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Submission for Review: Sri Lanka

to be considered in connection with the Sixth periodic report of Sri Lanka
(CCPR/C/LKA/6)
on its compliance with the International Covenant on Civil and Political Rights

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Women's Action Network – Sri Lanka

Alliance for Minorities – Sri Lanka

Human Rights Litigation and International Advocacy Clinic

University of Minnesota Law School

229 19th Avenue South

Minneapolis, MN 55455

Contact: jmgreen@umn.edu

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Summary

The rule of law and human rights protections in Sri Lanka are under serious threat.

Since 2019, government power has been consolidated in the Rajapaksa family, when President Gotabaya Rajapaksa appointed his brother, former Sri Lankan president Mahinda Rajapaksa as Prime Minister and Finance Minister.¹ The Rajapaksa Government has been criticized for corruption and its disregard for human rights and the rule of law. The Government has also targeted human rights defenders, journalists, and those seeking to investigate and prosecute violations during the 26-year civil war that ended in 2009 as well as subsequent human rights violations. Rather than carefully vet new appointees, the Rajapaksa administration has appointed persons accused of war crimes to official positions and pledged immunity to those accused. Thirteen years have passed since the end of Sri Lanka's civil war, yet there is no functioning system for accountability for the families of the disappeared. The Government's 2015 UNHRC commitments for transitional justice mechanisms that would deliver truth and justice, reparations and accountability have gone unfulfilled. Constitutional reform measures were promised by the previous Government as part of a power-sharing deal and were seen by the Tamil National Alliance (TNA) as guaranteeing non-recurrence of human rights violations, but these efforts have likewise been abandoned. There have also been rollbacks of measures to ensure checks and balances and independent commissions as guaranteed in the Constitution. The passage of the 20th Amendment has further diluted these checks and balances.

The current political and economic situation in Sri Lanka has exacerbated the situation and permitted the Government to continue to oppress minorities and violate the rule of law. In 2020, the COVID-19 pandemic destabilized the country's economy, resulting in unemployment, food insecurity, and bringing more than 500,000 people under the poverty line.² It disproportionately impacted minority women who are informal and garment industry workers.³ In response to the pandemic, the Government passed legislation specifically targeting the Muslim minority, removed or amended due process of law protections, and delayed reparations and investigations. One cruel policy was the forced cremation of the bodies of people who had or were suspected to have COVID. The bodies of over 300 Muslims were forcibly cremated without the consent of family members.

Public discontent over the worsening economic crisis has led to protest and civil unrest.⁴ Citizens protested against the Government for its mismanagement of the economy, blaming it for the current economic crisis, which has resulted in high unemployment, skyrocketing prices and shortages of food, medicine, fuel, and other essential goods.⁵ During recent youth protests against the President, the state media and government members initially called the protesters "extremists."⁶ In April and May 2022, President Rajapaksa announced a state of public emergency.⁷ Throughout this year, the President has declared a state of emergency three times. The emergency measures gave the President excessive powers to broadly change or suspend existing laws, use force, and violate citizens' human rights, including allowing the Government officials including the military to shoot

¹ Bloomberg, *Sri Lankan President Rajapaksa Appoints Brother as Prime Minister* (Nov. 21, 2019), <https://www.bloomberg.com/news/articles/2019-11-21/rajapaksa-appoints-china-friendly-brother-as-sri-lanka-premier>.

² UN Human Rights Council, *Promoting reconciliation, accountability and human rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/9 (Apr. 2022) [Hereinafter *2022 OHCHR Report*].

³ *Id.*

⁴ *Id.*

⁵ NPR, *Sri Lanka is facing economic crisis — and the U.S. dollar is partly to blame*, (Apr. 29, 2022), <https://www.npr.org/2022/04/29/1095642332/sri-lanka-is-facing-economic-crisis-and-the-u-s-dollar-is-partly-to-blame/>.

⁶ CNBC, *Sri Lanka's president declares emergency as police clash with angry protesters* (Apr. 1, 2022), <https://www.cnbc.com/2022/04/02/sri-lanka-president-declares-emergency-as-police-clash-with-protesters.html>.

⁷ CNN, *Sri Lanka president declares new state of emergency as protests roil island*, (May, 7 2022), <https://www.cnn.com/2022/05/07/asia/sri-lanka-president-rajapaksa-state-of-emergency-hnk-intl/index.html>.

civilians “on sight”, detain civilians for 24 hours prior to arresting them, torture and mistreat detainees, and search and seize private property without warrant.⁸

The former Prime Minister, Mahinda Rajapaksa, resigned on Monday, May 9th in response to the escalating anti-government protests, during which nine people were killed and over three hundred were injured, to date.⁹ The president Gotabaya Rajapaksa refused to resign, instead bringing in a new prime minister in an effort to create a new “unity government.”¹⁰ Ranil Wickremesinghe, the leader of the United National Party (UNP) opposition party, was sworn in as the new prime minister on May 12th.¹¹ The new government has faced difficulties in filling its Cabinet; it wanted all party members to join and form a coalition government. Except for two members of the main opposition party, Samagi Jana Balawegaya (SJB), who declared themselves independent and took ministerial positions, the rest of the cabinet ministers are once again from the majority Sri Lanka Podujana Peramuna (SLPP) party and its allies, especially the Sri Lanka Freedom Party (SLFP). Other opposition parties including the Janatha Vimukthi Peramuna (JVP) and the Tamil National Alliance (TNA) refused to come on board without the President stepping down and generally rejected Wickremesinghe’s new government, claiming it lacks legitimacy.¹² The main opposition party SJB declined to join the Cabinet but pledged to support the new government’s efforts to tackle the country’s economic and political crisis.¹³

The Sri Lankan Parliament reconvened for the first time since Mahinda Rajapaksa’s resignation on May 17th.¹⁴ Wickremesinghe warned the public about the worsening economic situation including depleting petrol stocks, foreign reserves, medicines and other essential supplies. The new Prime Minister announced his plan to request foreign assistance, privatize national airlines, and seek parliamentary approval to issue trillions of rupees. Wickremesinghe received such approval and now plans to print the trillion rupees with high inflation (according to the Sri Lanka Census and Statistics Department, the overall rate of inflation is 39.1% and in May 2022 alone food inflation is 57.4%). President Rajapaksa and many of his allies, including family members, remain in control of the country.¹⁵

Wickremesinghe has promised reform and to repeal the 20th amendment to the Constitution that gave more power to the executive president and took away checks and balances.¹⁶ It is unclear whether the 21st Amendment will actually be passed and it is not a reversal to the 19th Amendment (that safeguarded the independence of the judiciary and commissions and had a constitutional council to limit the president from single-handedly taking decisions; the 19th Amendment also had a clause that the president cannot hold a ministerial portfolio). It seems the current 21st amendment draft is not fully in line with the 19th Amendment. Questions also remain on whether Wickremesinghe will repeal other repressive laws such as the Prevention of

⁸ AP News, *Sri Lanka leader declares emergency amid protests* (May 6, 2022), <https://apnews.com/article/business-sri-lanka-19b439c251fe42cdb39924179c24accf>; See also Amnesty International, *Sri Lanka: New Emergency regulations and shooting orders threaten human rights* (May 11, 2022), <https://www.amnesty.org/en/latest/news/2022/05/sri-lanka-new-emergency-regulations-and-shooting-orders-threaten-human-rights/>; Human Rights Watch, *World Report 2022: Sri Lanka* (2022), <https://www.hrw.org/world-report/2022/country-chapters/sri-lanka>.

⁹ Foreign Policy, *Why Sri Lanka’s Crisis Has No End in Sight* (May 12, 2022), <https://foreignpolicy.com/2022/05/12/sri-lanka-protests-crisis-rajapaksa-prime-minister/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ France 24, *Sri Lanka’s new PM wins support for ‘economic war cabinet’ amid worsening crisis* (May 16, 2022), <https://www.france24.com/en/asia-pacific/20220516-sri-lanka-s-new-pm-wins-support-for-economic-war-cabinet-amid-worsening-crisis>.

¹⁴ Taipei Times, *Sri Lanka PM facing opposition* (May 14, 2022), <https://www.taipeitimes.com/News/world/archives/2022/05/14/2003778200>.

¹⁵ Al Jazeera, *Sri Lanka parliament reconvenes as PM warns of critical shortages* (May 17, 2022), <https://www.aljazeera.com/news/2022/5/17/sri-lanka-parliament-reconvenes-as-pm-warns-of-critical-shortages>.

¹⁶ https://www.business-standard.com/article/international/lankan-fm-briefs-us-ambassador-on-proposed-21st-amendment-to-constitution-122053000498_1.html

Terrorism Act (PTA). Protestors and others in the country are demanding that the President step down and that the “executive presidency” be abolished.¹⁷

Women and minority groups in Sri Lanka, including Muslims, Christians and Tamils, have especially been under threat and continue to face violence and discrimination. Threats to physical security are ongoing and have increased over the past three years. Violence and discrimination are institutionalized through the lack of constitutional and other legal protections for women and Muslims and other minority groups, the inconsistent enforcement of minorities’ rights, and inadequate State response to mob violence. Minorities face ongoing institutional discrimination in education, language access, and are underrepresented in sociopolitical institutions.

There is a lack of legal accountability for those who have committed past human rights violations against Tamils, Muslims, and women. Landmark cases that made some progress during the previous government have come to a standstill or been dismissed. In some cases, convicted perpetrators have been given presidential pardons or released by way of dismissal of their cases.

Numerous UN bodies have recommended concrete actions to prevent the ongoing human rights violations and impunity in Sri Lanka, and we urge the Human Rights Committee to vigorously question the new Sri Lankan Government on its lack of progress and retrogressive actions that move Sri Lanka further away from compliance with its ICCPR obligations.

Constitutional and Legal Framework; Right to an Effective Remedy (Article 2)

President Rajapaksa and his government enacted a Constitutional Amendment, known as the 20th Amendment, a little over two months after coming into power.¹⁸ The primary purpose and effect of the 20th Amendment was to consolidate many powers in the Executive President, upsetting the balance of power between the other two branches.¹⁹ For example, the 20th Amendment extended the President’s power over the Prime Minister, Cabinet and Parliament.²⁰ Similarly, the amendment modified the law-making process, reducing the time a bill had to remain in the public domain before the President could table it.²¹

The Government’s response to the List of Issues asserts that the 20th Amendment “was enacted in full compliance with the procedure set out in the Constitution...”²² However, intimidation and attacks against MPs also became particularly acute during the period of 2019-2021, between the 2019 Presidential election of Gotabaya Rajapaksa, the 2020 Parliamentary elections, and the vote on the 20th Amendment. Sri Lanka has multiple political parties and to govern, it is often necessary for parties to join together to form a majority. Our research has found disturbing reports that detention, harassment, and attacks against MPs from 2019 to 2021, influenced the formation of a majority coalition with the SLPP, led by brothers President Gotabaya Rajapaksa and Mahinda Rajapaksa, then Prime Minister and former President. The majority coalition’s dominance and the successful passage of the 20th Amendment by a two-thirds vote, initiated by the Rajapaksa administration, has given the executive branch extensive powers over the government and increased its immunity.²³

¹⁷ See Citizen’s Petition, <https://chnng.it/SWVbgh2Qzv>.

¹⁸ Center for Policy Alternatives, *A Brief Guide to the 20th Amendment to the Constitution* (Jul. 19, 2021), <https://www.cpalanka.org/a-brief-guide-to-the-20th-amendment-to-the-constitution/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Human Rights Committee, *Replies of Sri Lanka to the list of issues in relation to its sixth periodic report*, CCPR/C/LKA/RQ/6, (May, 2022) [Hereinafter *2022 Government Replies*].

²³ Krishan Francis, *Sri Lanka government proposes increased presidential powers* (Sept. 4, 2020), Associated Press, <https://apnews.com/article/8fc1155cb9137683f1605c845a56f49d>.

Gotabaya Rajapaksa of the SLPP majority party won the presidential election with 52.25% of the vote, while the UNP party secured most of the remaining votes.²⁴ After the election, MP Sajith Premadasa formed the SJB party, which split off from the UNP party.²⁵ In the 2020 Parliamentary elections, SJB secured 54 of the 225 available parliamentary seats, making them the official opposition party, while SLPP obtained 145 seats.²⁶

Crucial parliamentary crossovers from the opposition allowed for the passing of the 20th Amendment in October 2020. A total of nine opposition MPs, including six Muslim members, voted in favor of the 20th Amendment.²⁷ The nine votes ensured the amendment would pass with the requisite two-thirds majority.²⁸ These crossover votes also occurred amid accusations that the Government had bribed and intimidated Opposition MPs to ensure the 20th Amendment passed.²⁹

As discussed above, Prime Minister Ranil Wickremesinghe has promised reform and to repeal existing repressive laws, including through a 21st Amendment, but the prospect of enacting that Amendment is unclear, as is the possibility of restoring the checks on presidential power that the 19th Amendment provided.

Article 16 of the Sri Lankan Constitution protects Female Genital Mutilation (FGM) and no laws currently exist to protect children from this cruel and dangerous practice. Article 16 of the Constitution also protects the Muslim Marriage and Divorce Act (MMDA) and other cultural practices in the name of custom. The MMDA and FGM are discussed in more detail below.

Non-Discrimination and Equal Rights of Men and Women (Articles 2, 3, 25 and 26)

The July 2020 List of Issues asked the Government to report on progress on repealing discriminatory legal provisions including the Land Development Ordinance of 1935 and the Muslim Marriage and Divorce Act of 1951.³⁰

The Land Development Ordinance.

In March 2022, the Land Development Ordinance was amended so that women can inherit land. Specifically, the previous version of the law only allowed the oldest male child to inherit land from his family, but now the law has been amended to allow male and female children to inherit land.³¹ We welcome this positive development. However, issues remain regarding its implementation.

²⁴ Department of Government Information, *Presidential Election - 2019: Final Result - All Island* (Nov. 17, 2019), <https://web.archive.org/web/20191117131017/https://elections.news.lk/>.

²⁵ Daily Mirror, Premadasa-faction forms Samagi Jana Balawegaya (Feb. 12, 2020), https://www.dailymirror.lk/top_story/Premadasa-faction-forms-Samagi-Jana-Balawegaya/155-182916.

²⁶ Adaderana, *Parliamentary General Election 2020 Results*, <http://election.adaderana.lk/general-election-2020/>.

²⁷ NewsRadio, *156 'aye' & 65 'nay' for 20th Amendment* (Oct. 22, 2020), <https://www.newsradio.lk/local/156-aye-and-65-nay-for-20th-amendment/>.

²⁸ Parliament of Sri Lanka *Government Bills*, <https://www.parliament.lk/how-parliament-works/government-bills>.

²⁹ Newswire, *First crossover sign: SLMC MP speaks in favour of 20th amendment in Parliament* (Oct. 22, 2020), <http://www.newswire.lk/2020/10/22/slmc-mp-nazeer-ahamed-speaks-in-favour-of-20th-amendment-in-parliament/>.

³⁰ Human Rights Committee, *List of issues in relation to the sixth periodic report of Sri Lanka*, ¶5, CCPR/C/LKA/Q/6 (Jul. 2020). [Hereinafter *List of Issues*]

³¹ Economy Next, *Sri Lanka parliament passes Land Development (Amendment) Bill; gender equality in inheritance sought* (Mar. 12, 2022), <https://economynext.com/sri-lanka-parliament-passes-land-development-amendment-bill-gender-equality-in-inheritance-sought-91579/>.

Constitutional deficit in Article 16 and the Muslim Marriage and Divorce Act.

The Muslim Marriage and Divorce Act (MMDA) continues to prevent equality between Sri Lankan men and women. Although recently proposed reforms have sought to improve it, the current government's reform process has halted due to the President referring the MMDA reform process to his "one country, one law" task force headed by an extremist monk Gnanasara Thero and heavily resisted by the Muslim community which saw this reform move as an effort to abolish this customary law altogether. Many public officials have expressed support for reforming the MMDA, especially relating to the minimum age requirements and requiring the bride's consent. Currently, the MMDA allows for the registration of a marriage without the bride present³², and for girls younger than 12 years old to be married with the consent of the Quazi.³³ The most recent reform proposal to the MMDA, approved by the Cabinet in July 2021, requires the minimum age for marriage to be 18 years old, requires women to sign registration certificates, bans polygamy, and ends the Quazi system of male-only judges in Islamic family law courts.³⁴

President Rajapaksa created the task force in October of 2021 to move towards a "one country, one law" system, which intended to abolish personal laws, including the MMDA, so that all Sri Lankans are ruled under national law.³⁵ The task force was recently extended for another three months. However, six months have passed and the task force has failed to include women and minority groups and produce successful reform by the target date of January 2022.³⁶

The Sri Lankan Government must reform or eliminate the MMDA to ensure women are equally represented and protected before the law. The proposal submitted by then Justice Minister Ali Sabry in July 2021 should be passed as the amendment to the MMDA as early as possible and the General Marriage and Registration Ordinance (GMRO) should be reformed to allow Muslim women and men to have a choice of either marrying under the MMDA or the GMRO. Currently two Muslims can get married only under MMDA.

