

**Human Rights Watch Submission**

**to the UN Human Rights Committee**

**in advance of its review of Sri Lanka**

**January 2023**

This submission provides an overview of Human Rights Watch’s main concerns with respect to the human rights situation in Sri Lanka, submitted to the United Nations Human Rights Committee in advance of its 6th periodic review of Sri Lanka at the Committee’s 137th session (February 27 – March 24). We hope it will inform the Human Rights Committee’s preparation for its upcoming review of Sri Lanka’s compliance with its obligations under the International Covenant on Civil and Political Rights (hereinafter “the Covenant”).

For additional information, please see Human Rights Watch’s country page on Sri Lanka:

<https://www.hrw.org/asia/sri-lanka>

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

The 20th Amendment to the Sri Lankan Constitution was adopted by parliament on October 22, 2020.[[1]](#footnote-2) The amendment reversed many of the reforms introduced by the 2015 19th Amendment, which the UN Human Rights Council had welcomed for its “contribution to the promotion of democratic governance and independent oversight of key institutions.”[[2]](#footnote-3)

The 20th Amendment removed checks on the power of the executive presidency, including by abolishing the Constitutional Council, giving the president unfettered control over the appointment of senior judges, members of the Human Rights Commission of Sri Lanka, and other entities responsible for protecting rights under the Covenant including the Election Commission, the Police Commission, the Commission to Investigate Allegations of Bribery or Corruption, as well as over the appointment of officials responsible for upholding the rule of law including the attorney -general, the auditor general and the inspector general of police.

Following the adoption of the 20th Amendment, the Global Alliance of National Human Rights Institutions (GANRHI) recommended in October 2021 that the status of the Human Rights Commission of Sri Lanka be downgraded from “A” to “B” because the new appointment procedure “could compromise its independence” and it was “not characterized by openness and transparency.”[[3]](#footnote-4) GANHRI also found that the commission “has not effectively engaged on and publicly addressed all human rights issues including allegations of deaths in custody and torture, nor has it spoken out in a manner that promotes and protects all human rights,” and “did not submit a parallel report to the United Nations Human Rights Committee.”[[4]](#footnote-5)

The Human Rights Commission of Sri Lanka was given one year before the downgrade took effect to address GANHRI’s concerns. At the October 3 – 7, 2022 meeting of its Subcommittee on Accreditation, GANHRI confirmed the downgrade because it was “not satisfied the HRCSL has adequately addressed its concerns.”[[5]](#footnote-6)

On July 12, 2022, then-president Gotabaya Rajapaksa fled the country amid largescale protests and subsequently resigned. He was replaced as president by Ranil Wickremesinghe, at first in an acting capacity until Wickremesinghe was elected president by parliament and inaugurated on July 21. President Wickremesinghe introduced a constitutional amendment bill that was adopted by parliament and enacted as the 21st Amendment to the Constitution on October 31, 2022.[[6]](#footnote-7) Although in some respects resembling the 19th Amendment, the 21st Amendment does not restore the level of independence from political interference in appointments to previously independent institutions such as existed under the 19th Amendment. After providing a detailed legal analysis, the Centre for Policy Alternatives, a Colombo-based nongovernmental organization, concluded that the amendment did “not curtail the powers of the President nor introduce checks and balances in any meaningful manner… the Bill has drawn from the weakest aspects of the Nineteenth Amendment and Twentieth Amendment to the Constitution.”[[7]](#footnote-8)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Ensure that the Constitution protects the independence of the judiciary and of other institutions responsible for protecting human rights and the rule of law.

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

The Muslim Marriage and Divorce Act

The 1951 Muslim Marriage and Divorce Act (MMDA) contains numerous provisions that violate the rights of Muslim women and girls and Sri Lanka’s obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[[8]](#footnote-9) Section 23 allows child marriage at any age, stipulating only that a girl below the age of 12 years cannot be married under the MMDA unless authorized by a judge of the (Islamic) Qazi family court. Furthermore, section 363 of the Penal Code specifically permits what would otherwise constitute statutory rape, in cases of child marriage that are permitted under the MMDA. It provides that a man having sexual relations with a girl under the age of 16 years commits rape, whether or not she gives consent, unless she is above the age of 12 and is his wife.[[9]](#footnote-10)

Sections 8, 9, 10, 12, 14, and 15 of the MMDA stipulate that only men can be judges of the Qazi court. The MMDA does not require a woman’s consent to be recorded before the registration of any marriage under the Act, section 18 requiring only that the groom and the wali (guardian) of the woman make written declarations. The MMDA permits a Muslim man to marry up to four women. Section 24 requires only that he notify the Qazis before entering additional marriages, without any requirement to obtain the consent of his existing wife (or wives).

The second and third schedules of the MMDA provide discriminatory procedures for divorce that place greater burdens on women. For a husband to initiate a divorce (talak), only the presence of the Qazi and two witnesses is required. No grounds for divorce need be recorded, and the Qazi is required to inform the wife of the divorce if she is absent. However, the conditions for divorce initiated by a woman (fasah) require a hearing at which the wife, a minimum of two witnesses, and the husband provide testimony before the divorce is deliberated upon by a panel.

Article 16 of the Sri Lankan Constitution states that “[a]ll existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.’[[10]](#footnote-11) This has been interpreted as exempting the MMDA from the guarantee of rights to equality, and against discrimination on grounds including religion and sex, provided by article 12 of Constitution.

