya-claims-witnesses-in-case-intimidated/> >

¹³⁷'Sandhya Ekanaligoda files FR in the SC Challenging, the findings of the Presidential Commission on Political Victimisation', Counter Point, 16 May 2021 <<https://counterpoint.lk/sandhya-ekanaligoda-files-fr-sc-challenging-findings-presidential-commission-political-victimisation> >

¹³⁸Lakmal Sooriyagoda, 'CA stays recommendations of PCoI on Political Victimisation in respect of SSC Janaka Bandara', Daily Mirror, 3 August 2021 <https://www.dailymirror.lk/breaking_news/CA-stays-recommendations-of-PCoI-on-Political-Victimisation-in-respect-of-SSC-Janaka-Bandara/108-217449 >

¹³⁹'Lasantha Wickrematunge Murder "Trial" To Be Conducted By People's Tribunal In The Hague', Colombo Telegraph, 29 September 2021 <<https://www.colombotelegraph.com/index.php/lasantha-wickrematunge-murder-trial-to-be-conducted-by-peoples-tribunal-in-the-hague/> >

Ahimsa Wickrematunge, the daughter of the journalist, had also previously filed a complaint with the Human Rights Committee in January 2021.¹⁴⁰

Undue restrictions on online expression, blocking online content and/or social media, and the prosecution of online expression:

- **Social media blackouts:** On 3 April 2022, amidst island-wide public protests, the Sri Lankan government restricted access to social media platforms on the request of the Ministry of Defence.¹⁴¹ The ban was lifted later that day.¹⁴² The legality and constitutionality of the ban were questioned.¹⁴³
- **Arrests:** In February 2022, civil society activist, Shehan Malaka Gamage, was arrested by the CID in Panadura, reportedly over a remark he has made with regard to the East Sunday terror attacks. He also organised a Black Flag campaign against a lack of progress in investigations into the attacks. He was subsequently granted bail by the Maligakanda Magistrate's Court.¹⁴⁴
- In April 2022, social media activist Anuruddha Bandara was allegedly abducted by a group claiming to be from the police, and he was later reported to have been arrested by the Mutuwal Police.¹⁴⁵ He was released on bail after being produced in the Colombo Magistrate's Court.¹⁴⁶
- In May 2022, three admins of social media platforms were arrested by the Computer Crimes Investigating Unit of the CID for allegedly 'instigating

¹⁴⁰'Slain Sri Lankan journalist Lasantha Wickrematunge's daughter files U.N. complaint', The Hindu, 8 January 2021 <<https://www.thehindu.com/news/international/slain-sri-lankan-journalist-lasantha-wickrematunges-daughter-files-un-complaint/article33530770.ece> >

¹⁴¹'Crisis-hit Sri Lanka blocks social media to contain protests', The Economic Times, 3 April 2022 <<https://economictimes.indiatimes.com/news/international/world-news/sri-lanka-imposes-nationwide-social-media-blackout/articleshow/90618268.cms> >

¹⁴²Peony Hirwani, 'Sri Lanka reverses 'completely useless' ban on social media amid protests', The Independent, 3 April 2022 <<https://www.independent.co.uk/asia/south-asia/sri-lanka-curfew-social-media-blocked-b2049853.html> >

¹⁴³Zulfick Farzan, 'Imposing Social Media Ban a violation of Human Rights - SL Human Rights Chief', News First, 3 April 2022 <<https://www.newsfirst.lk/2022/04/03/imposing-social-media-ban-a-violation-of-human-rights-sl-human-rights-chief/> >

¹⁴⁴ibid

¹⁴⁵'Go Home Gota' FB admin and social media activist Anuruddha Bandara arrested by Mutuwal Police', Daily Mirror, 2nd April 2022 <[Go Home Gota' FB admin and social media activist Anuruddha Bandara arrested by Mutuwal Police - Breaking News | Daily Mirror](https://www.dailymirror.lk/breaking_news/Go-Home-Gota-FB-admin-and-social-media-activist-Anuruddha-Bandara-arrested-by-Mutuwal-Police-Breaking-News-Daily-Mirror)>

¹⁴⁶'Go Home Gota' FB admin and social media activist Anuruddha Bandara granted bail', Daily Mirror, 3 April 2022 <https://www.dailymirror.lk/breaking_news/Go-Home-Gota-FB-admin-and-social-media-activist-Anuruddha-Bandara-granted-bail/108-234370 >

and aiding and abetting recent violent activities' through the social media, following the incidents at Galle Face Green on 9 May 2022.¹⁴⁷