Gender-based violence (Articles 2, 3, 6, 7 and 26)

Sexual and Gender-based Violence and impunity for violence against women persists.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment recognized women as a vulnerable group in the criminal justice systems worldwide.³⁷ The Special Rapporteur on violence against women has also highlighted the particular, gender-specific challenges women detainees face including increased violence, sexual abuse, inadequate healthcare and hygiene, and separation from children.³⁸ The

³² *Marriage and Divorce Act (MMDA)*, Sri Lanka, Section 16, 17.

³³ *Id.* at Section 23.

³⁴ Muslim Personal Law Reform Action Group, *Statement: Progressive Decisions by Cabinet of Ministers on Substantive MMDA Reform are Welcome* (Jul. 8, 2021) <https://www.mmdasrilanka.org/statement-progressive-decisions-by-cabinet-of-ministers-on-substantive-mmda-reform-are-welcome/>.

³⁵ Economy Next, *Sri Lanka President extends tenure of controversial 'one country, one law' task force* (Mar. 1, 2022), <https://economynext.com/sri-lanka-president-extends-tenure-of-controversial-one-country-one-law-task-force-91025/>.

³⁶ Sumaiya Pallak, *Unheard Voices: Muslim Women vs. the MMDA*, Roar Media (March 30, 2022),

<https://roar.media/english/life/current-affairs/unheard-voices-muslim-women-mmda>; see also Mass L. Usuf, Prime Minister and Foreign Minister must stand by their promises, Daily FT (March 9, 2022),

<https://www.ft.lk/columns/Prime-Minister-and-Foreign-Minister-must-stand-by-their-promises/4-731692>.

³⁷ A/HRC/31/57. See also, CEDAW, Art. 2; ICCPR, Art. 26. *Non-discrimination has been considered customary law* (HRC, Gen. Com. No. 18.)

³⁸ Committee on the Elimination of Discrimination Against Women (CEDAW), *Report of the Special Rapporteur on violence against women: Pathways to, conditions and consequences of incarceration for women*, CEDAW/A/68/340, (Aug. 21, 2013).

physical and psychological deterioration of women who are separated from their children amounts to torture and cruel, inhuman or degrading treatment.³⁹

Recent reports of gender-based violence in Sri Lanka indicate an increase during the pandemic, as many survivors reported being trapped indoors with perpetrators.⁴⁰ The Government implemented severe lockdown measures to combat COVID-19, which resulted in a sharp increase of domestic and gender-based violence cases and increasing demand for shelters.⁴¹ Reportedly, women's shelters became fully occupied during the pandemic and many victims of domestic and gender-based violence were left without protection and a necessary safe space.⁴² WAN partner, the Mannar Women's Development Federation, has handled twice as many domestic violence cases during pandemic related lockdowns as they had previously. According to the Stop Child Cruelty Trust May 2022 media briefing, 14 children were murdered in the last 20 months all over Sri Lanka.

In its 2021 report, the OHCHR stated that war in Sri Lanka was marked by sexual and gender-based violence affecting residents from all communities.⁴³

In 2022, the OHCHR expressed concern about the additional vulnerability of women survivors advocating for justice with security forces and authorities.⁴⁴

Sexual bribery, particularly of widows or divorcees, remains a problem, and the primary legal tool used to combat the issue, the Bribery Act, contains vague language, does not address actions by non-state actors, and is rarely and inconsistently enforced.⁴⁵ On October 11th, 2019, in a landmark case, the Sri Lankan Court of Appeals acquitted four soldiers who were convicted and sentenced for gang rape of a Tamil woman in 2015.⁴⁶ Due to the threat to the victim's life since her rapists were released, she left the country in November 2019.⁴⁷ In an April 2018 report, the Law and Trust Society compiled a report analyzing hundreds of sexual violence cases tried against men and former combatants.⁴⁸ The report concludes that: (1) there is a wide disparity in sentencing, and many sentences that were below the mandatory minimum; (2) many suspended sentences were

³⁹ UN OHCHR, *Women and Detention* (Sept. 2014) (finding "extremely severe" impact of even short period of imprisonment if the prisoner is the primary caregiver of the children, including "damaging, long-term consequences for the children"); see also Beth Van Schaack, *The Torture of Forcibly Separating Children From Their Parents*, JUST SECURITY, (Oct. 18, 2018).

⁴⁰ U.S. Department of State, *2021 Country Report on Human Rights Practices in Sri Lanka* (2021), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/sri-lanka/>.

⁴¹ United Nations Population Fund (UNFPA), *UNFPA Sri Lanka launches Online Training Courses for Survivors of SGBV amidst COVID-19* (Sept. 30, 2021), <https://srilanka.unfpa.org/en/news/unfpa-sri-lanka-launches-online-training-courses-survivors-sgbv-amidst-covid-19>.

⁴² *Id.*

⁴³ 2021 OHCHR Report at ¶ 7.

⁴⁴ 2022 OHCHR Report at ¶ 32.

⁴⁵ THE ISLAND, *Survey Finds Paying Bribes Acceptable to a Quarter of Lankans* (Dec. 9, 2019), http://island.lk/index.php?page_cat=article-details&page_article-details&code_title=215146; Hasini Rupasinghe, *Sexual Bribery in Sri Lanka: Victims Continue to Cry in Silence*, DAILY MIRROR ONLINE (June 14, 2018), <http://dailymirror.lk/article/sexual-bribery-in-sri-lanka-victims-continue-to-cry-in-silence-151257.html>; Dinali Wijayasooriya, *Zero Tolerance on Sexual Bribery*, DAILY MIRROR ONLINE (Dec. 17, 2019), <http://dailymirror.lk/news-features/zero-tolerance-on-sexual-bribery-131-179673>; Gillian Maloney, *It's Time to Combat Sexual Bribery*, SRI LANKA NEWS (Dec. 2, 2019); <http://www.independent.lk/its-time-to-combat-sexual-bribery/>.

⁴⁶ *Military Rape Cases: No Judgement On 2001 Mannar Gang Rape: WAN*, THE COLOMBO TELEGRAPH (Oct. 9, 2015), <https://www.colombotelegraph.com/index.php/military-rape-cases-no-judgement-on-2001-mannar-gang-rape-wan/>.

⁴⁷ *Sri Lankan Court Acquits Soldiers over Gang Rape of Tamil Woman*, TAMIL GUARDIAN (Oct. 11, 2019), <https://www.tamilguardian.com/content/sri-lankan-court-acquits-soldiers-over-gang-rape-tamil-woman%C2%A0>.

⁴⁸ Shenali De Silva, *A Snapshot of the Criminal Justice System: Building a Picture through Sexual Violence Cases in the Court of Appeal*, LAW AND TRUST SOCIETY (Apr. 2018), https://lslanka.org/wp-content/uploads/2018/04/LST_CJS_REPORT_230418-1.pdf.

ordered; (3) appeals courts regularly find that convictions could not be supported; (4) victims' credibility are consistently attacked and questioned; (5) and public accessibility continues to be an issue.⁴⁹ Another specific example occurred in April 2021, when women in rural areas faced high interest rates from lenders and protested to abolish microfinance loans; reports surfaced of lenders seeking sexual factors in exchange for loan repayment and of increasing rates of violence against women in rural areas.⁵⁰

The U.S. State Department reported that the Sri Lankan Government had failed to adequately investigate and hold perpetrators accountable for gender-based violence including domestic violence, human trafficking related violence, and violence against members of the LGBTIQ+ community.⁵¹ In addition, as cases of domestic and gender-based violence are seriously underreported in Sri Lanka, the number of reported cases do not accurately reflect the reality.⁵²

States of Emergency and Counter-terrorism Measures (Articles 2, 7, 9, 10 and 14, 18, 19, 23, 26)

States of emergency during anti-government protests.

As citizens are running out of essential goods during the economic crisis, tens of thousands have taken to the streets of Colombo and outside the ruling family's official residences to participate in a series of peaceful anti-government protests. Protestors called for the resignation of the President and other members of the Cabinet claiming that their corruption and criminal financial mismanagement have resulted in the country's current economic crisis.⁵³ The peaceful anti-government protests have been met with excessive use of force and police brutality including the use of tear gas, water cannons, and rubber bullets, in violation of their rights to the freedom of association. The Government has imposed emergency regulations and three states of emergency giving the military and police extreme powers including to shoot protestors "on sight", arrest and detain protestors without adequate due process or safeguards, and to search protestors' private property without warrant; all of these extreme powers are in violation of protestors' rights under the ICCPR.

Prevention of Terrorism Act.

The Prevention of Terrorism Act (PTA) has long been criticized for its lack of compliance with international law and standards, including by this Committee. The Act contains overly broad and loose definitions of terrorism, national security, and the nation's sovereignty, which has facilitated the Government's use of torture to secure confessions from detainees, arbitrary arrest and long detentions with limited access to family and counsel, and the targeting of minorities. The Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CIDTP) expressed concern about the link to torture and CIDTP.⁵⁴ The increasing use and expansion of the PTA constitute steps backward and they have expanded the use of torture and ill-treatment, while increasing the PTA's discriminatory impact on minorities and women, particularly minority women.

⁴⁹ *Id.* at 100-01.

⁵⁰ U.S. Department of State, *2021 Country Report on Human Rights Practices in Sri Lanka* (2021), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/sri-lanka/> [2021 US DoS Report] ⁵¹2021 US DoS Report.

⁵² Global Human Rights Defence, *Gender Based Violence Plaguing Sri Lanka* (Mar. 24, 2022), <https://ghrd.org/gender-based-violence-plaguing-srilanka/>.

⁵³ Al Jazeera, *Sri Lankan president to appoint new PM, cabinet this week* (May 11, 2022), <https://www.aljazeera.com/news/2022/5/11/sri-lankan-president-to-appoint-new-pm-cabinet-this-week>.

⁵⁴ UN Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment on his mission to Sri Lanka*, A/HRC/34/54/Add.2, (22 December 2016).

In the previous ICCPR cycle, the Committee expressed concern regarding the ongoing use of counter-terrorism justifications under the framework of the PTA to impose arbitrary detentions.⁵⁵ The 2014 Concluding Observations expressed concern about “restrictions of freedom of expression and association, arbitrary searches and arrests, prolonged detention without charge or trial and reversal of the burden of proof when detainees allege that they have made confessions as a result of torture or ill-treatment.”⁵⁶ In 2016, the State noted its commitment to developing a new counterterrorism law.⁵⁷ The International Committee of the Red Cross (ICRC) and family members of detainees suspected of terrorist activities were being permitted to meet with detainees.⁵⁸ The Government claimed that there was a “de facto moratorium on new arrests under the PTA”, asserting that 58 people were on trial.⁵⁹ However, following the Easter bombings, the Government arrested hundreds of Muslims in April 2019 under the PTA and the ICCPR Act (described below), which many human rights organizations criticized as abusive and an infringement on legitimate freedom of expression.⁶⁰

In December 2021, five United Nations Special Rapporteurs along with the Working Group on Enforced and Involuntary Disappearances listed five main reforms the Sri Lankan Government should implement to ensure the PTA complies with international law.⁶¹ Among the suggested reforms was including a definition of torture that complied with international norms, as well as instituting provisions and measures to prevent and prohibit arbitrary deprivation of liberty, among others.⁶²

The July 2020 List of Issues once again asks for progress on repealing and replacing the PTA in “full compliance with the Covenant” as well as whether there are new arrests and for the Government to report on the status of persons still detained and judicial review and trials.⁶³ In January 2022, the Rajapaksa Government issued indications that the PTA would be amended but the May 2022 Government Replies to the List of Issues noted that on March 23, 2022, proposed amendments were “an interim measure.”⁶⁴

The proposed amendments do not comply with international law, or what the five UN Special Rapporteurs and Working Group suggested. The definition for terrorism remains unchanged, and the provisions to prevent torture have not been implemented.⁶⁵ The amendment to reduce the time people may be detained without trial from 18 months to 12 months⁶⁶ would not address the human rights abuse of prolonged or unwarranted detention and torture and ill-treatment.⁶⁷ There is no requirement that a person come before the court within the 12 months of their deprivation of liberty. Another amendment is providing magistrates and attorneys access to detainees; however, this is already a constitutional guarantee, and should not be praised as a major

⁵⁵ UN Office of the High Commissioner for Human Rights, Concluding Observations on the Fifth Periodic Report of Sri Lanka, CCPR/C/LKA/CO/5 (Nov. 21, 2014) [Hereinafter *2014 Concluding Observations at ¶ 11*].

⁵⁶ *Id.*

⁵⁷ UN Human Rights Committee, Additional Update to the Fifth Periodic Report of Sri Lanka under the ICCPR (June 7, 2016) [Hereinafter *2016 Additional Update at ¶ 40*].

⁵⁸ UN Human Rights Committee, *Update to the Fifth Periodic Report of Sri Lanka under the International Covenant on Civil and Political Rights at ¶ 17* (Oct. 16, 2015).

⁵⁹ *Id.* at ¶ 51.

⁶⁰ HUMAN RIGHTS WATCH, *Sri Lanka: Muslims Face Threats, Attacks* (Jul. 3, 2019), <https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks>; AMNESTY INTERNATIONAL, *Sri Lanka: Respect Human Rights in the Aftermath of the Easter Attacks* (May 3, 2019), <https://www.amnesty.org/download/Documents/ASA3702972019ENGLISH.pdf>.

⁶¹ UN Office of the High Commissioner for Human Rights, *Sri Lanka: UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law* (Mar. 2, 2022), <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>.

⁶² *Id.*

⁶³ *List of Issues at ¶ 9*.

⁶⁴ *2022 Government Replies*, at ¶ 41.

⁶⁵ Groundviews, *PTA Must be Repealed* (Feb. 1, 2022), <https://groundviews.org/2022/02/01/pta-must-be-repealed/>.

⁶⁶ *Id.*

⁶⁷ International Commission of Jurists, *Sri Lanka: The Prevention of Terrorism Act cannot be reformed; it must be repealed* (Feb. 1, 2022).

accomplishment or reform.⁶⁸ Further, the pre-existing constitutional guarantee has proven ineffective. These amendments are inconsistent with Sri Lanka's obligations under the Convention Against Torture and against prolonged incommunicado detention.⁶⁹

The requested amendments eliminate fundamental rights and protections against arbitrary arrest and detention. Specifically, the amendments indicate a police officer may start an investigation *after* arresting someone, indicating people may be detained without reasonable cause or on false grounds.⁷⁰ Furthermore, the amendments extend who can detain individuals to “police officer[s], or any member of the armed forces”.⁷¹ When someone is detained, the detainer has 24 hours to turn them over to the police, extending the window for torture and coerced confessions.⁷² These amendments remove judicial oversight from the detention process, opening the door to human rights violations, including torture and lack of due process.

Another amendment seeks to permit the use of torture without any judicial oversight allowing detainees to be placed in rehabilitation centers instead of prisons.⁷³ These rehabilitation centers are meant for people who hold “violent” extremist ideologies, but Sri Lanka's track record allows reasonable concern. As previously indicated, people have been detained for the clothes they wear⁷⁴ or for merely speaking up to protect their right to religion.⁷⁵ Without a clear definition of what “rehabilitation” procedures will be allowed, there is a concern that the religious minorities will likely be targeted, detained, and subject to torture.

The longstanding prohibition against incommunicado detention recognizes how it facilitates torture and ill treatment and how the detention itself serves as a form of those violations. A March 2020 report by the Special Rapporteur on Torture and CIDTP concluded that “[l]awful sanctions” cannot include any sanctions or measures prohibited by relevant international instruments or national legislation, such as prolonged or indefinite solitary confinement, sensory manipulation, collective punishment, prohibition of family contacts, or detention for purposes of coercion, intimidation, or for reasons related to discrimination of any kind.⁷⁶

The proposed PTA amendments also do not address other provisions of the Act that can be used to facilitate torture and CIDTP, including Section 16 on the admissibility of “confessions” that shifts the burden of proof of coercion to the accused.⁷⁷ In a national study of prisons by the Human Rights Commission of Sri Lanka, 83% of PTA detainees reported being subjected to torture and 90% of those tortured reported being forced to sign a confession.⁷⁸ The amendments fail to address the lack of judicial oversight in relation to investigation

⁶⁸ Groundviews, *PTA Must be Repealed* (Feb. 1, 2022). <https://groundviews.org/2022/02/01/pta-must-be-repealed/>.

⁶⁹ UN Treaty Body Database, *Ratification Status for Sri Lanka* (date ratified: 3 January 1994).

⁷⁰ Shreen Abdul Saroor and Mytili Bala, *Terrorizing Minority Grounds Through Counterterrorism*, Muslims in Post-War Sri Lanka: Repression, Resistance and Reform (Nov. 22, 2021).