For decades, campaigners have called for the MMDA to be amended. In 2021 the cabinet approved reforms to the act, reportedly to make 18 the minimum age for marriage, ensure women sign their marriage certificates, ban polygamy, and end the system of appointing only male Qazi judges.[[11]](#footnote-12) The proposals were welcomed by Muslim women activists.[[12]](#footnote-13) However they were not presented to parliament, and the process appeared to have been derailed on October 28, 2021, when former President Rajapaksa appointed a conservative Buddhist monk, Galagoda Aththe Gnanasara, to lead a presidential taskforce on reforming the “personal laws” relating to different communities, including the MMDA.[[13]](#footnote-14) Attempts to reform the MMDA have not progressed under the administration of President Wickremesinghe.

Abortion

Sri Lanka has among the most restrictive abortion laws in the world.[[14]](#footnote-15) Under section 303 of the Penal Code, anyone deliberately causing a miscarriage, except for the purpose of saving a woman’s life, can be imprisoned for up to three years.[[15]](#footnote-16) The sentence can increase to seven years if the woman is “quick with child,” meaning that the movement of the fetus can be felt. The same penalties apply to a person who performs an abortion and to a woman who causes herself to miscarry. In December 2021, a 13-year-old girl from Mullaithivu reportedly died as a result of an illegal abortion after allegedly being raped by a family member.[[16]](#footnote-17)

On March 8, 2022, then Justice Minister Ali Sabry called for parliament to consider legalizing abortion in cases of rape.[[17]](#footnote-18) The Law Commission of Sri Lanka made a similar proposal in 2013.[[18]](#footnote-19) However, successive governments have failed to bring new legislation.

Sexual Orientation and Gender Identity

Section 365 of the Penal Code prohibits “carnal intercourse against the order of nature,” which is punishable with up to 10 years in prison and a fine.[[19]](#footnote-20) Section 365A punishes “any act of gross indecency” with up to two years in prison and a fine. These provisions are widely understood to criminalize consensual sex between same-sex people, including women.[[20]](#footnote-21) In at least seven cases between 2017 and 2020 the Sri Lankan authorities subjected people to forced anal examinations in an attempt to gather evidence for prosecutions for same-sex conduct.[[21]](#footnote-22)

Article 399 of the Penal Code, which prohibits “cheating by personation,” is used by the police to target transgender people.[[22]](#footnote-23) Furthermore, the 1841 Ordinance to Amend and Consolidate the Law Relating to Vagrants (Vagrants Ordinance) contains overbroad and vague provisions that are used to target transgender women and women suspected to be sex workers, as well as broadly criminalizing the most economically marginalized.[[23]](#footnote-24)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Amend the MMDA in line with the proposals approved by the cabinet in 2021, to remove all discriminatory provisions including abolishing polygamy, set the minimum age of marriage at 18 with no exceptions, remove any exceptions to the law on statutory rape, ensure that marriages can take place only with the full consent of women including their signature on their marriage certificates, and end the system of all-male Qazi courts.
* Legislate to decriminalize abortion not only for rape survivors but for everyone, and ensure universal access to abortion care, including services and information.
* Repeal sections 365, 365A and 399 of the Penal Code, to end the criminalization of same-sex conduct and remove the legal basis used to discriminate against transgender people.
* Repeal the Vagrants Ordinance and review all other legislation relating to vagrancy

**Gender-based violence (arts. 2, 3, 6, 7 and 26)**

Activists and researchers have long reported high rates of domestic violence, including marital rape, in Sri Lanka.[[24]](#footnote-25) Section 363 of the Penal Code excludes marital rape from the crime of “rape” unless the couple are “judicially separated.”[[25]](#footnote-26) As noted above in connection to the MMDA, this includes the rape of married children over the age of 12 years, which is permitted under the MMDA.

A survey reported by the Epidemiology Unit of the Ministry of Health in October 2020 found that “[t]he coronavirus pandemic has resulted in the escalation of violence against women and children in Sri Lanka.”[[26]](#footnote-27) Physical violence was reported by 7.8% of respondents, and 5.6% reported sexual violence. The researchers found that “[c]hildren, and women from ethnic minority or indigenous populations, lesbians, gay, bisexual, transgender or intersex persons, migrant and refugee populations, and those living in poverty” were at particularly high risk of experiencing violence during the pandemic.

The police have failed to respond adequately to cases of domestic violence. The Sri Lankan police spokesman reportedly told a television talk show in August 2021 that the police would not pursue cases of threats or assault against a woman by her husband.[[27]](#footnote-28) The National Forum Against Gender-Based Violence, a national body of state and nongovernmental organizations, said in June 2021, “We are concerned about instances of failure to believe victim narratives that cause fear and inflict blame and shame on the survivors, demanding victims to return to their abusers and the failure to provide them with support and referrals.”[[28]](#footnote-29)

While Sri Lankan law criminalizes sexual harassment, sexual violence and harassment in the world of work—including to and from work on public transit, which most low-income women use for their commute—continues to be prevalent.[[29]](#footnote-30) High rates of sexual violence and harassment, paired with lack of implementation and enforcement of laws, also prevent women from entering and staying in the workplace.[[30]](#footnote-31) Sri Lanka has not ratified the International Labour Organization Convention on Violence and Harassment at Work (ILO Convention No. 190), which calls for a holistic approach toward protecting workers against violence and harassment that integrates criminal laws and civil laws, such as labor laws, which can promote prevention, monitoring, and remedies.