Data Protection Act:

- Parliament enacted the Data Protection Act amid concerns over the privacy of individuals and adverse impact on media reporting. The Act as it stands does not recognize or make exemption for 'Journalistic Purpose' in the exercise of freedom of the press or freedom of expression, restricting their use of personal information for the purpose of reporting.¹⁴⁸ The Data Protection Act also has the probability of undermining the greater balance between openness and privacy struck by the Right to Information (RTI) Act.¹⁴⁹

Restrictions on right to peaceful assembly:

- **Ban on protests:** On 6 July 2021, the police announced that protests and public meetings were banned until further notice and stated that quarantine regulations will be used to take action against transgressors. Since then, a spate of arrests of persons were made for engaging in public protests. Legality, proportionality and collateral purposes of imposing the ban have been questioned.¹⁵⁰
- **Restrictions/limitations on right to assembly under quarantine regulations:** On 9th November 2021, new regulations were introduced by way of Gazette (Extraordinary) No. 2253/107 to limit the size of public gatherings and make it mandatory to obtain prior approval of Director

¹⁴⁷ Dharshana Sanjeeva Balasuriya, 'Three social media admins including TV presenter arrested over recent unrest' Daily Mirror, 19 May 2022

<https://www.dailymirror.lk/breaking_news/Three-social-media-admins-including-TV-presenter-arrested-over-recent-unrest/108-237338 >

¹⁴⁸ Sri Lanka parliament passes data protection act amid privacy concerns', Economy Next, 10 March 2022 <<https://economynext.com/sri-lanka-parliament-passes-data-protection-act-amid-privacy-concerns-91476/>>

¹⁴⁹ Professor Rohan Samarajiva, 'Personal Data Protection Act passed: What will it mean?', Daily FT, 22 March 2022 <<https://www.ft.lk/columns/Personal-Data-Protection-Act-passed-What-will-it-mean/4-732307> >

¹⁵⁰ Comment: Legality of the State Response to the Right to Protest in the light of the Covid-19 Pandemic', Centre for Policy Alternatives, November 2021 <<https://www.cpalanka.org/wp-content/uploads/2021/11/CPA-comment-on-right-to-protest-2.pdf> >

General of Health Services to hold gatherings, activities, events or similar places of meetings.¹⁵¹

- **Curfew:** On 2 April 2022, the President gazetted a curfew order under Section 16 of the Public Security Ordinance (PSO)¹⁵² However, despite the curfew and the state of emergency, island-wide protests continued to take place.¹⁵³ A number of fundamental rights petitions against both the state of emergency and the curfew have been filed.¹⁵⁴

Curfew was imposed again on 9 May 2022.¹⁵⁵

Incidents related to interference with the exercise of freedom of peaceful assembly, including the use of court injunctions to prevent assemblies, and disproportionate force against protesters have been reported. Some notable incidents include:

Injunctions:

- Court injunctions obtained against P2P March: Several magistrates across districts in the North-East issued bans and injunctions against the 'Pottuvil to Polikandi' (P2P) protests in February 2021.¹⁵⁶
- Injunctions against protests by families of the disappeared: In February 2021, Vavuniya Magistrate Court imposed a ban on demonstrations and hunger strikes planned by Tamil families of the disappeared to mark Sri Lanka's

¹⁵¹Gazette (Extraordinary) No. 2253/10 of 9th November 2021 <http://www.documents.gov.lk/files/egz/2021/11/2253-10_E.pdf >

¹⁵² Gazette (Extraordinary) No. 2273/89 of 2nd April 2022 <http://documents.gov.lk/files/egz/2022/4/2273-89_E.pdf>

¹⁵³Krishan Francis and Bharatha Mallawarachi, 'Sri Lanka's sports minister quits, Cabinet offers to resign', AP News, 4 April 2022 <<https://apnews.com/article/covid-business-health-sri-lanka-media-9216d34ce88dfeef7a6c76ffb315cc6a> >

¹⁵⁴SC grants leave to proceed with FR petitions challenging emergency law', News Wire, 7 April 2022 <<https://www.newswire.lk/2022/04/07/sc-grants-leave-to-proceed-with-fr-petitions-challenging-emergency-law/> >