⁷¹ *Id.*

⁷² *Id.*

⁷³ P.K. Balachandran, *Sri Lanka to set up rehabilitation centers for extremists*, Eurasia Review (March 15, 2021), <https://www.eurasiareview.com/15032021-sri-lanka-to-set-up-rehabilitation-centers-for-extremists-analysis/>.

⁷⁴ Uwin Lugoda, *International Covenant on Civil and Political Rights: A tool of oppression?*, The Morning (Feb. 7, 2021), <https://www.themorning.lk/international-covenant-on-civil-and-political-rights-a-tool-of-oppression/>.

⁷⁵ Daily FT, *Abusing the ICCPR Act*, (Jul. 1, 2021), https://www.ft.lk/ft_view__editorial/Abusing-the-ICCPR-Act/58-719844.

⁷⁶ Office of the High Commissioner for Human Rights (OHCHR), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/43/49 (Mar. 20, 2020).

⁷⁷ Sri Lanka Brief, *Proposed amendments do not eliminate the draconian aspects of the original PTA - M. M. Zubair* (Feb. 4, 2022) (calling for repeal because of decades of discrimination against Tamils and Muslims, long administrative detention, or confessions obtained through torture).

⁷⁸ Ambika Satkunanathan, *PTA reform: A farce in multiple acts*, The Morning Sri Lanka News (Feb. 5, 2022).

and arrest of suspects,⁷⁹ as well as blanket immunity under Section 26 and the resulting lack of accountability for and deterrence of human rights violations.⁸⁰

“De-Radicalization” Measures.

In addition to the long-delayed and inadequate proposed amendments to the PTA, the Government has introduced measures to dramatically expand the president’s powers to send inmates to “reintegration centres” under the authority of the Defense Ministry.⁸¹ These have been challenged by activists and are currently suspended but pending a decision in the Supreme Court.⁸² These regulations have been criticized by UN special procedures.⁸³

State counterterrorism efforts target and incite citizens to target Muslims.

The PTA has also been used to disproportionately target religious minorities, including Muslims, violating the prohibition against discrimination.⁸⁴ For example, over 100 Muslims were detained in Kattankudy, including seven women and at least two infants who were separated from their mothers.⁸⁵ The conditions alone amount to torture or CIDTP, as many in the group were detained for months without access to counsel or court hearings.⁸⁶ Approximately 30 of the Kattankudy detainees have been released, including six women⁸⁷, but under harsh bail questions, including restrictions on their mobility including travel bans. Their passports have also been taken so they cannot travel outside the country and in some of their bail applications it is stated if the victim must move from one district to another, they should get prior permission from the Sri Lankan Terrorism Investigation Department (TID) director. If summoned, they have to report to the TID within 72 hours which hampers them securing long-term employment.

Since the last Committee Review, violence and discrimination against the Muslim minority has escalated. The April 2019 bombings capitalized on already-present ethnic tensions to justify further targeting of the Muslim minority.⁸⁸ The Special Rapporteur on freedom of religion in August 2019 highlighted that measures allegedly taken to combat terrorism were affecting law-abiding Muslim Sri Lankan citizens in profoundly negative ways. For instance, bans on wearing face-coverings in public have promoted intolerance particularly against Muslim

⁷⁹ International Commission of Jurists, *Sri Lanka: The Prevention of Terrorism Act cannot be reformed; it must be repealed* (Feb. 1, 2022).

⁸⁰ Mytili Bala, *PTA must be repealed*, Groundviews (Jan. 2, 2022).

⁸¹ Shreen Abdul Saroor and Mytili Bala, *Terrorizing Minority Grounds Through Counterterrorism*, Muslims in Post-War Sri Lanka: Repression, Resistance and Reform 102 (Nov. 22, 2021).

⁸² Daily Mirror, *SC suspends operation of Deradicalization Regulations; granted leave to proceed with petitions*, (Jan. 26, 2022).

⁸³ Office of the High Commissioner for Human Rights, *August 2021 letter to Sri Lankan government* (Aug. 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26575>.

⁸⁴ Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/43/49 (Mar. 20, 2020). See also Shreen Saroor, *Women Victims of the Prevention of Terrorism Act*, (Feb. 7, 2022). (The vast majority of PTA detainees are Muslim men from Batticola and Mawanella”); Amnesty International, *Sri Lankan Authorities must end violence and discrimination against muslims* (Oct. 17, 2021).

⁸⁵ Sri Lanka Brief, *Sri Lanka Civil Society Platform Contacts Rights Commissioner on Missing Persons Office*, (Sept. 13, 2021), <https://srilankabrief.org/sri-lanka-civil-society-platform-contradicts-rights-commissioner-on-missing-persons-office/>.

⁸⁶ *Id.*

⁸⁷ Human Rights Watch, *In a Legal Black Hole: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act* (Feb. 7, 2022), <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>.

⁸⁸ UN Human Rights Council, *Opening statement by UN High Commissioner for Human Rights Michelle Bachelet*, 41st session (24 June 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24724&LangID=E>.

women.⁸⁹ This has put Muslim individuals and communities at greater risk of harassment and violence.⁹⁰ This has also put refugees and asylum-seekers in the Negombo area from Muslim-majority countries, who are under UNHCR protection, in danger of being targeted, with fear among Sri Lankan citizens that supporting and protecting this at-risk population will invite reprisals.⁹¹ There has also been widespread boycotting of Muslim businesses as part of a concentrated anti-Muslim campaign.⁹² State counterterrorism efforts have been reported to be fueling an increase in hate speech and violence against the Muslim community, particularly after the April 2019 Easter bombings.⁹³

Further, President Rajapaksa banned 11 Muslim organizations under the PTA. While two of those are well-known terrorist groups (ISIL and al-Qaeda), the other nine are local religious and social organizations.⁹⁴ This supports the concern that Muslims will be particularly subject to these new amendments under the PTA. The Sri Lankan Government should avoid legislation that may negatively impact a particular minority. At the very least, the Sri Lankan Government should clearly define what rehabilitation procedures are allowed under the PTA, ensuring they comply with international treaties and obligations.

Gender and the Prevention of Terrorism Act.

Women currently detained under the Prevention of Terrorism Act (PTA) come from poor families⁹⁵ and are imprisoned for reasons independent of their actions, such as mere association with family members allegedly involved in the 2019 Easter Sunday attacks or other contacts with male suspects.⁹⁶ The Sri Lankan State has failed to protect the rights of these Muslim and Tamil women. By refusing appropriate medical care, separating mothers from children, and impeding access to legal representation, the State has subjected detained women to torture and cruel, inhuman or degrading treatment. Additionally, overcrowding remains a problem in many prisons⁹⁷ in which women detainees are few and far apart, isolated, and subjected to gender-based violence, further impacting their mental wellbeing. The Women's Action Network reports that after sustained advocacy by Sri Lankan activists, 15 of 26 detained women have been released on bail, and advocacy continues for the remaining eleven still in detention.

Reports have been presented regarding the treatment of women in Sri Lankan prisons.⁹⁸ Some women serving as the primary caretakers of their children have reported forced separation from children under five years old,

⁸⁹ Office of the High Commissioner for Human Rights, *Preliminary findings of Country Visit to Sri Lanka by the Special Rapporteur on freedom of religion or belief* (Aug. 2019), <https://www.ohchr.org/en/news/2019/08/preliminary-findings-country-visit-sri-lanka-special-rapporteur-freedom-religion-or> [Hereinafter *2019 Special Rapporteur Freedom of Religion Report*].

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² INTERNATIONAL CRISIS GROUP, *After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence* (Sept. 27, 2019), <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>.

⁹³ *2019 Special Rapporteur Freedom of Religion Report*.

⁹⁴ Al Jazeera, *Sri Lanka Bans Muslim Groups Before Easter Attacks Anniversary* (Apr. 14, 2021), <https://www.aljazeera.com/news/2021/4/14/sri-lanka-bans-11-muslim-groups-ahead-of-attacks-anniversary>.

⁹⁵ Shreen Saroor, *Women Victims of the Prevention of Terrorism Act*, (Feb. 7, 2022).

⁹⁶ See Ambika Satkunathan, *Living in Hell: The Plight of Prisoners Held Under the PTA*, Groundviews (Jan. 27, 2021), (interviewing PTA detainees about torture in the last two years); see also Lisa Fuller and Rukshana Rizwie, *Muslims 'targeted with arbitrary arrests' after Easter massacre*, Al Jazeera, (Jun. 16, 2019); Shreen Saroor, *Women Victims of the Prevention of Terrorism Act*, (Feb. 7, 2022).

⁹⁷ Colombo Page, *"Pay Special Attention to Safety and Welfare of Children of Women Inmates During the Welikada Prison Relocation - PM"*, 7 September 2021; see also Arjuna Ranawana, *"Sri Lanka's Overcrowded Jails Tense Over COVID-19"*, Economy Next, 27 March 2020; see also "Human Rights Implications of Overincarceration and overcrowding", A/HRC/30/19, (Aug. 10, 2015), (overcrowding can be considered a form of torture).

⁹⁸ Ambika Sakunanathan, *The criminal justice system in South Asia is discriminatory and violent*, Money Control, (Sept. 26, 2021), see also Ambika Satkunathan, *Living in Hell: The Plight of Prisoners Held Under the PTA*, Groundviews, (Jan. 27, 2021).

or being detained while pregnant or breastfeeding.⁹⁹ Children were left with distant family members if they were lucky, and placed in children's homes if they were not.¹⁰⁰ Once in prison, the women have limited contact with family and information about their children's wellbeing, further deteriorating emotional and psychological wellbeing.¹⁰¹ By refusing appropriate medical care, separating mothers from children, and impeding access to legal representation, the State subjects detained women to torture and cruel, inhuman or degrading treatment.

Women often suffer physical, economic, social and psychological harm when the family breadwinners are detained by the State, and due to frequent delays in arrest notices, spouses are sometimes unaware for days or weeks about what happened to their loved ones. Many are too poor to be able to travel to visit loved ones in detention.

Women are also under surveillance, visited by security agencies and summoned for interrogation; further isolating them from family and community who fear similar treatment. Those who have offered assistance have also been harassed and interrogated. Frequently families of those detained under the PTA cannot obtain reputable counsel and have been taken advantage of due to their desperation, including financial extortion and pressure to send their loved ones to "De-Radicalization" programs.¹⁰²

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

Withdrawal from UN commitments.

After this Committee's 2014 Concluding Observations, the UN Human Rights Council passed Resolutions 30/1, 34/1, 40/1, and 46/1 to implement and establish transitional justice and accountability mechanisms in Sri Lanka. The Government has withdrawn co-sponsorship or failed to support and strongly opposes measures necessitated by Resolutions 46/1, 40/1, 34/1, and 30/1, signaling a credible threat of rollbacks of already completed commitments. Under Resolution 40/1, the Human Rights Council requested OHCHR to continue monitoring Sri Lanka's implementation of recommendations and processes relating to reconciliation, accountability and human rights,¹⁰³ and under 46/1, for change within Sri Lanka and to develop strategies for future accountability processes in other competent jurisdictions.¹⁰⁴ The Sri Lankan Government criticized these efforts in a March 22 statement to the Human Rights Council: "Sri Lanka once again reiterates its view that the evidence gathering mechanism established under OP 6 of resolution 46/1 is unhelpful to the people of Sri Lanka, will polarize Sri Lankan society, and adversely affect economic development, peace and harmony at a challenging time. It is an unproductive drain on Member State resources, at a time of severe financial shortfalls across the entire multilateral system including the High Commissioner's Office."¹⁰⁵

⁹⁹ Human Rights Commission of Sri Lanka, *Prison Study by the Human Rights Commission of Sri Lanka*, 589-592 (2020), <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 584-585.

¹⁰² Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/43/49 (Mar. 20, 2020). See also Shreen Saroor, *Women Victims of the Prevention of Terrorism Act* (Feb. 7, 2022) ("The vast majority of PTA detainees are Muslim men from Batticola and Mawanella"); Amnesty International, *Sri Lankan Authorities must end violence and discrimination against muslims* (Oct. 17, 2021).

¹⁰³ 2021 OHCHR Report.

¹⁰⁴ *Id.*

¹⁰⁵ Hon. Prof. G.L. Peiris, *Statement for The Permanent Mission of Sri Lanka to the United Nations and Other Intergovernmental Organizations in Geneva, Human Rights Council, 49th Session: Interactive dialogue on the OHCHR report on Sri Lanka* (Mar. 4, 2022), <https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/49session/Pages/Statements.aspx?SessionId=56&MeetingDate=04/03/2022%2000:00:00>.

The Human Rights Council passed Resolution 46/1 noting the absence of progress towards accountability by national mechanisms in Sri Lanka. The Resolution gave the OHCHR the capacity to “collect, consolidate, analyze and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka, to advocate for victims and survivors, and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction.”¹⁰⁶ To carry out these activities, the OHCHR has created a startup team and hired international legal specialists. The OHCHR has also created an “information and evidence repository using e-discovery software” and identified information already possessed by the UN related to alleged violations and abuses by both State and non-State actors. The start-up team will analyze and assess collected information from a criminal justice perspective.¹⁰⁷

Delays in establishing transitional justice mechanisms.

In its 2019 report to this Committee, the Government made note of actions taken to promote transitional justice following the passing of Resolution 30/1. The Sri Lanka Government established the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) and the Consultation Task Force in order to promote international best practices and involve civil society representatives in the reconciliation and transitional justice process.¹⁰⁸ The Government of Sri Lanka enacted legislation to establish the Office on Missing Persons (OMP) in August 2016, set up offices in the North and East, and started receiving complaints in late November 2018.¹⁰⁹ The Parliament of Sri Lanka passed legislation to establish an Office for Reparations (OR) in October 2018 and selected Commissioners in 2019.¹¹⁰ A Working Group in Sri Lanka drafted legislation for a truth seeking commission, but did not indicate a timeline for implementation and whether it was expected to pass.¹¹¹ A human rights activist filed a Right to Information (RTI) application requesting all draft legislation related to the pledged transitional justice mechanisms. On September 3rd, 2019 (after 16 months of RTI hearings), she was told by the State Counsel for the Prime Minister’s office that the State could not provide any information regarding a truth commission or judicial mechanism.¹¹²

Following the presidential election, the Secretariat for Coordinating Reconciliation Mechanisms and the Office for National Unity and Reconciliation, the two bodies created to oversee the implementation of transitional government, have not been functioning effectively.

The OMP and OR mechanisms set up by the previous government have also come to a stalemate now. The OR currently has only one commissioner. The other four commissioners’ terms expired last year and the President neither re-appointed outgoing commissioners to serve a second term nor appointed new commissioners. Under the OMP, one of the newly appointed commissioners resigned last month arguing that the justice ministry was blocking the independent function of the OMP.

Lack of progress implementing transitional justice mechanisms.

The OHCHR in its March 2022 Report to the UN Human Rights Council took specific notice of the Sri Lankan Government’s lack of progress in delivering on commitments it made under UN Human Rights Council

¹⁰⁶ 2022 OHCHR Report.

¹⁰⁷ *Id.*

¹⁰⁸ UN Human Rights Committee, *Sixth periodic report submitted by Sri Lanka under article 40 of the Covenant (ICCPR), due in 2017, received Feb. 22, 2019*, at ¶ 27 (Apr. 25, 2019), <https://digitallibrary.un.org/record/3823094> [Hereinafter *Government Report* at ¶¶ 7-8.

¹⁰⁹ *Id.* at ¶¶ 9-10.

¹¹⁰ *Id.* at ¶ 11.

¹¹¹ *Id.* at ¶ 12.

¹¹² Shreen Saroor vs. Prime Minister’s Office, *RTIC Appeal/01/2018* (attached in Appendix) at 15-16.