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Remove all marital rape exceptions from laws criminalizing rape.
* Require police to investigate and appropriately prosecute acts of domestic and gender-based violence, including against a woman by her husband.
* Provide comprehensive services for the protection of women experiencing or at risk of domestic violence, including urgent protection orders by means of online applications. Require police to communicate protection orders to respondents, and to monitor and urgently respond to breaches of such protection orders.
* Ratify and make reforms in alignment with ILO Convention No. 190, which sets out comprehensive protections to ensure a world of work free from violence and harassment, including gender-based violence and sexual harassment.

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

States of Emergency

For much of its post-independence history Sri Lanka has been governed under a state of emergency, allowing the president to issue emergency regulations that override any law except the Constitution.[[31]](#footnote-32) In practice these regulations restrict numerous fundamental rights, including the presumption of innocence; the burden of proof, and retroactive penal sanctions; equality before the law and non-discrimination; ordinary procedure for arrests and judicial sanction for detention; and rights to freedom of expression, assembly, association, movement, occupation, religion, culture, and language.[[32]](#footnote-33)

Following the 2019 Easter Sunday bombings, the then president, Maithripala Sirisena, imposed a state of emergency that lasted for four months.[[33]](#footnote-34) Human Rights Watch documented that the emergency regulations were used to enable the arbitrary detention of Muslims without evidence of wrongdoing.[[34]](#footnote-35) A ban on Islamic face coverings introduced under the emergency regulations led to the targeting of Muslim women, including those wearing headscarves, which were not banned, who faced harassment and in some cases arrest including in government buildings and public spaces.[[35]](#footnote-36)

On April 1, 2022, the then President Gotabaya Rajapaksa declared a state of emergency following a protest against his government outside his private residence in Colombo.[[36]](#footnote-37) The government imposed a 36-hour curfew and attempted to block access to social media.[[37]](#footnote-38) Over 600 people were reportedly arrested for defying the curfew.[[38]](#footnote-39) A state of emergency requires confirmation by parliament within 14 days. At that time Rajapaksa’s ruling Sri Lanka People's Freedom Alliance had suffered a number of defections by MPs, leaving its majority uncertain. The emergency declaration was revoked by presidential decree on April 6.[[39]](#footnote-40)

On May 6, 2022, the president once again imposed a state of emergency after police used tear gas against students protesting near parliament.[[40]](#footnote-41) The numerous emergency regulations issued included one suspending the usual requirement that a detainee be produced before a magistrate within 14 days if the arrest was ordered by a deputy inspector general of police. The regulation also allowed for such detainees to be kept in the temporary custody of a questioning officer for up to seven days without judicial supervision or control, making them vulnerable to torture and other ill-treatment.[[41]](#footnote-42) Emergency regulations also increased punishments for a variety of offenses ranging from kidnapping to sexual harassment, human trafficking, and “unnatural offences” (widely understood as same-sex sexual activity). The state of emergency lapsed after 14 days because a motion to extend it was not tabled in parliament.[[42]](#footnote-43)

On May 9, 2022, after clashes broke out when government supporters attacked protesters, sparking widespread disorder,[[43]](#footnote-44) the military was deployed with orders to “shoot at persons causing harm to life or involved in theft of property.”[[44]](#footnote-45) Similar orders were subsequently issued to the police.[[45]](#footnote-46)

On July 17, while serving as acting president, Ranil Wickremesinghe declared a state of emergency imposing emergency regulations that were almost identical to those imposed by his predecessor in May. To the extent that they were different, the July regulations were even more draconian, extending the period that a suspect could be held without being produced before a magistrate from 24 to 72 hours.[[46]](#footnote-47) The state of emergency expired on August 18.

On July 21, Wickremesinghe issued [an order](http://documents.gov.lk/files/egz/2022/7/2289-40_E.pdf) to “call out with effect from July 22, 2022 all the members of the Armed Forces . . . for the maintenance of public order.”[[47]](#footnote-48) In the early hours of July 22, [Sri Lankan](https://www.hrw.org/asia/sri-lanka) security forces including members of the army and air force forcibly dispersed people at a peaceful protest site and assaulted protesters in central Colombo, injuring more than 50 people and arresting at least 9 people.[[48]](#footnote-49) Police subsequently arrested scores of people accused of participating in earlier protests. Some arrests, which were conducted during the state of emergency by men wearing civilian clothes, who did not inform the detainee of the reason for their arrest, resembled abductions. In some cases, the police did not immediately acknowledge the arrest or disclose the place of detention, raising concerns of enforced disappearance.[[49]](#footnote-50)

Counterterrorism legislation

Successive Sri Lankan governments have made no progress in repealing and replacing the Prevention of Terrorism Act (PTA),[[50]](#footnote-51) despite repeated promises to do so. Amendments to the Act adopted in March 2021 do not substantially address the numerous abusive provisions that have enabled arbitrary detention, torture, and other violations since its introduction in 1979.[[51]](#footnote-52)

A 2020 report by the Human Rights Commission of Sri Lanka (HRCSL) found that, as of September 2018, at least 29 PTA prisoners had spent 5 to 10 years on remand (pretrial detention), and 11 had spent 10 to 15 years on remand.[[52]](#footnote-53) The commission said the longest period a person had been in remand before trial was then 15 years. The longest period a trial had been ongoing was 16 years. The study also found that about 84 percent of PTA prisoners were tortured after their arrest, and over 90 percent of those were forced to sign a document in a language, Sinhala, they could not understand. Very often, PTA prisoners are denied proper access to legal representation.