¹⁵⁵ Asantha Sirimanne, 'Sri Lanka Imposes Curfew as Government Backers, Protesters Clash', Time, 9 May 2022 <<https://time.com/6174743/sri-lanka-curfew-protests/> >

¹⁵⁶'Court bans issued against #P2P protests across the North-East', Tamil Guardian, 4 February 2021 <<https://www.tamilguardian.com/content/court-bans-issued-against-p2p-protests-across-north-east> >

Independence Day as a day of protest. The court cited COVID-19 as a pretext to forbid the protests by the families of the disappeared.¹⁵⁷

- On 4 May 2022, The Colombo Fort Magistrate ordered that the protest site outside the official residence of the Prime Minister must be removed, but added that such order will not be applicable as long as the protest remains peaceful.¹⁵⁸
- On 19 May 2022, The Colombo Magistrate's Court rejected a request made by the Welikada Police to issue an order against a protest organised by the Inter-University Students Federation (IUSF) to be held at the Polduwa Junction.¹⁵⁹

Surveillance:

- Surveillance of protests by families of the disappeared: on 6 July 2021, families of the disappeared marked 1,580 days of continuous protest in Mullaitivu amidst continuous intimidation and surveillance by the police.¹⁶⁰
- On 9 May 2022, it was reported that security forces had increased their presence around the Mullivaikkal memorial site. Military investigators have questioned those living nearby about arrangements made to commemorate 18 May.¹⁶¹

Use of disproportionate force:

¹⁵⁷'Vavuniya court bans Tamil families of disappeared from protesting against Sri Lankan Independence Day', Tamil Guardian, 3 February 2021

<<https://www.tamilguardian.com/content/vavuniya-court-bans-tamil-families-disappeared-protesting-against-sri-lankan-independence> >

¹⁵⁸'Sri Lanka court orders removal of Mynagagama site if protest doesn't remain peaceful', Economy Next, 4 May 2022 <<https://economynext.com/sri-lanka-court-orders-removal-of-mynagagama-site-if-protest-doesnt-remain-peaceful-93826/> >

¹⁵⁹Zulfick Farzan, 'Court rejects Police request to stop IUSF protest', News First, 19 May 2022 <<https://www.newsfirst.lk/2022/05/19/court-rejects-police-request-to-stop-iusf-protest/> >

¹⁶⁰'Families of the disappeared mark 1,580 days of protest in Mullaitivu amidst surveillance', Tamil Guardian, 6 July 2021 <<https://www.tamilguardian.com/content/families-disappeared-mark-1580-days-protest-mullaitivu-amidst-surveillance> >

¹⁶¹'Sri Lankan security forces step up surveillance around Mullivaikkal memorial', Tamil Guardian, 9 May 2022, <<https://www.tamilguardian.com/content/sri-lankan-security-forces-step-surveillance-around-mullivaikkal-memorial> >

- In June 2020, during the Black Lives Matter solidarity protest where 53 were arrested, multiple video recordings and television footage showed the police using force in making arrests.¹⁶²
- Police opened fire during a protest in Rambukkana, killing one protester and injuring more than 24 others on 19 April 2022.¹⁶³
- On 9 May 2022, a group of supporters of the then Prime Minister assaulted peaceful protestors and destroyed makeshift structures.¹⁶⁴ Police efforts to control the mob appeared to be inadequate.¹⁶⁵
- On 21 May 2021, Vivekanandan Piriyanagan, a resident of Moonkilaru North, Mullaitivu was hospitalised, reportedly after being brutally assaulted by thugs with close ties to military intelligence.¹⁶⁶

Use of water cannons and tear gas:

- 24 October 2019 - Police fired tear gas and water cannons to disperse a protest march organised by the Inter-University Students Federation (IUSF).¹⁶⁷
- 31 March 2022 - Tear gas and water cannons were fired at people protesting on the road leading to the President's House in Mirihana.¹⁶⁸

¹⁶²Meera Srinivasan, 'Concern over 'police brutality' in Sri Lanka', The Hindu, 10 June 2020 <<https://www.thehindu.com/news/international/concern-over-police-brutality-in-sri-lanka/article31798486.ece> >

¹⁶³'At least one killed as police open fire at Sri Lanka protesters', Al Jazeera, 19 April 2022 <<https://www.aljazeera.com/news/2022/4/19/one-dead-as-sri-lanka-police-opens-fire-at-protesters> >