Resolution 30/1.¹¹³ In February 2020, the Government stated it would withdraw from the HRC Resolution but still intended to pursue an “inclusive, domestically designed and executed reconciliation and accountability process.”¹¹⁴ However, by March 2022, it had failed to create a new roadmap for transitional justice.¹¹⁵ While Sri Lanka has implemented some mechanisms, such as an office for missing persons, an office on reparations, and an office on reconciliation, it has not implemented an independent judicial mechanism to investigate allegations of violations of human rights and international humanitarian law. Existing mechanisms have been largely deficient.¹¹⁶ The OHCHR Report noted that multiple mechanisms were not adequately set up, OMP staff have been harassed, and even those mechanisms that have been established have experienced significant delays.¹¹⁷

In its Replies to the List of Issues,¹¹⁸ the Government of Sri Lanka claims it enacted legislation to establish an Office on Missing Persons (OMP) in August 2016, operationalized it in September 2017, appointed its members in February 2018, and have since commenced their work.¹¹⁹ The Office has also announced that it will be setting up twelve regional offices and that it started receiving complaints from the public starting in November 2018.¹²⁰ The Government reported that an Act providing for the establishment of an Office for Reparations was approved by the Parliament in October 2018, which will seek to facilitate the granting of relief, in monetary terms and otherwise, to victims of conflict, thus enabling them to rebuild their lives and contribute towards the development of their communities and the country.¹²¹ The Government reportedly selected Commissioners for the office in January 2019. It also reported that it had created a Working Group made up of senior academics, government officials and transitional justice experts, in order to draft legislation on a truth-seeking mechanism, which was drafted and presented to the cabinet for approval in October 2018.¹²²

The Government also reported that the Office of Reparations has been awarded \$3.96 million for the payment of processed claims.¹²³ The Government also reported that the new Office for National Unity and Reconciliation has been conducting peace and reconciliation workshops and activities and is currently developing a “strategic roadmap for national healing, peacebuilding and reconciliation through a consultation process with civil society and political parties.”¹²⁴ The High Commissioner stressed, however, that reconciliation can only be achieved when supported by comprehensive transitional justice measures, which are currently lacking.¹²⁵

The OMP and the OR have struggled to deliver concrete results and access to justice for victims, but after the election of Gotabaya Rajapaksa as President, both mechanisms are in the process of being slowly eliminated. The OHCHR noted that transitional justice mechanisms created by acts of Parliament, including the OMP and OR, continue to exist and function. Despite this, the OMP and OR have struggled to make progress and gain the trust of victims, especially after changes in their membership.¹²⁶ This lack of progress of the two established

¹¹³ Office of the United Nations High Commissioner for Human Rights, *Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka*, U.N. Doc. A/HRC/40/23 (Feb. 8, 2019) [Hereinafter *2019 OHCHR Report*].

¹¹⁴ Human Rights Council, Forty-third session, high-level segment, statement by the Minister for Foreign Relations, Skills Development, Employment and Labour Relations, (Feb.26, 2020).

¹¹⁵ *2022 OHCHR Report*.

¹¹⁶ Office of the High Commissioner for Human Rights, *Promoting reconciliation, accountability and human rights in Sri Lanka Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20 (Feb. 2021). [Hereinafter *2021 OHCHR Report*]; *2022 OHCHR Report*.

¹¹⁷ *2022 OHCHR Report* at ¶¶ 15-17.

¹¹⁸ *Government Replies to List of Issues*.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *2022 OHCHR Report*.

mechanisms and the failure to create justice mechanisms and initiate an effective reparations and truth and reconciliation commission, has brought delay and the denial of justice to victims of the past war.

As for the judicial mechanism, the Government of Sri Lanka has not created one. The President created a special Commission of Inquiry in 2020 to “to review the reports of previous Sri Lankan commissions of inquiry, assess the status of implementation of their recommendations, and propose deliverable measures to implement them in line with the new Government’s policy.”¹²⁷ The Commission submitted its second interim report to the President in February 2022, however it is not clear whether it has had any effects on the transitional justice process.¹²⁸ The OHCHR report also noted that domestic judicial processes in Sri Lanka had consistently failed to deliver accountability. According to the High Commissioner, the new commission’s membership lacked diversity, as well as public confidence, and would not likely produce any “meaningful results.”¹²⁹

Transitional justice mechanisms implemented remain deficient.

The Government claims that the Office on Missing Persons (OMP) and the Office for Reparations (OR) continue to function in line with the Government policy framework, and that the OMP in particular would issue death or absence certificates along with livelihood and other assistance to families.¹³⁰

However, the OMP has been working to verify over 6,000 complaints it has received since its inception in 2020 and has requested the Government and families of victims to provide details on thousands of cases.¹³¹ The Office also created four different panels of inquiry to conduct investigations and provide certificates of absence or of death to families. OHCHR expressed concern that the Office’s new procedures seemed to hand cases off to other parties in the aim of reducing the caseload and closing cases, rather than pursuing accountability and ensuring justice for families of victims.¹³²

The OHCHR report also affirmed that the OMP did not fully consider or respond to the input of families of the disappeared and the operationalization of the Office has been slow.¹³³ The High Commissioner expressed concern that many families of the disappeared are represented by women who are waiting for results of investigations in precarious socioeconomic conditions. These issues have been compounded by the COVID-19 pandemic and continued surveillance of families by the Government.¹³⁴

Amnesty International further critiqued the OMP in their 2022 report for its lack of impartiality.¹³⁵ While OMP’s members were previously appointed by the Constitutional Council, after the passage of the 20th Amendment the Constitutional Council was replaced with a much weaker Parliamentary Council, effectively granting the President direct power to make OMP appointments.¹³⁶ Amnesty also observed widespread public resistance and a lack of trust in the OMP and particularly for the lack of diversity in its membership, including women, as well as for appointing commissioners who have been accused of crimes or have held other conflicting Government posts, such as in the Presidential Commission of Inquiry on Political Victimization.¹³⁷

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 2022 *Government Replies to List of Issues.*

¹³¹ *Id.*

¹³² 2022 *OHCHR Report.*

¹³³ *Id.*

¹³⁴ SRI LANKA CAMPAIGN FOR PEACE AND JUSTICE, *Gotabaya’s Sri Lanka: the risks ahead and how to respond* (Nov. 19, 2019), <https://www.srilankacampaign.org/Gotabayas-sri-lanka-the-risks-ahead-and-how-to-respond/>. 2022 *OHCHR Report; 2022 SR Religion report.*

¹³⁵ Amnesty International, *Still No Answers: An Update on the Rights of Victims of Enforced Disappearances in Sri Lanka* (2022), <https://www.amnesty.org/en/wp-content/uploads/2022/03/ASA3752782022ENGLISH.pdf>.

¹³⁶ *Id.*

¹³⁷ *Id.*

Amnesty also reported that OMP has removed a previously public list of disappeared persons from its website and taken its website down completely.¹³⁸ In addition, the OMP has made attempts to diminish its caseload by asserting that certain complaints did not fall under its mandate, in the apparent aim of reducing the official number of disappearances in the country.¹³⁹ Amnesty also reported victims' and families' clear lack of trust in the OMP as a body, due to the lack of answers even if there was sufficient evidence in the case, and OMP's repeated requests to victims for information they had already provided, spurring their concern that OMP was drafting death certificates instead of investigating the cases.¹⁴⁰ According to Amnesty, the Government has also stopped providing interim relief as a form of compensation and issuing certificates of absence, instead aiming to close cases by issuing death certificates and compensation to victims.¹⁴¹ Amnesty further criticized the Government for capitalizing on desperate victims and their families, who during the aftermath of COVID-19 and the current economic crisis, are willing to take minimal compensation.¹⁴²

The Office of Reparations was allocated almost \$4 million by the Government for the payment of processed claims. However, according to the OHCHR report, only 400 million in Sri Lankan Rupees was actually used by the Office. It is also unclear whether the payments correspond to the severity of the human rights violations. The Government Replies to the List of Issues also stated that the Office processed 5,964 claims,¹⁴³ but in processing the claims, they used an outdated compensation calculation from 1998/9; thus, the maximum compensation was only 100,000 Rupees. As a result, some claimants only received meager amounts. In addition, the reparations policy was tabled in the Parliament in February 2021.¹⁴⁴

No judicial mechanisms exist to hold the Government and the former combatants accountable for past human rights violations (especially wartime international humanitarian law and human rights violations).

While the Government stated that national law enforcement systems would continue to investigate and prosecute cases on all allegations in relation to violations of human rights¹⁴⁵, this has largely not been the case. The Government has not created a judicial mechanism for accountability for human rights violations committed during the civil war. This has resulted in ongoing impunity for past violators of human rights. According to the most recent OHCHR reports from 2021 and 2022, the Government has not yet established a judicial mechanism with a special counsel to investigate allegations of violations of human rights and of international humanitarian law as promised under UN HRC Resolution 30/1.¹⁴⁶ Further, it has consistently failed to prosecute international crimes and serious human rights violations and pursue an effective transitional justice process and has continuously shown its unwillingness to recognize serious international crimes and pursue accountability.¹⁴⁷ The High Commissioner noted that domestic judicial processes in Sri Lanka have consistently failed to deliver accountability, and that the creation of another commission of inquiry was far from a judicial mechanism, and unlikely to address the issue or deliver any meaningful results.¹⁴⁸

The 2021 and 2022 Office of the High Commissioner for Human Rights Reports noted with concern that Sri Lanka had no plans within the last three years to establish a judicial mechanism to ensure criminal accountability for human rights violations.¹⁴⁹ The 2022 Report also detailed the failures and delays in accountability for human

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *2022 Government Replies*, at ¶71.

¹⁴⁴ *Id.*

¹⁴⁵ *2022 Government Replies*.

¹⁴⁶ *2022 OHCHR Report*.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *2021 OHCHR Report; 2022 OHCHR Report*.

rights violations that were perpetrated during the civil war,¹⁵⁰ all highlighted by the Government's lack of support for "accountability and truth-seeking components."¹⁵¹ The Government has repeatedly stated, including in its Replies to this Committee, that UN Human Rights Council Resolution 34/1 (and presumably the related Resolution process) was not "good" for the country, and withdrew its sponsorship.¹⁵²

Impunity for extrajudicial killing and excessive use of force.

Alleged violations of the right to life regularly go unpunished. According to the 2022 OHCHR Report, there have been several cases of deaths in custody and excessive force used on those arrested and detained by the police and other security forces.¹⁵³ On June 6, 2021, Mohamed Ali Khan, who was arrested for violating the quarantine, died in police custody and his family alleged that he had been murdered by the police.¹⁵⁴ Two other detainees, Chandran Vidushan and Mohamed Ramzan, also died after being arrested by the police reportedly from "drug-related" causes. In July, a gang leader Lalith Wasantha was killed by the Special Task Force reportedly because he resisted arrest. In January 2022, Rajapaksa Mudiyansele Menike was arrested for fraud allegations and died after falling out of a fifth story window of the Criminal Investigations Department building, reportedly she had committed suicide.¹⁵⁵ The Bar Association in Sri Lanka also reported that in November 2021, the police killed Hewa Lunuwilage Lasantha after he allegedly attacked police officers. A day prior to his death, Lasantha's lawyer had contacted the Bar Association to report that his client's life was in danger and the Bar Association stated that his death has the hallmark of "extrajudicial killing."¹⁵⁶ The OHCHR report expressed concern that nine other deaths had occurred while in police custody and that two police officers had been charged, but it is unclear for what cases they have been charged and the outcome of the arrests. The High Commissioner called on the Government to investigate these instances of extrajudicial killing and attribute individual and command responsibility for crimes and ensure reparations for families.¹⁵⁷

Impunity for enforced disappearances.

According to a 2022 report by the Global Human Rights Defence, Sri Lanka currently has the second-highest number of enforced disappearances in the world after Syria, most of which occurred during the civil war.¹⁵⁸ Human rights defenders, activists, journalists, and other dissenters have been subject to enforced disappearances by the Government.¹⁵⁹

Sri Lanka has enacted domestic legislation to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance¹⁶⁰ and established two institutions to address cases of enforced disappearance under UN Resolutions, including the OMP and the OR.¹⁶¹ As previously stated, these institutions remain ineffective in bringing justice to victims and holding perpetrators accountable.

¹⁵⁰ 2019 OHCHR Report, at ¶¶ 38-61.

¹⁵¹ *Id.* at ¶ 62.

¹⁵² TAMIL GUARDIAN, *UN Resolution cannot be entertained* (Dec. 21, 2019), [https://www.tamilguardian.com/content/%E2%80%98un-resolution-cannot-be-entertained%E2%80%99-sri-lankan-president;Ishara Silva, Gotabaya Rajapaksa at Media briefing: 'I will deliver on my promises', CEYLON TODAY \(Oct. 18, 2019\) https://ceylontoday.lk/print-more/42931. 2022 Government Replies](https://www.tamilguardian.com/content/%E2%80%98un-resolution-cannot-be-entertained%E2%80%99-sri-lankan-president;Ishara%20Silva,%20Gotabaya%20Rajapaksa%20at%20Media%20briefing:%20'I%20will%20deliver%20on%20my%20promises'%20,CEYLON%20TODAY%20(Oct.%2018,%202019)https://ceylontoday.lk/print-more/42931.2022%20Government%20Replies)

¹⁵³ 2022 OHCHR Report.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Global Human Rights Defence, *Enforced Disappearances in Sri Lanka* (Feb. 2022), <https://ghrd.org/wp-content/uploads/2022/02/Enforced-Disappearances-in-Sri-Lanka.pdf>.

¹⁵⁹ *Id.*

¹⁶⁰ Parliament of the Democratic Socialist Republic of Sri Lanka, *International Convention for the Protection of All Persons from Enforced Disappearance Act No. 5 of 2018*, (Mar. 21, 2018), https://www.srilankalaw.lk/gazette/2018_pdf/05-2018_E.pdf.

¹⁶¹ Global Human Rights Defence, *Enforced Disappearances in Sri Lanka* (Feb. 2022), <https://ghrd.org/wp-content/uploads/2022/02/Enforced-Disappearances-in-Sri-Lanka.pdf>.

Since 1994, more than 65,000 complaints of enforced disappearances have been filed with various ad hoc Presidential Commissions of Inquiry.¹⁶² In the 2022 OHCHR Report, the High Commissioner expressed serious concern regarding the continued lack of progress in human rights cases before the courts, including on enforced disappearances.¹⁶³ In August 2021, the Attorney General's Department decided not to proceed with charges against former Navy Commander Wasantha Karannagoda in the case of the enforced disappearances of 11 individuals in 2008 and 2009. Mr. Karannagoda had filed a writ with the Court of Appeal and secured a stay order as interim relief on the basis that he had been wrongly implicated. The families of the victims challenged the decision before the Court of Appeal and hearings are expected in April 2022.¹⁶⁴ Ten years after journalist Prageeth Eknaligoda was forcibly disappeared, his fate remains unknown and impunity for perpetrators prevails.¹⁶⁵ More details about his case are below. Other cases, such as the enforced disappearances of youth activists Lalith Kumar Weeraraj and Kugan Muruganathan in 2011, remain equally unresolved.¹⁶⁶

Families and lawyers of the disappeared have also been continuously harassed and intimidated by the Government.¹⁶⁷ For example the Sri Lankan TID interrogated an association of victims of the disappeared in northeast Sri Lanka for having alleged ties to the LTTE and for participating in the 46th Session of the UN Human Rights Council.¹⁶⁸ The 2022 OHCHR report also stated that authorities continue to harass and threaten victims' groups, sending intelligence and police officers to their homes to inquire about protests and links to LTTE. In particular, the High Commissioner expressed concern that women are oftentimes the only surviving family members of the disappeared and by advocating for justice they face additional vulnerability and security threats. She called on the Government to treat victims' groups as partners in peacebuilding and allow them to mobilize and carry out activities.¹⁶⁹

The Sri Lankan Government still fails to provide families searching for their loved ones with answers.¹⁷⁰ Family members of missing individuals continue to search for their relatives, believing that they are "detained in a secret detention center deep in the heart of the Sri Lankan State."¹⁷¹ Secret detentions leading to disappearances are common because Sri Lanka's justice system lacks structural guarantees to prevent secret detentions, including lack of access to legal representation, few limits on pretrial detention, little effective access to bail, and no accessible options to challenge the legality of detention.¹⁷² Promises to release information and identities of individuals detained by armed forces during and after the war have not been kept.¹⁷³

¹⁶² *Id.*

¹⁶³ 2022 OHCHR Report.

¹⁶⁴ *Id.*

¹⁶⁵ Global Human Rights Defence, *Enforced Disappearances in Sri Lanka* (Feb. 2022), <https://ghrd.org/wp-content/uploads/2022/02/Enforced-Disappearances-in-Sri-Lanka.pdf>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ 2022 OHCHR Report.

¹⁷⁰ COLOMBO TELEGRAPH, *Investigating The Truth of What Happened to Enforced Disappeared Tamils in Sri Lanka* (Aug. 30, 2019) <https://www.colombotelegraph.com/index.php/investigating-the-truth-of-what-happened-to-enforced-disappeared-tamils-in-sri-lanka/>.

¹⁷¹ Chulani Kodikara, "Where are they?": *The Matter of Surrendees and Gotabaya Rajapaksa's Response*, SUNDAY OBSERVER (Oct. 20, 2019) <http://www.sundayobserver.lk/2019/10/20/opinion/%E2%80%9Cwhere-are-they%E2%80%9D-matter-surrendees-and-Gotabaya-rajapaksa%E2%80%99s-response>.

¹⁷² Office of the High Commissioner for Human Rights, *Rep. of the Working Group on Arbitrary Detention on Its Visit to Sri Lanka*, U.N. Doc. A/HRC/39/45/Add.2, at 6 (2018).