In the aftermath of the 2019 Easter Sunday bombings, the authorities arbitrarily arrested and detained hundreds of people under counterterrorism and emergency laws. Defense lawyers and activists told Human Rights Watch that the vast majority of arrests were under the PTA. Lawyers said their clients had often been arrested without any credible evidence of terrorist involvement, including for reasons such as having the Quran or other Arabic literature in their possession during searches.[[53]](#footnote-54) Some, especially suspects from the area of Kattankudy in eastern Sri Lanka, where the Easter Sunday bombers resided, remain in custody without trial over three years later.

After Gotabaya Rajapaksa won the presidential election in November 2019, his administration used the PTA to target perceived political opponents and members of the minority Tamil and Muslim communities. The authorities also threatened the victims of past human rights violations, human rights activists and lawyers, journalists, and members of civil society groups under the guise of countering terrorism. As a human rights activist working with the Tamil community based in the north of Sri Lanka told Human Rights Watch: “They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time. Police are arresting people for posting pictures on Facebook. They can arrest you for anything.”[[54]](#footnote-55)

On March 9, 2021, then-President Rajapaksa introduced the Prevention of Terrorism (de-radicalization from holding violent extremist religious ideology) Regulations No. 1 of 2021, which seeks to expand powers under the PTA.[[55]](#footnote-56) The regulation broadly allows the authorities to detain and “rehabilitate” anyone who “by words either spoken or intended to be read or by signs or by visible representations” causes the commission of violence or “religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.” Instead of being tried, the suspect may be detained in a “reintegration center” for up to one year, on the recommendation of the attorney general. The defense minister is empowered to extend the detention for a second year. As of January 2023 the regulation was suspended while the Supreme Court considers fundamental rights petitions against it.

According to information provided to Human Rights Watch, the Human Rights Commission of Sri Lanka said it recorded 109 arrests under the PTA in 2021.[[56]](#footnote-57)

Under growing domestic and international pressure, the government amended the PTA in March 2022, purportedly to reduce abuses committed under the act.[[57]](#footnote-58) Even as amended, the law allows the government to detain anyone for up to a year without charge, without producing any evidence, and without the possibility of bail.[[58]](#footnote-59) The amendment does not provide meaningful safeguards against torture, instead encouraging it by allowing convictions based on a confession given to a police officer. Furthermore, it still allows officials to keep a suspect in “any place for the purpose of interrogation” – a provision that has facilitated torture and increases the risk of enforced disappearance.

Other amendments to the PTA adopted in March 2022, purportedly to reduce the risk of torture, merely replicate existing provisions of Sri Lankan law that have done little to date to prevent abuses. These include mandating magistrates to make monthly visits to places of detention to check whether prisoners are being tortured. The Human Rights Commission of Sri Lanka told Human Rights Watch it had informed the Supreme Court chief justice in January 2022 that magistrates had recently made no visits to Criminal Investigation Department or Terrorism Investigation Division detention centres, although the authority to do so already existed.[[59]](#footnote-60) The amendment also adds a requirement to notify the Human Rights Commission of PTA arrests – a requirement that already exists but which police often ignore.[[60]](#footnote-61)

As amended, the PTA does not meet any of the five “necessary prerequisites” described by seven United Nations special rapporteurs in December 2021 to comply with international human rights standards.[[61]](#footnote-62)

On March 22, 2022, the then justice minister (now foreign minister) Ali Sabri informed parliament that “since September, 2021, there has been a de facto moratorium on the use of the PTA on offences other than those which have a direct involvement with terrorism.”[[62]](#footnote-63) On June 13, the then foreign minister G.L. Pieris announced a “de facto moratorium" on the use of the PTA in an address to the Human Rights Council.[[63]](#footnote-64) However, on August 21 President Wickremesinghe, in his capacity as defence minister, signed orders to hold three student activists accused of participation in protests in detention for 90 days under the PTA.[[64]](#footnote-65) Two of those students were subsequently released without charge, but at the time of writing the convenor of the Inter University Students' Federation, Wasantha Mudalige, remains in PTA detention for over 150 days although the government has produced no evidence of “terrorism” against him.[[65]](#footnote-66)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Amend or repeal and replace all laws enabling the imposition of states of emergency, including the Public Security Ordinance (1947), the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006, to ensure that non-derogable rights protected under the Convention are upheld, and that any restrictions on rights during times of crisis are strictly proportionate and of limited duration.
* Immediately impose a full moratorium on the use of the PTA. Promptly repeal the PTA and replace it with counterterrorism legislation meeting the five criteria set out by special procedures mandate holders for compliance with international human rights standards.

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

After becoming president in November 2019, Gotabaya Rajapaksa took numerous steps to block or reverse steps to provide accountability for past violations. Since President Wickremesinghe came to office in July 2022, the government continues to block accountability while the military denies responsibility for well-documented violations such as enforced disappearances.[[66]](#footnote-67)

United Nations Human Rights Council

In February 2020, the Sri Lankan government withdrew from its commitments under UN Human Rights Council resolution 30/1 (and its successor resolutions 34/1 and 40/1), which included provisions to provide for justice for abuses committed by both sides during the civil war. Resolution 46/1 was subsequently adopted by the Human Rights Council in March 2022, despite opposition from the government of Sri Lanka, establishing an office within the OHCHR to collect and analyse evidence of international crimes committed in Sri Lanka for use in future international trials.[[67]](#footnote-68) The mandate of 46/1 was renewed and strengthened in resolution 51/1 on October 6, 2022.[[68]](#footnote-69) The government continues to oppose this process.