¹⁶⁴Chanka Jayasinghe, 'Sri Lanka pro-govt mob attacks MynaGoGama, assault protestors despite emergency', Economy Next, 9 May 2022 <<https://economynext.com/sri-lanka-pro-govt-mob-attacks-mynagogama-assault-protestors-despite-emergency-93992/> >

¹⁶⁵Yudhanjaya Wijeratne and Nisal Periyapperuma, 'The SLPP Attack On GotaGoGama: a Timeline', Watchdog, 11 May 2022 <<https://longform.watchdog.team/observations/the-slpp-attack-on-gotagogama-a-timeline> >

¹⁶⁶'Tamil man hospitalised following assault by Sri Lankan military aligned thugs over Mullivaikkal commemoration', Tamil Guardian, 22 May 2022 <<https://www.tamilguardian.com/content/tamil-man-hospitalised-following-assault-sri-lankan-military-aligned-thugs-over-mullivaikkal>>

¹⁶⁷'University student protest : Tear gas and water cannons used to disperse unlawful assembly', News First, 24 October 2019 <<https://www.newsfirst.lk/2019/10/24/university-student-protest-tear-gas-and-water-cannons-used-to-disperse-unlawful-assembly/> >

¹⁶⁸Amani Nilar, 'Tear gas and water cannons being fired at protestors', News First, 31 March 2022 <<https://www.newsfirst.lk/2022/03/31/just-in-tear-gas-and-water-cannons-being-fired-at-protestors/> >

- 3 April 2022 - Police fired tear gas and water cannon to disperse student-led protests near Kandy.¹⁶⁹
- 19 May 2022 - Police fired tear gas at the Inter University Students' Federation (IUSF) protest near the World Trade Centre, calling for the President's resignation.¹⁷⁰

10. Freedom of association (art. 22)

Surveillance of NGOs:

It was reported that as of December 2020, more than 40 civil society organisations had approached the OHCHR with reports of harassment and surveillance.¹⁷¹ Incidents of Criminal Investigation Department (CID) and Terrorism Investigation Department (TID) officers visiting local Non-governmental Organisation (NGO) premises, or launching investigations into activities of NGOs¹⁷² has continued to occur in 2021 and 2022.

The NGO Secretariat was removed from being under the purview of the Ministry of Defence and was placed under the Ministry of Foreign Affairs in November 2021.¹⁷³ Its Director General has on various occasions stated intentions of bringing in new legislation to supervise NGOs and INGOs.¹⁷⁴

¹⁶⁹Rathindra Kuruwita, 'Police fire tear gas as Sri Lanka protesters defy curfew', Al Jazeera, 3 April 2022 <<https://www.aljazeera.com/news/2022/4/3/protesters-rally-in-sri-lanka-despite-curfew-social-media-curbs> >

¹⁷⁰'Police use tear gas and water cannons to disperse IUSF protesters', Daily Mirror, 20 May 2022 <https://www.dailymirror.lk/main_image/Police-use-tear-gas-and-water-cannons-to-disperse-IUSF-protesters/346-237367 >

¹⁷¹'AHEAD OF NEW SRI LANKA RESOLUTION, CIVIL SOCIETY AND UN HIGHLIGHT ONGOING RIGHTS CONCERNS', CIVICUS, 16 March 2021 <<https://monitor.civicus.org/updates/2021/03/16/ahead-new-sri-lanka-resolution-civil-society-and-un-highlight-ongoing-rights-concerns/> >

¹⁷²'TID ordered to investigate NGO headed by lawyer linked to Easter Sunday attacks', Colombo Page, 6 May 2020 <http://www.colombopage.com/archive_20A/May06_1588745659CH.php >

¹⁷³'Sri Lanka president amends institutional, legal framework of several ministries', Economy Next, 18 November 2021 <<https://economynext.com/sri-lanka-president-amends-institutional-legal-framework-of-several-ministries-88060/> >

¹⁷⁴Kelum Bandara, "'Govt to introduce fresh legislations to supervise NGOs, INGOs" - Raja Goonaratne', Daily Mirror, 21 September 2021 <<https://www.dailymirror.lk/hard-talk/Govt-to-introduce-fresh-legislations-to-supervise-NGOs-INGOs-Raja-Goonaratne/334-220774> >