¹⁷³ *Id.*

Importantly, eyewitness accounts in relation to the whereabouts of surrendering LTTE cadres have been reported.¹⁷⁴ These accounts suggest that the LTTE cadres were placed in an enclosure fortified with barbed wire to be questioned shortly after their surrender.¹⁷⁵ Family members claim that these were the last moments in which they saw their loved ones.¹⁷⁶ In response, President Rajapaksa, who was questioned while he was a presidential candidate, evaded the question about the whereabouts of the LTTE cadres and instead stated that there were greater concerns in the North and East of the country, such as education and job security.¹⁷⁷

After the election of President Gotabaya Rajapaksa, a Swiss embassy staffer was abducted and forced to hand over sensitive embassy information of those who fled the country to seek asylum in Switzerland, mounting concerns over the Rajapaksa family's continuing practice of enforced disappearances.¹⁷⁸ Though President Rajapaksa denied any involvement in the embassy staffer's abduction, on the same day, he imposed a blanket travel ban on approximately 700 members of the Sri Lankan police who had been investigating the Rajapaksa family.¹⁷⁹ Since the election of President Rajapaksa, investigations on human rights abuses, including enforced disappearances, have been delayed or halted altogether, raising concerns of the unraveling of justice to victims of human rights abuses.¹⁸⁰

Accountability: Government officials including security forces are not being held accountable for past human rights violations and the Rajapaksa administration has reinforced impunity rather than accountability.

In the 2022 report, the OHCHR expressed concern that some cases involving security forces have lingered in courts for a decade after original indictments or been reversed or dismissed. This indicates inability and unwillingness of the Government to prosecute and punish perpetrators, particularly when State security forces (or Government officials in general) are alleged perpetrators.¹⁸¹

President Gotabaya Rajapaksa has set back efforts for accountability for crimes involving government officials. Rajapaksa's lawyers went to court to dismiss all criminal and civil cases against him and his family.¹⁸² Those who have worked to investigate and prosecute war crimes are under attack. The head of Sri Lanka's Criminal Investigation Department (CID) was reassigned to a junior position away from the head office in Colombo.¹⁸³ The lead detective on many of the abduction and murder cases, in which Rajapaksa family members and military were accused, fled to Switzerland with his family due to threats to his life.¹⁸⁴ In the meantime, national television

¹⁷⁴ Chulani Kodikara, "Where are they?" : The Matter of Surrendees and Gotabaya Rajapaksa's Response, Sunday Observer (Oct. 20, 2019) <http://www.sundayobserver.lk/2019/10/20/opinion/%E2%80%9Cwhere-are-they%E2%80%9D-matter-surrendees-and-Gotabaya-rajapaksa%E2%80%99s-response>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Maria Abi-Habib & Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, NY TIMES (Nov. 27, 2019).

¹⁷⁹ Chulani Kodikara, "Where are they?" : The Matter of Surrendees and Gotabaya Rajapaksa's Response, Sunday Observer (Oct. 20, 2019) <http://www.sundayobserver.lk/2019/10/20/opinion/%E2%80%9Cwhere-are-they%E2%80%9D-matter-surrendees-and-Gotabaya-rajapaksa%E2%80%99s-response>.

¹⁸⁰ *Id.*

¹⁸¹ 2022 OHCHR Report.

¹⁸² THE STRAITS TIMES, *Corruption charges dropped as Gotabaya Rajapaksa has immunity as new Sri Lanka President* (Nov. 21, 2019) <https://www.straitstimes.com/asia/south-asia/corruption-charges-dropped-against-immune-new-sri-lanka-president-Gotabaya-rajapaksa>.

¹⁸³ COLOMBO GAZETTE, *CID Director Who Handled High Profile Cases Transferred* (Nov. 21, 2019), <https://colombogazette.com/2019/11/21/cid-director-who-handled-high-profile-cases-transferred/>.

¹⁸⁴ Maria Abi-Habib & Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, NY TIMES (Nov. 27, 2019), <https://www.nytimes.com/2019/11/27/world/asia/sri-lanka-rajapaksa-crackdown.html>; ALJAZEERA, *Top detective*

channels in mid-November displayed the photos of other detectives involved in the investigations of the family's crimes, accusing them of corruption and treason, after they were stripped of their personal security.¹⁸⁵ On November 27, 2019, a spokesman for the National Police Commission of Sri Lanka said, that they would decide in the next few weeks whether the investigations would continue on these landmark cases.¹⁸⁶ President Gotabaya Rajapaksa imposed a blanket travel ban on more than 700 members of the Sri Lankan police unit that had been investigating the family corruption and murders.¹⁸⁷

In another alarming development, the Rajapaksa brothers used security forces that were known to engage in war crimes and multiple human rights abuses.¹⁸⁸

The Rajapaksa Government also set up a "political victimization" committee to investigate all officers, elected members, and complainants and investigators of family crimes.¹⁸⁹ The Commission was established in January 2020 when President Rajapaksa directly appointed several Judges and Inspectors as "Commissioners".¹⁹⁰ The Commission was created to investigate claims of "political victimization" that may have taken place during investigations by various Commissions from January 8th, 2015, to November 16th, 2019.¹⁹¹

According to the presidential proclamation, "Commissioners were hired to inquire and obtain information regarding the following instances: a) Whether there has been any malpractice or irregularity, or non-compliance with or disregard of the proper prudence, norms, guidelines, procedures and best practices applicable in relation to the administration of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Financial Investigations Divisions (FCID) of the Sri Lanka Police or the Special Investigations Unit (SIU) of the Sri Lanka Police; b) Whether any investigations by the above entities had been influenced or obstructed or prevented in any manner, resulting in loss, damage, injury or detriment, either direct or imputed to any person or persons; c) Whether any officer entrusted with conduct of investigations by the above entities have acted under undue influence by third parties, including by the said Anti-Corruption unit; and d) Whether any person had committed any act of political victimization, misuse or abuse of power, corruption or any fraudulent act in relation to the functions of the above entities, or in relation to the administration of any law or the administration of justice."¹⁹²

The Commission has been especially hostile to police investigators tasked with prosecuting individuals responsible for serious human rights abuses committed under the previous Rajapaksa Government, including the Attorney General for high profile criminal cases including that of 'Navy 11'.¹⁹³ Former MP/Speaker Karu Jayasuriya stated that the Commission would decide the fate of the government's political opponents extra-judicially.¹⁹⁴

who investigated high-profile cases flees Sri Lanka (Nov. 26, 2019), <https://www.aljazeera.com/news/2019/11/top-detective-investigated-high-profile-cases-flees-sri-lanka-191126115850448.html>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Al Jazeera, *Sri Lanka's new president picks brother Mahinda Rajapaksa as PM* (Nov. 29, 2019)

<https://www.aljazeera.com/news/2019/11/sri-lanka-prime-minister-set-resign-election-setback-191120111642357.html>.

¹⁸⁹ Center for Policy Alternatives, *A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization* (Apr. 2021), <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-CoI-SPCoI-on-Political-Victimization.pdf>.

¹⁹⁰ *Proclamation by the President*, The Gazette of Sri Lanka (Jan. 9, 2021), http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Open Wounds and Mounting Dangers: Blocking Accountability for Grave Abuses in Sri Lanka*, Human Rights Watch (Feb. 1, 2021), <https://www.hrw.org/report/2021/02/01/open-wounds-and-mounting-dangers/blocking-accountability-grave-abuses-sri-lanka>.

¹⁹⁴ Economy Next, *Sri Lanka Former Speaker Gravely Concerned about Political Victimization Bill* (Apr. 20, 2021), <https://economynext.com/sri-lanka-former-speaker-gravely-concerned-about-political-victimisation-bill-80940/>.

On October 13, 2020, nine days before the 20th Amendment vote, the Presidential Commission on Political Victimization issued a notice to twenty-one former and current opposition members, including the leader of the Opposition, Sajith Premadasa, to appear before the Commission.¹⁹⁵

The High Commissioner is seriously concerned at the continued lack of progress and even steps backward in several emblematic human rights cases before the courts. Investigations of the alleged abuses of the security forces, including extrajudicial killings and excessive use of force, suffer from undue delay, overturned convictions, and failure to remove officers from duty pending trial.¹⁹⁶ Investigations of security forces committing human rights violations have been rare and ineffective.

There have been many cases of human rights abuses that continue not to be investigated. One example is the Welikada prison incident in 2012 where 27 inmates were allegedly executed. According to the recent OHCHR report, the Colombo High Court delivered judgments for three officers charged in the case, one of whom was acquitted of all charges. There is a lack of evidence of whether the Government has taken further action against other members of security forces involved in the incident.¹⁹⁷

Other examples include the abduction of eleven youth from Colombo in 2008/2009 allegedly by the Navy, the murder of Tamil politician Nadarajah Raviraj in 2006, and the murder of Lasantha Wickrematunge, the editor of 'The Sunday Leader' in 2009.¹⁹⁸ Both Sri Lankan military officials and politicians have publicly rebuked investigations of military officials for past human rights violations.¹⁹⁹ There is also increasing intimidation of victims and witnesses who have come forward to take up cases against the military for abductions and killings.²⁰⁰ Landmark cases include the intimidation of Santhiya Eknaligoda, the wife of disappeared political cartoonist Prageeth Eknaligoda (as noted above, the chief investigator in that case fled to Switzerland after death threats), and a Swiss visa officer was allegedly abducted, detained and abused.²⁰¹ Gnanasara Thero, the General Secretary of the Sinhalese Buddhist nationalist organization Bodu Bala Sena (Buddhist Power Force or BBS), was imprisoned for contempt of court for threatening Santhiya Eknaligoda, but on May 24, 2019, Gnanasara received a presidential pardon from former President Maithripala Sirisena and was released from prison.²⁰² A 2010 series of bombings were directed at MPs and there have been no investigations or prosecutions.

¹⁹⁵ Colombo Page, *Presidential Commission on Political Victimization issues notice to 21 including Opposition Leader* (Oct. 13, 2020), http://www.colombopage.com/archive_20B/Oct13_1602604850CH.php.

¹⁹⁶ U.S. DEPARTMENT OF STATE, *Sri Lanka Human Rights Report 2018* (Mar. 2018).

¹⁹⁷ 2022 OHCHR Report.

¹⁹⁸ Amnesty International, *Sri Lanka: Impunity Fuels Recurrence of Violence* (May 18, 2019),

<https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-impunity-fuels-recurrence-of-violence/>.

¹⁹⁹ SRI LANKA BRIEF, *Sri Lanka Ex-Forces Chiefs Condemn Geneva Resolution and Defend Former Navy Chief Karannagoda Over Abduction of 11 Youth*, (Oct. 14, 2019), <https://srilankabrief.org/2019/10/sri-lanka-forces-chiefs-condemn-geneva-resolution-defend-former-navy-chief-karannagoda-over-abduction-of-11-youth/>; *See also* SRI LANKA BRIEF, *Sri Lanka Upping the Game of Protecting War Heroes* (Oct. 13, 2019), <https://srilankabrief.org/2019/10/sri-lanka-upping-ddthe-game-of-protecting-war-heroes-kishali-pinto-jayawardene/>.

²⁰⁰ SRI LANKA CAMPAIGN FOR PEACE AND JUSTICE, *Gotabaya's Sri Lanka: the risks ahead and how to respond* (Nov. 19, 2019), <https://www.srilankacampaign.org/Gotabayas-sri-lanka-the-risks-ahead-and-how-to-respond/>.

²⁰¹ Shreen Abdul Saroor, *New Year Reflections*, DAILYMIRROR ONLINE (Jan. 1, 2020),

<http://www.dailymirror.lk/opinion/New-Year-Reflections/172-180463>; Maria Abi-Habib & Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, NY TIMES (Nov. 27, 2019).

²⁰² GROUNDVIEWS, *On the Presidential Pardon: Reactions to Gnanasara's Release*, (May 24, 2019).

Security sector officials accused of human rights violations promoted to high-ranking offices.

Members of the Sri Lankan Security Forces with credible accusations of human rights violations have been appointed to prominent positions.²⁰³ One of the most prominent was that soon after his election, President Gotabaya Rajapaksa appointed his brother, Mahinda Rajapaksa, as Prime Minister of Sri Lanka.²⁰⁴

Former President Sirisena appointed (now) General Shavendra Silva to Army Commander despite his alleged involvement in war crimes,²⁰⁵ including findings in the UN 2015 war crimes investigation.²⁰⁶ President Gotabaya Rajapaksa elevated General Silva to Acting Chief of Staff and Commander of the Sri Lanka Army,²⁰⁷ In February 2020, Silva was sanctioned by the U.S. over alleged war crimes. However, Silva remains in power and the Sri Lankan Government has not taken further steps to investigate his role in allegedly committing extrajudicial killings of Tamils during the 2009 civil war.²⁰⁸

Another troubling appointment is the confirmation of rank of rear admiral granted by the Sri Lanka Navy to Commodore D.K.P. Dassanayake. The Office of Missing Persons in Sri Lanka raised concerns regarding Dassanayake's connection to a series of abductions. In 2017, the Criminal Investigations Department arrested Dassanayake on three charges of aiding and abetting the disappearance of 11 Tamil youths.²⁰⁹ He was later released on bail.²¹⁰ In 2020, the Presidential Commission of Inquiry ordered the attorney general to halt the prosecution pending investigations into the matter. While the attorney general refused to comply, the Court of Appeals suspended the trial. In 2021, Dassanayake retired from his position with the Navy with military honors.²¹¹

Regarding the case of former Navy Commander Wasantha Karannagoda, hearings on the case concerning 14 other navy personnel are set to continue, but in December 2021 Mr. Karannagoda was appointed Governor of the Northwestern Province.²¹²

President Rajapaksa also appointed another alleged war criminal, Major Kamal Gunaratne, as the defense secretary.²¹³ This gives the President direct oversight of the ministry. Major Gunaratne, too, has been charged with war crimes, including leading a notorious unit that allegedly committed war crimes near the end of the war.²¹⁴ The International Truth and Justice Project issued a report in 2019 with evidence that Gunaratne had

²⁰³ 2019 OHCHR Report at ¶ 37. The Office of the High Commissioner for Human Rights stressed the need for processes to ensure that human rights violators do not remain in positions of authority.

²⁰⁴ Al Jazeera, *Sri Lanka's new president picks brother Mahinda Rajapaksa as PM* (Nov. 29, 2019)

<https://www.aljazeera.com/news/2019/11/sri-lanka-prime-minister-set-resign-election-setback-191120111642357.html>.

²⁰⁵ United Nations Office of the High Commissioner, *Press Release Sri Lanka: UN Experts Say Army Chief Appointment is "Affront to Victims" of Rights Abuses*, (Aug. 27, 2019).

²⁰⁶ Office of the High Commissioner for Human Rights, *Rep. of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2 (Sept. 16, 2015),

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>.

²⁰⁷ *Id.* at ¶ 57.

²⁰⁸ The Guardian, *US imposes sanctions on Sri Lankan army chief over war crimes*

(Feb. 14, 2020), <https://www.theguardian.com/world/2020/feb/14/us-sanctions-sri-lanka-army-chief-shavendra-silva>.

²⁰⁹ SRI LANKA BRIEF, *Navy Abductions Case: OMP Raises Concern over Suspect Dassanayake's Confirmation of Rank* (June 10, 2019), <https://srilankabrief.org/2019/10/navy-abductions-case-omp-raises-concern-over-suspect-dassanayakes-confirmation-of-rank/>.

²¹⁰ Colombo Page, *Sri Lanka court grants bail to Commodore D.K.P. Dassanayake and others arrested for abducting 11 youths* (Jan. 9, 2018), http://www.colombopage.com/archive_18A/Jan09_1515508626CH.php.

²¹¹ Lankasara, *Rear Admiral Dassanayake once linked to an abduction racket retires with full military honours* (2021), <https://lankasara.com/news/rear-admiral-dassanayake-retires/>.

²¹² 2022 OHCHR Report.

²¹³ COLOMBO TELEGRAPH, *New Dossier Released on Alleged War Crimes Committed by Sri Lanka's New Defence Secretary Kamal Gunaratne* (Dec. 10, 2019), <https://www.colombotelegraph.com/index.php/new-dossier-released-on-alleged-war-crimes-committed-by-sri-lankas-new-defence-secretary-kamal-gunaratne>.

²¹⁴ International Truth and Justice Project, *Gathering Evidence*, <https://itjpsl.com/reports/kamal-gunaratne>.

been complicit in war crimes and crimes against humanity.²¹⁵ Gunaratne denied the allegations.²¹⁶ Gunaratne is also mentioned in the UN 2015 war crimes investigation.²¹⁷ The Government has not investigated Gunaratne's alleged criminal actions and he remains in his position.

Commander Karuna Amman, former LTTE commander, was appointed as the Vice President of the Sri Lanka Podujana Peramuna (Sri Lanka Freedom Party, SLPP).²¹⁸ In June 2020, the Sri Lankan Government launched an investigation into Amman's actions during the civil war and allegations of his involvement in extrajudicial killings, torture, and recruitment of child soldiers.²¹⁹ Amman was never formally charged with any crimes and continues to hold his Government post.²²⁰

Internally displaced persons, refugees and asylum seekers (Articles 17, 27)

Land Seizures and Resettlement: Freedom of Movement, Right to Privacy, and Rights of Minorities.