On January 21, 2021, as an ostensible alternative to the Human Rights Council process, President Rajapaksa announced a new domestic commission of inquiry chaired by Supreme Court Justice A.H.M.D. Nawaz[[69]](#footnote-70) to review the findings of the numerous earlier commissions of inquiry,[[70]](#footnote-71) which had not led to accountability or revealed the fate of missing people. The government indicated the outcome of that commission, before its findings are complete, telling the Human Rights Council in September 2021 that allegations against senior military officers are “unacceptable” and without “substantive evidence.”[[71]](#footnote-72) The commission presented its second interim report to the president in February 2022.[[72]](#footnote-73) According to a spokesman for the President’s Media Division, the commission “recommended to grant the right to commemorate the death of a relative [that] occurred during the war, in private.”[[73]](#footnote-74) (The Rajapaksa government had previously supressed Tamil commemorations of those who died in the civil war.)

President Wickremesinghe has said that he intends to announce a new truth commission to examine past violations, although he has yet to provide detailed information about the proposal.[[74]](#footnote-75) Victims groups have expressed scepticism as to whether the new body would meaningfully further the work of previous similar bodies, which failed to establish the truth in enforced disappearance and other cases, and whose recommendations were not implemented.

Obstructing domestic investigations

Immediately following the presidential election in November 2019, Nishantha Silva, a senior police officer investigating high-profile human rights violations implicating government officials, fled the country following threats.[[75]](#footnote-76) Other criminal investigators were put under travel restrictions. Silva’s superior officer, Senior Superintendent of Police Shani Abeysekera, who had also investigated numerous high-profile cases, was suspended from the police in January and arrested in July 2020 for allegedly “falsifying evidence.”[[76]](#footnote-77) He was released on bail in June 2021 after the Court of Appeal found that the evidence against him was “a fabricated, false version and an exaggerated account or concocted story involving a set of collaborators or conspirators, to unduly cause prejudice and harm.”[[77]](#footnote-78) He has repeatedly said that, although he has received death threats against himself and his family, his police protection has been withdrawn.[[78]](#footnote-79)

On January 9, 2020, President Rajapaksa appointed a three-member  Commission of Inquiry to Investigate Allegations of Political Victimization to look into the supposed “political victimization” of government officials by previous government.[[79]](#footnote-80) The commission sought to block investigations and prosecutions in emblematic human rights cases, overturn a murder conviction, reinstate security force members disciplined for serious misconduct, and protect Rajapaksa family members and others from investigations into fraud and money laundering.[[80]](#footnote-81) During its hearings throughout 2020 it repeatedly impeded or prejudiced legal proceedings in cases involving Rajapaksa allies and associates accused of corruption or human rights abuses, leading the attorney general to repeatedly accuse it of exceeding its authority.[[81]](#footnote-82)

The Bar Association of Sri Lanka has said that the commission’s report, which was submitted to the president on December 8, 2020, “may undermine the Rule of Law in this country, impair the independence of the Judiciary, and erode the impartial and efficient functioning of the Attorney General’s Department.”[[82]](#footnote-83) Among the cases that the commission sought to block are the 2008-2009 enforced disappearance and suspected murder of 11 men and boys allegedly by members of naval intelligence; the 2008 abduction and torture of a journalist, Keith Noyahr; the 2009 murder of a newspaper editor, Lasantha Wickrematunge; the 2010 disappearance of a journalist, Prageeth Ekneligoda, in which a criminal trial is proceeding; and the 2012 Welikada Prison massacre, in which one government official was subsequently convicted and sentenced to death[[83]](#footnote-84) and another was acquitted. In all these cases except the first, evidence given by police in court implicated Gotabaya Rajapaksa, who was defense secretary at the time.[[84]](#footnote-85) A resolution has been before parliament since 2021 to implement the commission’s recommendations, by clearing suspects and instead bringing prosecutions against police, prosecutors, and prosecution witnesses in these and other cases. As of January 2023, it had not been put to a vote.

The commission of inquiry also investigated a number of high-profile corruption cases from the period when Rajapaksa family members were in government between 2005 and 2015. The commission similarly recommended that suspects be acquitted and that officials responsible for bringing cases be charged with fabricating evidence. Some of these corruption cases, such as suspected fraud in the purchase of MiG military aircraft, are linked to alleged human rights violations.[[85]](#footnote-86)

On March 26, 2020,  Rajapaksa pardoned former Sgt. Sunil Ratnayake, who had been convicted of massacring eight civilians, including children.[[86]](#footnote-87) The bodies of the victims showed signs of torture. The conviction had been one of very few cases of security force personnel being held criminally responsible for civil war era atrocities. Ratnayake’s conviction had been upheld by Sri Lanka’s court of appeal. On January 13, 2021, the Batticaloa High Court freed a pro-government member of parliament, Sivanesathurai Chandrakanthan (alias Pillayan) and four other suspects in the 2005 murder of an opposition parliamentarian, Joseph Pararajasingham, after the attorney general dropped charges in the case.[[87]](#footnote-88) On June 24, 2021, Rajapaksa pardoned former MP Duminda Silva, who was convicted in 2016 along with four others for killing a rival politician and three of his supporters in 2011.[[88]](#footnote-89)