In the July 2020 List of Issues, the Committee asked the Government to “report on the progress made in resettling internally displaced persons, in providing durable solutions relating *inter alia* to housing and employment, and in restitution of immovable property, including land... on the restitution of private land occupied by the military in Northern and Eastern Provinces to their original owners,... new land grabs,... alleged “colonization” through the establishment of irrigation, forestry and archaeological projects, and continued military involvement in economic activities.”²²¹

In a 2015 update to the Committee, the State noted that a series of measures had been undertaken to address citizen grievances related to land ownership displacement during the war.²²² Such measures included releasing at least 1,818 acres of former conflict “High Security Zones” back to their owners.²²³ In its 2019 report to the Committee, the Government of Sri Lanka reported its progress in releasing and its administrative changes in order to facilitate the release of land.²²⁴ The Government included statistics on how much land has been released,²²⁵ details on the creation of stakeholder meetings for the release of land,²²⁶ the creation of five mediation boards on land,²²⁷ and the organization of a Consultation on Land Restitution.²²⁸ UN and NGO

²¹⁵ Colombo Telegraph, *New Dossier Released On Alleged War Crimes Committed By Sri Lanka's New Defence Secretary Kamal Gunaratne* (Dec. 10, 2019), <https://www.colombotelegraph.com/index.php/new-dossier-released-on-alleged-war-crimes-committed-by-sri-lankas-new-defence-secretary-kamal-gunaratne/>.

²¹⁶ Tamil Guardian, *'Who Cares, I Served My Country,' - Sri Lanka's Defence Secretary lashes out at UNHRC* (Feb. 26, 2021), <https://www.tamilguardian.com/content/who-cares-i-served-my-country-sri-lanka-s-defence-secretary-lashes-out-unhrc>.

²¹⁷ Office of the High Commissioner for Human Rights, *Rep. of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2 (Sept. 16, 2015), <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>.

²¹⁸ Rajitha Jagoda Arachchi, *Land and Police Powers to N-E if Rajapaksa wins says Karuna*, SUNDAY OBSERVER (Nov. 10, 2019), <https://www.sundayobserver.lk/2019/11/10/news/land-and-police-powers-n-e-if-Rajapaksa-wins-says-karuna>.

²¹⁹ Human Rights Watch, *Sri Lanka Investigates Rebel Leader Turned Politician* (Jun. 23, 2020), <https://www.hrw.org/news/2020/06/23/sri-lanka-investigates-rebel-leader-turned-politician>.

²²⁰ *Id.*

²²¹ UN Human Rights Committee, *List of issues in relation to the sixth periodic report of Sri Lanka*, CCPR/C/LKA/Q/6 (Jul. 2020).

²²² UN Human Rights Committee, *Update to the Fifth Periodic Report of Sri Lanka under the International Covenant on Civil and Political Rights*, at ¶ 16 (Oct. 16, 2015).

²²³ *Id.*

²²⁴ *Government Report*, at ¶¶ 61-66.

²²⁵ *Id.* at ¶¶ 61-62.

²²⁶ *Id.* at ¶ 63.

²²⁷ *Id.* at ¶ 64.

²²⁸ *Id.* at ¶ 65.

reports question the Government's claims of progress. Finally, there are ongoing concerns about State failure to protect and resettle displaced Muslim refugees, particularly after the Easter Sunday Bombings when thousands of Muslim refugees and migrants became displaced after landlords were pressured to evict them.²²⁹

Deficient procedures and failure to timely release land impacts communities in the North and East.

The Office of the High Commissioner on Human Rights noted her concern in her February 2022 report about the Government's processes of returning land to communities in the North and East.²³⁰ While the High Commissioner has noted that progress has been made on the release of land, partial or incomplete releases affect communities' access to livelihood resources, such as agricultural or fishing resources, and military involvement in economic activities of communities.²³¹

In her 2022 report, the OHCHR notes the same statistic as the Government Responses to the List of Issues, 92% of private lands returned.²³² However, the High Commissioner also comments on several "renewed trends" that have "created new tensions": the creation of the Task Force for Archaeological Heritage Management, the identification of Buddhist archaeological monuments, and Government restrictions on land use claiming forest and environmental preservation. The High Commissioner explains that minority communities fear these actions are taken "to change the demographic landscape of the region. This could impact livelihoods and increase potential for new conflicts."²³³ In Mullaitivu, the largest district in the Northern Province, the military still occupy large portions of cultivable land and much of the land in this district is declared forest reserves. The 2022 OHCHR gave as an example of "increasing majoritarianism" the January 18, 2021 inauguration of a Buddha statue by the State Minister for National Heritage and military orders that disregarded a court order on claims that the statue was to be built in the Mullaitivu District on the site of an ancient Hindu temple.²³⁴

Additionally, the continued military presence and operations within occupied lands in the North and East is perceived by locals as permanent militarization.²³⁵ The military acts as the sole, "key, and largely unchecked, authority on release on land," with no "comprehensive approach to . . . releasing the lands under military occupation in a systematic and transparent manner."²³⁶ Issues with land release by the military include, but are not limited to, partial releases, inadequate resettlement assistance, inefficient determinations of land title, or, in some cases, relocating affected populations rather than releasing land.²³⁷ Cases involving the military and land release in Sri Lankan courts are ongoing or have not resulted in release.²³⁸ Land release is emotionally and politically charged, "with regard to both individual ownership and communities' sense of belonging to a given area. . . ."²³⁹ The High Commissioner recommended that "[a]ny State-promoted settlement of people or land acquisition on cultural, archaeological, development or environmental grounds should be carefully considered . . . [and] should be made through transparent processes and following meaningful consultation with the people

²²⁹ Human Rights Watch, Umer Beigh, *Sri Lanka is Still Neglecting Its Displaced Muslims* (Dec. 7, 2020); <https://www.newframe.com/sri-lanka-is-still-neglecting-its-displaced-muslims/>.

²³⁰ 2022 OHCHR Report at ¶¶ 17-19.

²³¹ 2019 OHCHR Report at ¶ 35.

²³² 2022 OHCHR Report at ¶17; 2022 Government Replies at ¶ 107.

²³³ 2022 OHCHR Report ¶¶ 17-18.

²³⁴ 2022 OHCHR Report at ¶ 24.

²³⁵ HUMAN RIGHTS WATCH, "WHY CAN'T WE GO HOME?": MILITARY OCCUPATION IN SRI LANKA 18 (Oct. 2018), <https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka>.

²³⁶ *Id.* at 22.

²³⁷ *Id.* at 61-69.

²³⁸ *Id.* at 75.

²³⁹ 2019 OHCHR Report.

and the communities affected.”²⁴⁰ In her 2022 report, the High Commissioner cites reports of 45 disputes between state actors and minorities between January and November 2021.²⁴¹

Deficits in protecting and resettling displaced Muslim internally displaced persons.

A disproportionate number of Muslim Sri Lankans were forcibly evicted at gunpoint by Tamil Tigers in 1990 in Sri Lanka.²⁴² Muslims in Sri Lanka have expressed frustration that there is a lack of transparency about the resettlement process.²⁴³ Concerns have also been raised that land allocation by the Government has included settling Sinhalese on previously Muslim lands to the disadvantage of shrinking Muslim minorities in such communities.²⁴⁴ State-sponsored programs that transfer Sinhalese into the North and East, such as Gal Oya and Weli Oya/Manal Aru, are viewed by the local Tamil and Muslim populations as particularly contentious.²⁴⁵ For example, the majority-Muslim-and-Hindu, Tamil-speaking towns of Pulmoaddai and Kokkilai, which both border the Northern and Eastern provinces, have gone through well-documented changes throughout military occupation, such as the creation of military outposts, Sinhalese settlements, and the building of military-controlled Buddhist sites in the occupied areas.²⁴⁶

Nondiscrimination, Prohibition of Advocacy of National, Racial or Religious Hatred, Freedom, and Freedom of Thought, Conscience and Religion and Rights of Minorities (Articles 2, 18, 20, 26 and 27)

Unequal protection for religious minorities under the Constitution.

In the most recent OHCHR report, the High Commissioner expressed concern that while the Constitution includes a prohibition on discrimination, the Government has continued to use “ethno-nationalistic and majoritarian” rhetoric and make policies that reflect interests of the Buddhist Sinhala majority while nominally taking into account the interests of minorities.²⁴⁷ In his 2020 report on his visit to Sri Lanka, the Special Rapporteur on the freedom of religion also stated that while the Constitution guarantees to all persons the freedom of religion, in practice non-discrimination and equality is often available to the Buddhist majority and not for Muslim citizens.²⁴⁸ He cited a 2003 Supreme Court decision, which held that the right to propagate a religion other than Buddhism would be impermissible as it would impair the very existence of Buddhism.²⁴⁹ The Special Rapporteur on minority issues also observed that Article 9 of the Sri Lankan Constitution and the non-statutory Government circular in 2008 by the Ministry of Buddha Sasana and Religious Affairs were used to the detriment of other religions.²⁵⁰ The Special Rapporteur on freedom of religion reported in August 2020

²⁴⁰ *Id.*

²⁴¹ 2022 OHCHR Report at ¶ 19.

²⁴² UN Human Rights Council, *Report of the Special Rapporteur on minority issues on her mission to Sri Lanka, Rita Izsák-Ndiaye*, ¶ 13, 29, U.N. Doc. A/HRC/34/53/Add.3 (Jan. 31, 2017) [Hereinafter *2017 Report of the Special Rapporteur on minority issues*], at ¶ 42.

²⁴³ *Id.* at ¶ 44.

²⁴⁴ *Id.* at ¶ 39.

²⁴⁵ HUMAN RIGHTS WATCH, “WHY CAN’T WE GO HOME?”: MILITARY OCCUPATION IN SRI LANKA, (Oct. 2018), <https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka>.

²⁴⁶ PEARL Action, *Sinhalization of the North East: Kokkilai* (Sept. 21, 2019), <https://pearlaction.org/2019/09/21/sinhalization-of-kokkilai/>; PEARL Action, *Pulmoaddai* (Mar. 11, 2019), <https://pearlaction.org/2019/03/11/sinhalization-of-pulmoaddai/>.

²⁴⁷ 2022 OHCHR Report.

²⁴⁸ UN Human Rights Council, *Visit to Sri Lanka: Report of the Special Rapporteur on Freedom of Religion or Belief* A/HRC/43/48/Add.2 [Hereinafter *Special Rapporteur Freedom of Religion Report 2020*] ¶ 31.

²⁴⁹ *Id.*

²⁵⁰ 2017 Report of the Special Rapporteur on minority issues at ¶ 29.

that there was a policy of toleration rather than inclusion for religious minorities, which does not create horizontal equality for all citizens.²⁵¹ This is further exacerbated by the State's failure to collect data on challenges faced by Muslim minority for appropriate legal policy planning as reported in 2017 by the Special Rapporteur on minority issues.²⁵²

Misuse of the ICCPR Act to target minorities.

In the National Action Plan for the Protection and Promotion of Human Rights for 2017-2021, the State affirmed its commitment to enforcing the ICCPR treaty through the domestic ICCPR Act which criminalizes the advocacy of religious hatred that incites discrimination, hostility, or violence.²⁵³ The State claims to promote programs for religious coexistence through the Office for National Unity and Reconciliation.²⁵⁴ However, other UN bodies and civil society organizations have found that a number of the laws themselves have fallen short of international human rights standards and that, in practice, the State has failed to provide legal protections.

Sri Lanka's ICCPR localized act has been used selectively to target ethnic minorities for inciting violence. In the recent past, the ICCPR Act was disproportionately used against the Muslim community, especially in the context of the State promoting anti Muslim sentiment Muslim community members reacted to on social media. Religious leaders, politicians, writers, human rights defenders and social media activists have been detained under the act without bail and on grounds that their speech or actions encourage religious extremism.²⁵⁵

Discriminatory measures imposed against religious minority groups and policy deficits.

The OHCHR held in its most recent report in 2022 that despite the intent to unite the country, government actions in the past year have reinforced the nexus between Buddhist and Sinhalese nationalism and further marginalized the Muslim, Tamil, and Christian communities.²⁵⁶ The High Commissioner expressed concern that public policies reflect the interest of the Sinhala Buddhist majority and show minimal consideration for the interests of ethnic and religious minority groups; instead excluding these groups from official discourse and treating them as a threat.²⁵⁷

As discussed above, Sri Lanka's counterterrorism laws have effectively over-policed and intimidated minority groups, and Muslims in particular.²⁵⁸ The Government has proposed several laws that discriminate against the Muslim community, including a proposed ban on burqas and niqabs in March 2021, arguing that they were signs of "religious extremism" that affected national security.²⁵⁹ The ban was approved by the Cabinet on April

²⁵¹ *Special Rapporteur Freedom of Religion Report 2020* at ¶ 57.

²⁵² *2017 Report of the Special Rapporteur on minority issues* at ¶ 75.

²⁵³ *Government Report* at ¶ 23; *Sri Lanka: National Action Plan for the Protection and Promotion of Human Rights 2011-2016* (May 2011), <https://www.refworld.org/docid/5a842f057.html> ; International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007 (Nov. 16, 2007), <https://citizenslanka.org/wp-content/uploads/2015/12/International-Covenant-on-Civil-Political-Rights-ICCPR-Act-No-56-of-2007E.pdf>.

²⁵⁴ *Id.* at ¶ 125.

²⁵⁵ DailyFTI, *Abusing the ICCPR Act* (Jul. 1, 2021), https://www.ft.lk/ft_view__editorial/Abusing-the-ICCPR-Act/58-719844. See also Uwin Lugoda, *International Covenant on Civil and Political Rights: A tool of oppression?*, *The Morning* (Feb. 7, 2021), <https://www.themorning.lk/international-covenant-on-civil-and-political-rights-a-tool-of-oppression/>.

²⁵⁶ Human Rights Committee, *Replies of Sri Lanka to the list of issues in relation to its sixth periodic report*, CCPR/C/LKA/RQ/6 (Feb. 2019).

²⁵⁷ *2022 OHCHR Report*.

²⁵⁸ *Id.*

²⁵⁹ Office of the High Commissioner for Human Rights, *Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity - Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/49/44 (Mar. 2022), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4944-rights-persons-belonging-religious-or-belief-minorities>. [Hereinafter *Special Rapporteur Freedom of Religion Report 2022*]

27, 2021, sparking controversy among human rights organizations and defenders.²⁶⁰ In October 2021, the Government also proposed to implement a recent ban on the slaughter of cattle, an activity that is mostly carried out by the Muslim community.²⁶¹ The Cabinet approved the ban in September 2020, on the basis that an increase in cattle slaughter was making it hard for traditional farmers to acquire cows for dairy farming.²⁶²

According to the Special Rapporteur on the freedom of religion's latest report, since the COVID-19 pandemic, there have been reports of increased violence and harassment towards religious minorities, who are suspected of spreading and carrying the virus.²⁶³ In some regions of the country, both state and non-state actors have blamed minority groups for being the source and spreader of COVID-19. The Special Rapporteur on freedom of religion also expressed concern that the Government is abusing COVID-19 tracing for surveillance of certain communities²⁶⁴

During the COVID-19 pandemic, the government initially would not allow the minority Muslim and Christian communities to bury the bodies of COVID victims.²⁶⁵ The bodies of over 300 Muslims were forcibly cremated without the consent of family members. In February 2021, the Government finally designated a burial place in the Eastern province under strict military surveillance until February 2022 and now has allowed Muslims and Christians to bury their relatives according to their religious beliefs and where they choose. To date no explanation or apology was given by the Government for such cruelty and intimidation targeting religious minorities. The regulation that brought in the mandatory cremation of people who died from COVID is still to be rescinded.

Displaced northern Muslims' voting rights continue to be curtailed and they are discriminated against deliberately by election officers who refuse to register their votes unless they are at the voter's place of origin. To enforce voting rights, the displaced should be allowed to vote in their place of displacement especially when traveling to vote in their places of origin has become dangerous.

Disadvantaging and delegitimizing Muslim religious organizations and places of worship.

Although the Sri Lankan Office for National Unity and Reconciliation conducts programs meant to foster free association with any chosen religion for citizens,²⁶⁶ these efforts are fundamentally undermined by capricious local rules for registering and permitting Muslim religious organizations and places of worship.²⁶⁷ On his visit to Sri Lanka, the UN Special Rapporteur on freedom of religion observed that the State permits Buddhist monks to erect shrines even in areas where there is little Buddhist presence, but other religious communities have faced multiple restrictions on their ability to worship.²⁶⁸ Without proper permits, mosques are often closed. Yet with opaque guidelines and processes for State registration and permitting, Muslim organizations face great difficulty in acquiring legal personalities and sites of worship while facing police harassment for seeking to exercise these rights. In the end, local community opposition often prevails and authorities deny permits.

In 2022, the Special Rapporteur on the freedom of religion or belief reported that Sri Lankan authorities had imposed measures that restricted the freedom of religion or belief such as limiting religious rites and access to

²⁶⁰ Groundviews, *Ramadan with a Ban: Face Masks On, Niqabs Off* (May 5, 2021), <https://groundviews.org/2021/05/01/ramadan-with-a-ban-face-masks-on-niqabs-off/>.