There has been no progress in other prominent cases in which senior officials have been implicated, including the 2006 Trinco Five massacre of five Tamil students, and the 2006 massacre of 17 staff of the French aid group Action Contre la Faim.[[89]](#footnote-90)

Security sector reform

There has been no apparent progress on security sector reform. On the contrary, then-President Rajapaksa appointed military officers or former officers implicated in grave human rights violations to senior positions. Gen. Shavendra Silva, whose forces committed war crimes in 2009 when he was commander of the 58th Division of the Sri Lankan army, was appointed chief of defense staff on May 26, 2022.[[90]](#footnote-91) Rajapaksa also appointed Gen. (retd.) Kamal Gunaratne, whose forces committed war crimes in 2009 when he was commander of the army’s 53rd Division, as defense secretary.[[91]](#footnote-92) In December 2021, Rajapaksa appointed Adm. (retd.) Wasantha Karannagoda, who is implicated in the enforced disappearance of 11 men and boys in 2008 and 2009, allegedly by naval intelligence officers, to be the governor of North Western province.[[92]](#footnote-93) Silva, Gunaratne and Karannagoda continue to hold these positions under President Wickremesinghe.

Office of Missing Persons

The Office of Missing Persons (OMP) was established in 2017 to investigate cases of enforced disappearance, but has failed to make progress in investigations or to gain the confidence of victims’ families.

After the commission on “political victimization” submitted its report, its chairman, retired Supreme Court judge Upali Abeyratne, was appointed by President Rajapaksa to chair the Office of Missing Persons, further undermining its credibility. 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.”[[93]](#footnote-94) Rajapaksa also appointed Jayantha Wickramaratne, a former policeman accused of destroying evidence in the murder of journalist Lasantha Wickrematunge,[[94]](#footnote-95) to the OMP.[[95]](#footnote-96) According to Michelle Bachelet, then UN High Commissioner for Human Rights, the policy of the OMP “seems to be aimed at reducing the case load and closing files rather than a comprehensive approach to establish the truth and ensure justice and redress to families.”[[96]](#footnote-97)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Support UN Human Rights Council resolution 51/1 on investigating and bringing to justice those responsible for grave violations of international humanitarian law and international human rights law.
* Cease all attempts, including through the report of the “political victimization” commission and the Nawaz commission, to obstruct or delay domestic investigations and prosecutions of human rights cases. Empower the police and courts to pursue credible and independent inquiries into past human rights abuses, and conduct trials according to international fair trial standards.
* Suspend from military service and remove from public office any serving or retired military officer credibly implicated in violations, and empower civilian authorities to investigate and appropriately prosecute alleged crimes.
* Following transparent and substantive consultations with victims’ families, establish a credible mechanism to investigate cases of enforced disappearance and pay appropriate compensation to the families of victims.

**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)**

Under President Rajapaksa’s government, security force abuses against people subject to arrest and detention continued, including under the PTA, and were often committed against members of the Tamil and Muslim communities, as described above.

In 2021 the police were implicated in several unlawful deaths,[[97]](#footnote-98) including three men whose deaths in May and June were linked to disproportionate and abusive enforcement of measures to control the spread of the Covid-19 virus, as well as in cases linked to an abusive anti-drugs policy.[[98]](#footnote-99)

On May 17, police allegedly stopped D. Sunil Indrajith, 49, for violating a Covid-19 quarantine in Weligama and ordered a civilian police employee to beat him. He collapsed in the road and was killed by a passing bus.[[99]](#footnote-100) Two policemen and two others were subsequently arrested. On June 3, Chandran Vidushan, 22, died in police custody shortly after being arrested in Batticaloa.[[100]](#footnote-101) His family alleged that police tied him to a tree outside their house and severely beat him, then took him away. The authorities said he died of a drug overdose. On June 6, Mohamed Ali, 42, died after police arrested him for an alleged Covid-19 quarantine violation in Panadura, near Colombo.[[101]](#footnote-102) The police reported that he was fatally injured jumping from a moving police jeep. Ali’s wife alleged that the police beat him to death. Two policemen reportedly faced a disciplinary procedure for “negligence.”

Police fatally shot Melon Mabula on May 11, and Tharaka Perera Wijesekera on May 12.[[102]](#footnote-103) Both were in police custody for alleged involvement in organized crime. Prior to their killings their lawyers and others had warned that their lives were in danger. In a statement, the Bar Association of Sri Lanka said that both cases “have all the hallmarks of extra-judicial killings.”[[103]](#footnote-104)

Drug policy

In 2020, President Rajapaksa established a task force of senior military and police officers to create a “disciplined, virtuous, and lawful society,” and placed the police andNational Dangerous Drugs Control Board (NDDCB) under the Defense Ministry.[[104]](#footnote-105) The chief of defense staff, Gen. Shavendra Silva, said, “The security forces, which eradicated terrorism in the country 10 years ago, have been given a new task – to combat drug trafficking.”[[105]](#footnote-106)

The police crackdown on drug dealers and users has allegedly involved torture and other ill-treatment in police custody or at “rehabilitation” centers, and invasive body searches of female suspects. People accused of using drugs can be arbitrarily detained without charge or trial for “rehabilitation” in facilities run by the army. A study by Harm Reduction International found that the treatment of inmates in Sri Lanka’s “rehabilitation” centers includes near-daily beatings and other physical abuse amounting to torture.[[106]](#footnote-107) On January 18 2023, the Sri Lankan parliament approved the Bureau of Rehabilitation Bill, which entrenches the role of the armed forces in subjecting purported drug users to forced “rehabilitation.”[[107]](#footnote-108)

Trafficking or possession of drugs in Sri Lanka carries severe penalties, including death or life in prison.[[108]](#footnote-109) No executions have been carried out in Sri Lanka since 1976, although death sentences continue to be handed down and about 1,500 prisoners are on death row.[[109]](#footnote-110)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Create an independent authority for the prompt and impartial investigation and prosecution of allegations including torture and extra-judicial killing against the police.- End the involvement of security forces in drug prevention and drug treatment activities. Remove the NDDCB from the purview of the Ministry of Defense and place it under the purview of the Ministry of Health.
* - Take immediate steps to close compulsory drug rehabilitation centers and implement voluntary and evidence and health-based treatment options. - Decriminalize drug use and possession for personal use to address the over-incarceration of drug users.- Abolish the death penalty.

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

The 2oth Amendment to the Constitution, as described above, undermined the independence of the judiciary and the administration of justice in numerous ways, giving the president unfettered control over the appointment of senior judges, as well as officials responsible for the administration of justice, and removing the independent status of bodies including the Human Rights Commission of Sri Lanka and the Commission to Investigate Bribery or Corruption. These changes were not fully reversed by the 21st Amendment to the Constitution in 2022. Meanwhile, ad hoc bodies such as the Commission of Inquiry to Investigate Allegations of Political Victimization, described above, have sought to obstruct or interfere in judicial proceedings

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Reverse changes introduced by the 20th Amendment that undermined the independence of the judiciary and administration of justice.

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

Numerous communities remain unable to return to homes they were forced to leave during the civil war, in many cases because their land is occupied by the military.[[110]](#footnote-111)

In the immediate aftermath of the 2019 Easter Sunday bombings, angry crowds threatened and assaulted refugees and asylum seekers, many of whom were Muslims from other South Asian countries. Around 1,400 were forced to take shelter in unsuitable and crowded temporary accommodation for their safety.[[111]](#footnote-112)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Guarantee full restitution or compensation for losses or damage of housing, property, and land because of violations of international human rights and humanitarian law committed during the conflict. Ensure pledges on land returns are time bound and transparent to deter unnecessary further delays in implementation.
* Ensure the safety of refugees and asylum seekers in Sri Lanka.
* Ratify the 1951 Refugee Convention and its 1967 Protocol.

**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)**

Religious minorities face official discrimination as well as speech that incites violence, discrimination or hostility, which the authorities do little or nothing to discourage and sometimes appear to endorse. For example, President Rajapaksa said in a November 2020 speech that there are “legitimate fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism.”[[112]](#footnote-113)

In March 2020, the government published guidelines requiring that the remains of all people who had died from Covid-19 be cremated, which is against Islamic tradition.[[113]](#footnote-114) The World Health Organization had not recommended that governments do this,[[114]](#footnote-115) and four United Nations special rapporteurs criticized the requirement as a violation of freedom of religion.[[115]](#footnote-116) The policy was withdrawn almost a year later, after which such burials were restricted to a single remote site.[[116]](#footnote-117)

On April 12, 2020, Sri Lankan Muslim organizations wrote to the inspector general of police reporting an upsurge in hate speech, including calls to boycott Muslim businesses, and accusations that Muslims were deliberately spreading Covid-19, which the government did not contest.[[117]](#footnote-118) Senior government figures made public remarks associating the Muslim community with Covid-19 infection.[[118]](#footnote-119)

While the government took no action against those inciting violence and discrimination against minorities,[[119]](#footnote-120) it repeatedly used Sri Lanka’s 2007 International Convention on Civil and Political Rights Act to target members of minority communities, accusing them of “advocat[ing] national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence,” which is prohibited under section 3(1) of the Act.[[120]](#footnote-121)

One such case was that of Ramsy Razeek, who was arrested under the ICCPR Act on April 9, 2020 after he criticized the government policy requiring cremation for all people who died from Covid-19, writing on Facebook that “Muslims have been surrounded on all sides by racist groups operating in the country.… It is time to prepare for an ideological jihad for the country and all its citizens, using the pen and keyboard as weapons.”[[121]](#footnote-122) He was released on bail after five months.

On April 27, 2021, the cabinet approved plans to ban Muslim women’s face coverings. The ban was proposed by the public security minister, Adm. (retd.) Sarath Weerasekara, who called face veils “a sign of religious extremism,” and claimed the ban was justified on “national security” grounds. However, he has said “there will be no prohibition to wear face masks to prevent the Covid-19 virus.”[[122]](#footnote-123) The ban has not yet been implemented.

According to the United States government’s most recent *Report on International Religious Freedom*, during 2020 “the National Christian Evangelical Alliance of Sri Lanka (NCEASL) documented 50 incidents of attacks on churches, intimidation of and violence against pastors and their congregations, and obstruction of worship services… NCEASL said evangelical Christian groups continued to report that police and local government officials were complicit in the harassment of religious minorities and their places of worship.”[[123]](#footnote-124)

According to the same report, police and military personnel were complicit in allowing Buddhists to build religious structures on Hindu sites,[[124]](#footnote-125) sometimes citing supposed archaeological evidence as justification. The government has repeatedly attempted to prevent Tamils from commemorating or memorializing members of their community who were killed during the civil war.[[125]](#footnote-126)

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Amend the ICCPR Act to prevent its abuse in prosecuting members of ethnic and religious minorities for speech that is protected under the Convention.
* Publicly undertake to combat speech that incites violence, discrimination or hostility against minorities.
* End baseless restrictions on the practice of burial, and drop proposals to ban Islamic face coverings.
* Allow members of the Tamil community to freely commemorate and memorialize victims of the civil war.
* End the involvement of the police and military in religious archaeology.