²⁶¹ *Id.*

²⁶² Bharatha Mallawarachi, *Sri Lanka government decides to ban cattle slaughter*, AP News (Sept. 20, 2021), <https://apnews.com/article/sri-lanka-global-trade-cabinets-archive-bbb50aff1d7552e2e679ceb692142d0b>.

²⁶³ *Special Rapporteur Freedom of Religion Report 2022*.

²⁶⁴ *Id.*

²⁶⁵ Anbarasan Ehirajan, *Discrimination and harassment haunt Sri Lanka's Muslims*, BBC News (Jan. 14, 2022), <https://www.bbc.com/news/world-asia-59900733>.

²⁶⁶ *Government Report* at ¶ 125.

²⁶⁷ *Special Rapporteur Freedom of Religion Report 2020*

²⁶⁸ *Id.*

places of worship.²⁶⁹ For example, Sri Lanka's Eastern Heritage Task Force designated certain minority religious sites as "Buddhist sites" in order to restrict minority access to these areas.²⁷⁰

Incitement to violence by Buddhist extremists.

In October 2021, the President established a presidential task force, as previously stated, with a mandate to implement the "one country one law" concept. He appointed as its chair the leader of a Buddhist extremist organization known for promoting anti-Muslim hate speech.²⁷¹

Special status to Buddhism.

According to the U.S. Department of State Report on Religious Freedom in Sri Lanka from May 2021, the Constitution gives Buddhism the "foremost place" out of all religions in the country and obliges the Government to protect Buddhism while respecting the rights of all religious minorities.²⁷² The Government is also obliged to follow a 2008 circular passed by the Ministry of Buddha Sasana, Religious, and Cultural Affairs, which was upheld by a 2017 Supreme Court ruling. The circular requires all religious groups to receive permission from the Ministry to register and construct places of worship.²⁷³

Harassment, physical assaults, assaults on places of worship.

The OHCHR reported an increasing climate of fear for religious minorities as they continue to deal with persistent discrimination and violence in the post-war context of Sri Lanka.²⁷⁴ During the November 16th, 2019 presidential election, evicted Muslims were targeted and attacked while traveling from Puttalam to Mannar and Mullaitheevu to vote.²⁷⁵ Sinhala mobs, who happened to be both supporters of SLPP and Rajapaksa, shot and threw stones at their buses to and from the polling locations.²⁷⁶ Many of the injured were women and children. Police launched an investigation into the attack and no casualties were reported.²⁷⁷ There have been no updates to the investigations since 2019.²⁷⁸ Attacks like this will likely deter evicted Muslims from voting in future elections.

Toleration of the targeting of minority religious assemblies

While the Sri Lankan State issued a circular in June 2017 instructing 498 Officers in Charge of police stations to appropriately respond to religious violence,²⁷⁹ the UN Special Rapporteur on freedom of religion reported in August 2019 that the State frequently fails to protect Muslim communities against hostilities including "interruption of worship, damage to places of worship, physical assaults on clergy, intimidation, mob violence

²⁶⁹ *Special Rapporteur Freedom of Religion Report 2022.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² U.S. Department of State, *2020 Report on Religious Freedom in Sri Lanka* (Aug. 2021), <https://www.state.gov/reports/2020-report-on-international-religious-freedom/sri-lanka/>.

²⁷³ *Id.*

²⁷⁴ *Special Rapporteur Freedom of Religion Report 2022.*

²⁷⁵ THE PUBLIC'S RADIO, *Muslim Voters Attacked in Sri Lanka Presidential Election* (Nov. 16, 2019), <https://thepublicsradio.org/article/muslim-voters-attacked-as-sri-lanka-elects-president>; THE GUARDIAN, *Sri Lankan Presidential Election: Buses Carrying Muslim Voters Attacked* (Nov. 16, 2019), <https://www.theguardian.com/world/2019/nov/16/sri-lanka-presidential-election-gunmen-fire-on-buses-carrying-muslim-voters>.

²⁷⁶ *Id.*

²⁷⁷ Crisis 24, *Sri Lanka: No casualties reported following attack on voter convoy November 16 / update 2* (Nov. 16, 2019), <https://crisis24.garda.com/alerts/2019/11/sri-lanka-no-casualties-reported-following-attack-on-voter-convoy-november-16-update-2>.

²⁷⁸ *Id.*

²⁷⁹ *Government Report* at ¶ 124.

towards the community or clergy, demands for registration of the church or mosque and restricting the use of places of worship, the obstruction of religious rites such as those related to burial ceremonies or access to cemeteries, incitement to violence to the community and many other acts of intolerance.”²⁸⁰

Failure to condemn political instrumentalization of ethno-religious tensions and to recognize and build societal resilience against religious extremism.

The adversarial ethnicization of politics identified by the Special Rapporteur on minority issues in 2017 was again found to be a fundamental problem for Sri Lankan society.²⁸¹ Such instrumentalization pitting ethnicities and religions against one another was found to create a “tinderbox” ready to flare up at slight quarrels in an August 2019 report by the Special Rapporteur on freedom of religion. The Special Rapporteur further noted that there must be a recognition that to counter the fostering of religious extremism, steps must be taken to create respect for human rights, bridge-building across communities, and good governance.²⁸² With this “tinderbox” ready to ignite, the April bombings have been frequently used to justify harassing and humiliating Sri Lankan Muslims who may opportunistically be grouped with enemies of the State but whose targeting is part of a much longer anti-Muslim campaign in Sri Lanka exacerbated by political rhetoric.²⁸³ In December 2019, there were two incidents of violence on Christmas, including Christian pastors beaten by a monk in the East. On 4 August 2019, a young Methodist man was badly beaten by a group of Buddhist monks in the village of Mahinyanganaya; no arrests have been made.²⁸⁴ There has been no investigation even after many police complaints. In her February 2022 report to the Human Rights Council, the UN High Commissioner for Human Rights detailed developments over the past year that have increased the “sense of marginalization and anxiety among Tamil, Muslim and Christian minority communities and undermining the prospects for reconciliation.”²⁸⁵

Segregated education based on ethno-religious identity and curriculum discrimination against Muslims.

An August 2019 UN report notes that the intake of students from different religious communities in schools does not reflect a fair quota system.²⁸⁶ Additionally, the curriculum does not include an awareness of the

²⁸⁰ Special Rapporteur on freedom of religion or belief, Preliminary Findings of Country Visit to Sri Lanka by the Special Rapporteur on freedom of religion or belief, (Aug. 26, 2019), https://spinternet.ophchr.org/SP/CountryVisits/Shared%20Documents/LKA/INT_CV_ESS_LKA_16289_Final_E.pdf [Hereinafter *Special Rapporteur Freedom of Religion Report 2019*].

²⁸¹ 2017 Report of the Special Rapporteur on minority issues at ¶ 60.

²⁸² *Special Rapporteur Freedom of Religion Report 2019*.

²⁸³ SRI LANKA BRIEF, ICG: ‘Dangerous’ Actions Against Muslims Risk Sri Lanka Peace (Sept. 28, 2019), <https://srilankabrief.org/2019/09/icg-dangerous-actions-against-muslims-risk-sri-lanka-peace>; SRI LANKA BRIEF, *Sri Lankan Authorities Found the Muslim Surgeon had not Performed any Sterilizations* (May 7, 2019), <https://srilankabrief.org/2019/07/sri-lankan-authorities-found-the-muslim-surgeon-had-not-performed-any-sterilisations/>; SRI LANKA BRIEF, *Sri Lanka: Muslims Face Threats, Attacks—Authorities Should Act Against Incitement by Buddhist Nationalists* (Jul. 4, 2019), <https://srilankabrief.org/2019/07/sri-lanka-muslims-face-threats-attacks-authorities-should-act-against-incitement-by-buddhist-nationalists/>; SRI LANKA BRIEF, *HRC SL Requests Local Govt Authorities to Submit Info on Muslims Being Denied Commercial Activities and Actions Taken* (Jun. 13, 2019), <https://srilankabrief.org/2019/06/hrc-sl-requests-local-govt-authorities-to-submit-info-on-muslims-being-denied-commercial-activities-and-actions-taken/>; SRI LANKA BRIEF, *Sri Lanka Responds to Islamist Terrorism by Terrorising Muslims*, (Jun. 7, 2019), <https://srilankabrief.org/2019/06/sri-lanka-responds-to-islamist-terrorism-by-terrorising-muslims>.

²⁸⁴ Melani Manel Perera, *After Buddhist Monks Beat Christian, Methodist Bishop Insists Christians Are Citizens of the Country*, ASIANEWS.IT (Dec. 8, 2019), <http://www.asianews.it/news-en/After-Buddhist-monks-beat-Christian,-Methodist-bishop-insists-Christians-are-citizens-of-the-country-47734.html>.

²⁸⁵ 2022 OHCHR Report.

²⁸⁶ *Special Rapporteur Freedom of Religion Report 2019*.

religious pluralism of Sri Lanka.²⁸⁷ This indicates the immediate reform of the education system in these areas urged by a previous Special Rapporteur in 2017 do not appear to have made immediate, or indeed any, progress.²⁸⁸ Many Muslim children are often forced to go to Madrasa schools due to lack of access to other educational opportunities and poverty.

Official languages discrimination creating disadvantages in public discourse, employment and access to services.

Sinhala was formally recognized as the only official language through the 1956 Official Language Act, illustrating and further entrenching the ethnic and linguistic divides that were a harbinger of civil war.²⁸⁹ This law was partially reversed two years later with the Tamil Language (Special Provisions) law that allowed the Tamil language to be recognized as a medium of educational instruction and State correspondence in the Northern and Eastern provinces.²⁹⁰ However, the continued dominance of Sinhala as the *de facto* language of Sri Lanka and its institutions is a serious hindrance to minority participation.²⁹¹ There has been promise of future enactment of an Official Languages Law embracing a trilingual policy, and meanwhile learning a second language is compulsory up to the ninth grade.²⁹² However, most official documents, State institutions, and security officers use Sinhala even in the North and the East where Tamil speakers are the majority.²⁹³

Lack of Muslim minority participation and representation in major institutions and decision-making bodies.

While Muslims make up approximately one-tenth of the population and one-third of the Eastern Province, the ethnicization of politics, combined with the Sinhala-only language in State institutions, has created an atmosphere of intense exclusion for Muslim Sri Lankans from areas of decision-making and power structures.²⁹⁴ In a 2017 report, the Special Rapporteur on minority issues urged the Sri Lankan Government to pay particular attention to effective participation for Muslims in decision-making and creating institutional practices that accommodate ethnic, linguistic, and religious diversity to open access to Muslim participation.²⁹⁵ However, after the April 2019 bombings, Muslims who were in political power faced new attacks by Sinhala Buddhist majority members, resulting in the mass resignation of at least two Muslim governors and nine Ministers in Sri Lanka.²⁹⁶ There is a decline from previous administrations in the number of Muslim MPs holding Ministries and State Minister posts. Muslim political leaders are continuously harassed as having alleged connections to the Easter attacks,²⁹⁷ but in reality, it is due to Muslims largely not voting for Rajapaksa.

²⁸⁷ *Id.*

²⁸⁸ 2017 Report of the Special Rapporteur on minority issues at ¶ 73.

²⁸⁹ Official Language Act No 33 of 1956 (July 7, 1956), <https://www.lawnet.gov.lk/1947/12/31/official-language-2/>.

²⁹⁰ Tamil Language (Special Provisions) Act of 1958 (Sept. 14, 1958), <https://www.lawnet.gov.lk/1947/12/31/tamil-language-special-provisions-2/>.

²⁹¹ 2017 Report of the Special Rapporteur on minority issues at ¶ 18.

²⁹² *Id.* at ¶ 21.

²⁹³ *Id.* at ¶¶ 22-23.

²⁹⁴ *Id.* at ¶¶ 18, 53.

²⁹⁵ *Id.* at ¶ 62.

²⁹⁶ *The Healing Touch: On Muslim Ministers Resigning in Sri Lanka*, SRI LANKA BRIEF (June 6, 2019), <https://srilankabrief.org/2019/06/the-healing-touch-on-muslim-ministers-resigning-in-sri-lanka/>.

²⁹⁷ Krishan Francis, *Muslims Leave Sri Lanka Govt to Allow Probe of Terror Claim*, ASSOCIATED PRESS NEWS (June 3, 2019), <https://apnews.com/b0147bc92b5746f9b094532ad939b62d>.

Rights of the Child.

The Committee in 2014 expressed concerns about “the refusal of admission to school on the grounds of religion and the harassment of minority religious groups, including attacks on the places of worship of . . . Muslim . . . communities (arts. 18, 26 and 27).”²⁹⁸ The Committee urged the State to “ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination and are able to enjoy their own religion, language and culture, and able to participate in public affairs.”²⁹⁹ In its 2019 report, the State did not specifically address the Committee’s concerns regarding the limiting of children’s access to schools based on their religious affiliation. The State did note that “[a]pproximately 271 radio programmes [had] . . . been conducted for school children on language proficiency in encouraging bilingualism,” but this did not address how the State was acting to ensure that Muslim children were able to access schools.³⁰⁰ Child marriage is still permitted under MMDA for Muslim children.

Female Genital Mutilation (FGM) also continues to be practiced in Muslim community. Babies as old as 40 days undergo FGM and it is seen as a cultural ritual within the Muslim community.

Ongoing school segregation based on ethno-religious identity discriminates against Muslim children.

The Special Rapporteur on freedom of religion reported in August 2019 that this issue continues to be relevant “where the intake of students from different religious communities is not based on a fair quota system.”³⁰¹ These concerns echo those of the ICESCR concluding observations in 2017 that urged the State to address regional disparities in education.³⁰² There is concern among Sri Lankans that such disparities are actually fostering a new generation of anti-Muslim sentiments by excluding Muslim students.³⁰³ Specifically, Muslim girls are frequently discriminated against within education institutions.³⁰⁴ Muslim girls attending non-Muslim schools are frequently given the ultimatum of removing their shawl and/or traditional Muslim pants to enter the school or to leave and enroll into a Muslim-specific school.³⁰⁵ To date, there have been reported incidents of Muslim students harassed for wearing hijabs when they sit for public exams, an ongoing issue that disproportionality impacts young girls.

Freedom of Expression, Assembly, and Association (Articles 19, 21, 22)

In its previous ICCPR Review, the Committee raised concerns about “disproportion[te] and discriminatory restrictions on freedom of peaceful assembly and freedom of association,” particularly in Northern Sri Lanka, urging that measures should be taken by the State to protect these rights.³⁰⁶ In 2016, the State observed that peaceful assemblies, particularly protests, were permitted in 2015, and that reported excessive police responses

²⁹⁸ 2014 *Concluding Observations*, at ¶ 23.

²⁹⁹ *Id.*

³⁰⁰ *Government Report* at ¶ 130.

³⁰¹ *Special Rapporteur Freedom of Religion Report 2019*.

³⁰² UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Sri Lanka (ICESCR)*, at ¶ 64, U.N. Doc. E/C.12/LKA/CO/5 (4 Aug. 2017).

³⁰³ *Sri Lanka: Students Ridiculed in Sri Lanka for Using Brand Targeted in Anti-Muslim Boycott: Official*, SRI LANKA BRIEF (May 7, 2019), <https://srilankabrief.org/2019/07/sri-lanka-students-ridiculed-in-sri-lanka-for-using-brand-targeted-in-anti-muslim-boycott-official/>.

³⁰⁴ Vimukthi Fernando, *Muslims Face Continued Harassment in Wake of Terror Fears*, SUNDAY OBSERVER (Jan. 5, 2020), <http://www.sundayobserver.lk/2019/06/02/news-features/muslims-face-continued-harassment-wake-terror-fears>; Chandni Doulatramani, *Sri Lanka’s Veil Ban Is Fueling Hate*, FOREIGN POLICY (May 23, 2019), <https://foreignpolicy.com/2019/05/23/sri-lankas-veil-ban-is-fueling-hate/>.

³⁰⁵ *Id.*

³⁰⁶ 2014 *Concluding Observations*, at ¶ 22.

against protesters was being investigated by the National Police Commission.³⁰⁷ In April 2019, the State observed that peaceful assembly, association, and movement are guaranteed in the Sri Lankan Constitution under Article 14.³⁰⁸ They noted that the Office for National Unity and Reconciliation (ONUR) regularly conducts programs promoting religious coexistence, serving as an early warning system to detect religious violence.³⁰⁹ However, the ONUR is functioning with minimal resources and on the verge of closing with a lack of Government funding. Additionally, the State reported that the Cabinet of Ministers approved establishing District Level Reconciliation Committees in June 2017 to monitor religious and ethnic tensions and to formulate local mediation strategies.³¹⁰ However, serious restrictions of these fundamental freedoms remain.

Harassment and attacks on journalists, human rights defenders, media workers.

The President himself has spoken openly about wanting to control nongovernmental organizations; he has accused them of interfering with the sovereignty of the nation.³¹¹ Current Government officials have stated that even Constitutional reforms undertaken by the previous Government were at the behest of the NGOs and did not have popular support. Mainstream newspapers formerly considered neutral have joined in this attack.³¹² Just weeks before the election, the security apparatus started intimidating civil society organizations and human rights defenders.³¹³ Currently, surveillance is very heavy and includes intimidation of lawyers in courtrooms.³¹⁴ On March 31, 2022, several journalists were assaulted and at least six were taken into custody by the Special Task Force while the journalists were covering an anti-government protest in Colombo.³¹⁵ Government forces continue to arrest leading anti-government protesters on a daily basis while the SLPP members, including ministers and a former prime minister who provoked attacks on peaceful protesters, roam free.

Impunity for past cases including Lasantha Wickrematunge and Prageeth Eknaligoda.

In its Replies to the List of Issues the Government stated that the investigation into the murder of Wickrematunge was reopened and more suspects have been arrested.³¹⁶ However, none of the suspects have been charged and impunity has prevailed. In September 2021, the People's Tribunal on Murdered Journalists in The Hague indicted the Government of Sri Lanka for its role in and for the failure to adequately investigate Wickrematunge's murder. The trial began in January 2022.³¹⁷

³⁰⁷ 2016 *Additional Update*, *supra* note 56, at ¶¶ 32-33.

³⁰⁸ *Government Report* at ¶ 117.

³⁰⁹ *Id.* at ¶ 125.

³¹⁰ *Id.* at ¶ 121.

³¹¹ *Id.*

³¹² THE SUNDAY TIMES, *Great New Year likely for Gotabaya, while UNP faces worst crisis* (Dec. 29, 2019).

<http://www.sundaytimes.lk/191229/columns/great-new-year-likely-for-Gotabaya-while-unp-faces-worst-crisis-385126.html>.

³¹³ Maria Abi-Habib & Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, NY TIMES (Nov. 27, 2019).

³¹⁴ OBSERVATOIRE INTERNATIONAL DES AVOCATS, *Sri Lanka: Lawyer and human rights defender Kumaravadiwel Guruparan, prevented from practicing his profession as a lawyer at the request of the Sri Lankan army* (Nov. 14, 2019), <https://www.protect-lawyers.com/en/lawyer/kumaravadiwel-guruparan/>.

³¹⁵ DW News, *Free speech in Sri Lanka under threat amid political turmoil* (Apr. 4, 2022), <https://www.dw.com/en/free-speech-in-sri-lanka-under-threat-amid-political-turmoil/a-61380522>.

³¹⁶ Human Rights Committee, *Replies of Sri Lanka to the list of issues in relation to its sixth periodic report*, CCPR/C/LKA/RQ/6, (Feb. 2019).

³¹⁷ Colombo Telegraph, *Lasantha Wickrematunge Murder "Trial" To Be Conducted By People's Tribunal In The Hague* (Sep. 29, 2021), <https://www.colombotelegraph.com/index.php/lasantha-wickrematunge-murder-trial-to-be-conducted-by-peoples-tribunal-in-the-hague/>.

The Government also stated in its Replies that it has taken positive measures to investigate the disappearance of journalist Prageeth Eknaligoda, who went missing in January 2010.³¹⁸ However, the investigation has not led to any arrests and Eknaligoda's fate remains unknown. In 2021, a memorial was held for the missing journalist. In a recent statement, the Sri Lanka High Commissioner for Human Rights announced suspicion that Eknaligoda's disappearance was connected to the Government.³¹⁹ His widow, Santhiya Eknaligoda, must deal with patterns of intimidation even though she approached witness protection authorities. As previously noted, the person who had harassed and intimidated Santhiya, Gnanasara Thero, was subsequently pardoned and the chief investigator was forced to flee the country for his safety. Ms. Eknaligoda has publicly stated that she, her sons and witnesses have requested but not received adequate protection. The minimal protection she had under the previous Government has been removed.³²⁰ Due to the intimidation, both of her sons had to leave the country and live in exile.

Attacks on peaceful protestors.

In several instances, authorities have prevented victims' groups and civil society organizations from peacefully protesting or holding events and demonstrations.³²¹ In May 2021, the Government obtained court injunctions against 27 persons to prevent them from hosting an event to commemorate the war in Mullivaikkal, imposing a lockdown in the surrounding area and blocking road access.³²² The court amended the order the following day. In September 2021, the Government obtained court injunctions and restraining orders on the leaders of associations of families of the disappeared to prevent them from organizing demonstrations.³²³ In December 2021, the Government received another court injunction to prevent a human rights organization based in Kandy to host a rally on Human Rights Day, arguing that the event may lead to "disunity" among different ethnic groups.³²⁴

The current widespread protests to Sri Lanka's political and economic crisis began in 2021 as farmers began protesting the President's decision to ban fertilizer imports and require the use of organic fertilizer. This was one of the turning points, along with the growing lack of essential goods such as milk powder, medicine, fuel and gas. The protests grew and highlighted the escalating cost of living and lack of basic supplies in Colombo. The protests have mostly been led by opposition parties, students, trade union leaders and other human rights activists. They have been mostly peaceful, while police have responded with clearly excessive and disproportionate force.³²⁵ On March 31, hundreds of protestors gathered again in front of the President's residence. Police attacked the protestors with tear gas and water cannons, after which protestors set fire to military vehicles, threw stones at the police, and set a fire blocking one of Colombo's main roads.³²⁶ 50 people were injured and taken to the hospital while 45 others were arrested by the police.³²⁷ Police arrested over 50

³¹⁸ 2022 *Government Replies* at ¶ 125.

³¹⁹ Melani Manel Perera, *Eleven years after Prageeth Eknaligoda went missing, the battle for justice continues*, Asia News, (Jan. 26, 2021), <https://www.asianews.it/news-en/Eleven-years-after-Prageeth-Eknaligoda-went-missing,-the-battle-for-justice-continues-52172.html>.

³²⁰ Press Conference, <https://www.youtube.com/watch?v=9hiLk73e2M4> (Jan. 2019).

³²¹ 2022 *OHCHR Report*.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ Office of the High Commissioner for Human Rights, *Sri Lanka: UN experts condemn crackdown on protests* (Apr. 8, 2022), <https://www.ohchr.org/en/press-releases/2022/04/sri-lanka-un-experts-condemn-crackdown-protests>.

³²⁶ Ayashea Perera, *Sri Lanka: UN experts condemn crackdown on protests*, BBC News (Apr. 1, 2022), <https://www.bbc.com/news/world-asia-60950266>.

³²⁷ The Guardian, *Sri Lanka: 50 injured as protestors try to storm president's house amid economic crisis* (April 1, 2022), <https://www.theguardian.com/world/2022/apr/01/sri-lanka-protesters-try-to-storm-presidents-house-as-economic-crisis-deepens>.

people and filed complaints against them; 6 of them included journalists who were arrested under Section 120 of the Penal Code for the offense of “exciting feelings of disaffection against the President or Government.”³²⁸

On April 2, the President declared a state of public emergency, imposing a 36-hour curfew to stem any further protests. Following the curfew, numerous celebrity cricketers spoke out on social media condemning the government for failing to provide public relief and exacerbating the economic crisis.³²⁹ Social media activist Thisara Anuruddha Bandara who started the #GoHomeGota hashtag was arrested the same day under Article 120 of the Penal Code.³³⁰ Reports stated that the activist had been abducted from his home by police and questioned. He was later released on bail.³³¹ Multiple protests took place during the curfew, a student protest in Kandy was dispersed after police used tear gas and water cannons.³³²

On April 3, the Ministry of Defense requested the Telecommunications Regulatory Commission (TRC) to impose a social media shutdown in the aim of preventing citizens from using social media to organize protests.³³³ The TRC blocked public access to social media platforms including WhatsApp, Twitter, Facebook, Instagram, and YouTube for 15 hours.³³⁴ Starting April 9, one of the largest street demonstrations in Sri Lanka took place for more than ten days in Galle Face Green; it was established as Gotagagama, as tens of thousands of protestors refused to leave the Galle Face Green until the President resigned.³³⁵ It continues to date despite state-led violent attacks and continuous intimidation and arrests of the protesters.

On April 19, police used excessive force on protesters in Rambukkana Crossing, using tear gas and firing live ammunition into the crowds, killing one person and injuring at least 14.³³⁶ Police forces have also used tear gas and water cannons to disperse crowds.³³⁷ On April 29, further protests took place in Mynagagama where one protestor was assaulted by the police and hospitalized.³³⁸

Another series of protests under the hashtag #GotaHoruGoGama started in April led by students organizing in front of the Presidential Secretariat to demand the President’s resignation.³³⁹ Police attacked the peaceful

³²⁸ Committee to Protect Journalists, *CPJ calls on Sri Lankan government to respect press freedom amid nationwide state of emergency* (Apr. 4, 2022), <https://cpj.org/2022/04/cpj-calls-on-sri-lankan-government-to-respect-press-freedom-amid-nationwide-state-of-emergency/>.

³²⁹ Hindustan Times, *When Sri Lanka’s cricket legends rose against the government* (Apr. 8, 2022), <https://www.hindustantimes.com/cricket/when-sri-lanka-s-cricket-legends-rose-against-the-government-101649430337425.html>.

³³⁰ The Sunday Times, *Youth activist behind #GoHomeGota Facebook campaign arrested and produced in Court* (Apr. 3, 2022), <https://www.sundaytimes.lk/220403/news/youth-activist-behind-gohomegota-facebook-campaign-arrested-and-produced-in-court-479036.html>.

³³¹ Deccan Herald, *Sri Lanka restores access to social media platforms after 15 hours* (Apr. 3, 2022), <https://www.deccanherald.com/international/world-news-politics/sri-lanka-restores-access-to-social-media-platforms-after-15-hours-1097284.html>.

³³² Daily Mirror, *Protesting Uni. students tear gassed in Peradeniya* (Apr. 3, 2022), https://www.dailymirror.lk/breaking_news/Protesting-uni-students-tear-gassed-in-Peradeniya/108-234380.

³³³ Colombo Gazette, *Sri Lanka bans access to social media* (Apr. 3, 2022), <https://colombogazette.com/2022/04/03/sri-lanka-bans-access-to-social-media/>.

³³⁴ *Id.*

³³⁵ Colombo Gazette, *Thousands gather at Galle Face for massive protest* (Apr. 9, 2022), <https://colombogazette.com/2022/04/09/thousands-gather-at-galle-face-for-massive-protest/>.

³³⁶ Human Rights Watch, *Sri Lanka: Police Fire on Protesters*, (April 20, 2022), <https://www.hrw.org/news/2022/04/20/sri-lanka-police-fire-protesters>.

³³⁷ New York Times, *Protesters Clash With Police in Sri Lanka* (April 4, 2022), <https://www.nytimes.com/video/world/asia/100000008288810/sri-lanka-protest.html>.

³³⁸ Aljazeera, *Sri Lanka MP among five killed as violence escalates* (May 9, 2022), <https://www.aljazeera.com/news/2022/5/9/sri-lanka-govt-supporters-attack-protesters-demolish-tents?sf164474406=>.

³³⁹ The Sunday Times, *Sri Lanka’s ‘bunker government’ and a parliament under siege* (May 8, 2022), <https://www.sundaytimes.lk/220508/columns/sri-lankas-bunker-government-and-a-parliament-under-siege-481889.html>.

protestors, including children, with tear gas and water cannons and barricaded the area in an attempt to stop the protests.³⁴⁰ On May 9th, members of the SLPP party and loyalists to the Rajapaksa government staged a demonstration urging Mahinda not to resign. The loyalists then attacked people protesting at a nearby anti-government protest, resulting in the hospitalization of over 130 people.³⁴¹ Police stood by the attacks as bystanders and did not step in to stop or disperse the loyalists.³⁴² These attacks led to public condemnation and widespread retaliation against Rajapaksa loyalists and politicians, as protestors burned SLPP vehicles and set fire to SLPP politicians' residences.³⁴³ Despite Mahinda Rajapaksa's resignation the same day, protests became more violent as monuments and properties of the Rajapaksa family were destroyed; resulting in the Government using tear gas and rubber bullets against protestors.³⁴⁴ The escalation of protests resulted in nine deaths, while authorities reported 220 people being injured and 136 incidents of property damage.³⁴⁵ The High Court banned Mahinda and his politician son from leaving the country after ordering investigation into protest-related violence.³⁴⁶

On May 11, the government deployed the military and gave them orders to "shoot on sight" anyone who was "looting public property or causing harm to life", as well as permission to detain people for 24 hours before handing them over to the police and to search private property without warrants.³⁴⁷ Sri Lanka's high court also imposed travel bans on 17 protestors due to their need for testimonies for "ongoing investigations" into the GotaGoGama and MynaGoGama protest sites.³⁴⁸

The Government response to the anti-government protests is in serious violation of international law. The freedom of peaceful assembly, association and movement are guaranteed to Sri Lankan citizens under the Constitution. Sri Lankan authorities should carry out prompt investigations into reports regarding the use of force against peaceful protestors from March to May, 2022, during the state of public emergency. Use of lethal force by law enforcement is prohibited by international law, and Sri Lankan authorities should carry out a prompt and transparent investigation into use of force by police officers, taking action against any wrongdoing.

³⁴⁰ *Id.*

³⁴¹ News First, *Sri Lanka : 130 people hospitalized following violence in Colombo* (May 9, 2022),

<https://www.newsfirst.lk/2022/05/09/sri-lanka-130-people-hospitalized-following-violence-in-colombo/>.

³⁴² Amnesty International, *Sri Lanka: New Emergency regulations and shooting orders threaten human rights* (May 11, 2022),

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

³⁴³ Al Jazeera, *Sri Lanka: Flashpoints in deadly violence over economic crisis* (May 10, 2022),

<https://www.aljazeera.com/news/2022/5/10/sri-lanka-flashpoints-in-deadly-violence-over-economic-crisis>.

³⁴⁴ *Id.*

³⁴⁵ Amnesty International, *Sri Lanka: New Emergency regulations and shooting orders threaten human rights* (May 11, 2022),

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

³⁴⁶ France 24, *Sri Lanka names new PM as unrest simmers over economic crisis* (May 12, 2022),

<https://www.france24.com/en/asia-pacific/20220512-sri-lanka-names-new-pm-as-unrest-simmers-over-economic-crisis>.

³⁴⁷ Al Jazeera, *Sri Lanka issues 'shoot-on-sight' order to quell unrest* (May 10, 2022),

<https://www.aljazeera.com/news/2022/5/10/sri-lanka-gives-emergency-powers-to-army-police-after-violence>.

³⁴⁸ News First, *Travel Ban on Ex-PM Mahinda Rajapaksa and 16 others* (May 12, 2022),

<https://www.newsfirst.lk/2022/05/12/travel-ban-on-ex-pm-mahinda-rajapaksa-and-16-others/>.

Participation in Public Affairs (Article 25)

Electoral Rights.

In the previous ICCPR cycle, the Committee urged the Government to ensure all citizens, regardless of their ethnicity, religion, or language, are able to fully participate in public affairs.³⁴⁹ In 2015, the Government reported that former President Sirisena specifically made a “Declaration of Peace” in all three languages (Sinhala, Tamil, and English) after taking office, setting a unifying tone for the nation.³⁵⁰ The Government also observed that the 19th Amendment stipulates that the nomination of five persons appointed by the President to the Constitutional Council will reflect the “pluralistic character of Sri Lankan society.”³⁵¹ The Government noted it had implemented an Official Language Policy of Sri Lanka and a Ten Year National Plan for a Trilingual Sri Lanka to ensure meaningful access to State service for all citizens.³⁵² Government officials were reported to undergo training in additional languages, and public institutions were required to display bilingual or trilingual sign boards.³⁵³ However, the Administration announced in 2020 that the national anthem sung for the February 4th Independence Day celebrations was to be sung in Sinhala, not in Tamil.³⁵⁴ With the change of government in 2019 under Gotabaya Rajapaksa, all the above reconciliation steps became irrelevant.

³⁴⁹ 2014 *Concluding Observations* at ¶ 23.

³⁵⁰ UN Human Rights Committee, *Update to the Fifth Periodic Report of Sri Lanka under the International Covenant on Civil and Political Rights*, at ¶ 14 (Oct. 16, 2015).

³⁵¹ *Id.* at ¶ 6.

³⁵² *Government Report*, at ¶ 128.

³⁵³ *Id.* at ¶¶ 130-32, 145.

³⁵⁴ Harsha Gunasena, *Singing the National Anthem in Sinhala & Tamil Harmonizes the Different Ethnicities in Sri Lanka*, COLOMBO TELEGRAPH (Dec. 28, 2019), <https://www.colombotelegraph.com/index.php/singing-the-national-anthem-in-sinhala-tamil-harmonizes-the-different-ethnicities-in-sri-lanka/>.