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

The Rajapaksa administration reversed the significant reopening of civil society space made under the previous Sirisena administration.Since becoming president in July 2022, Ranil Wickremesinghe has taken action violating the rights to freedom of expression and peaceful assembly, ordering the military to violently disperse peaceful protesters and arbitrarily arresting scores of people accused of participating in protests during the previous months.[[126]](#footnote-127)

Journalists and human rights defenders

Self-censorship has returned to the Sri Lankan media,[[127]](#footnote-128) causing some journalists to leave the country fearing reprisals.[[128]](#footnote-129) There has been no successful conclusion in investigations into the killing of at least 19 journalists.[[129]](#footnote-130)

On April 1, 2020, the inspector general of police ordered his officers to arrest those who “criticize” officials involved in the coronavirus response, or share “fake” or “malicious” messages about the pandemic.[[130]](#footnote-131) The Bar Association said the order “could be misused by police officers in order to stifle the freedom of speech and expression.”[[131]](#footnote-132)

The security forces have carried out intense surveillance and harassment of civil society organizations and the families of victims of enforced disappearance.[[132]](#footnote-133) In 2020, an activist described to Human Rights Watch the fear that the then recently elected president generated: “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.”[[133]](#footnote-134) The Criminal Investigation Department of the police, and other security and intelligence agencies including the Terrorism Investigation Division, have repeatedly visited the families of the “disappeared,”[[134]](#footnote-135) as well as the offices of nongovernmental organizations, and the homes of NGO staff. This activity is most intense in the north and east of Sri Lanka.[[135]](#footnote-136) Some activists reported that their banks have prevented their organizations from making or receiving transfers, apparently under instructions from the central bank.[[136]](#footnote-137)

As noted above, the government frequently uses the pretext of “counterterrorism,” and abuses powers under the PTA, to suppress civil society – particularly members of the Tamil or Muslim communities. An activist in the Northern Province told Human Rights Watch in 2021, “Our organization and some of our partner organizations were sent a letter under the PTA requiring us to give details of our work. Our staff, and other human rights activists, also feel fear because they can make any allegation and arrest us. No lawyers from Jaffna [city in the north] are willing to appear with me. They can be put in custody without a charge sheet. This is very dangerous nowadays. We can’t talk about human rights. We can’t talk about the government. We have to be very careful when we work. When we do work, they [police and intelligence agencies] follow us. They followed me and my staff when we went to the Human Rights Commission [of Sri Lanka] to complain.”[[137]](#footnote-138)

On several occasions, including on March 31, July 9, and July 22, 2022, members of the police or security forces assaulted journalists who were reporting on anti-government protests.[[138]](#footnote-139)

Peaceful assembly
The authorities have repeatedly sought to suppress peaceful protests.

In February 2021, the authorities obtained court orders banning events and deployed police to disrupt a five-day protest march by Tamil political parties and civil society organizations from Pottuvil to Polikandy.[[139]](#footnote-140) In one case, the Kalavanjikudi Magistrates Court issued an order to “prohibit protests planned in support of the accusation of human rights violations at the Geneva sessions.”[[140]](#footnote-141)

In July 2021, trade unionists, activists, and teachers were arrested during a protest in Colombo against legislation they said would militarize higher education; they were detained at quarantine facilities after being granted bail by a magistrate.[[141]](#footnote-142) In August, police arrested trade unionists and students protesting the bill.[[142]](#footnote-143)

On April 19, 2022, police, fired on protesters demonstrating against rising fuel prices in Rambukkana, in an apparent use of excessive force, killing one person and wounding at least 14.[[143]](#footnote-144)

On May 9, 2022, several hundred people identifying themselves as supporters of then-Prime Minister Mahinda Rajapaksa arrived by bus in Colombo and proceeded from the prime minister’s official residence to the Galle Face Green, where protesters calling for the government’s resignation had been peacefully camped for several weeks.[[144]](#footnote-145) Witness accounts and video footage show government supporters attacking the protesters with clubs and other weapons and setting fire to tents.[[145]](#footnote-146) A senior police officer later said he had been ordered not to prevent the attack.[[146]](#footnote-147)

On July 22, as noted above regarding the state of emergency then in force, [Sri Lankan](https://www.hrw.org/asia/sri-lanka) security forces including members of the army and air force forcibly dispersed people at a peaceful protest site and assaulted protesters in central Colombo, injuring more than 50 people and arresting at least 9 others.[[147]](#footnote-148) Hours earlier, protest organizers had announced that they would leave the protest site the following day. Using batons, the security forces attacked demonstrators who had remained at the protest site, along with several journalists and two lawyers who were present. Protesters told Human Rights Watch that air force personnel detained a small group of people for several hours and severely beat them before they were released.

* *The Human Rights Committee should recommend that the Sri Lankan government:*
* Investigate and prosecute cases of attacks on and killings of journalists.
* Stop using security and intelligence agencies to intimidate and suppress civil society activists and organizations. End policies preventing civil society organizations from accessing legitimate sources of funding.
* Allow peaceful protests, investigate and prosecute as appropriate officers responsible for excessive use of force or other violations against protesters.
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