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Submission for the List of Issues: 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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Endorsements

Women's Action Network

Seven women's groups working on minority women's rights

Sri Lanka Advocacy

Sri Lanka Advocacy is a non-profit network of German NGOs
that address human rights, rule of law, humanitarian aid and
development issues and support human rights activists in Sri Lanka

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Summary

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

The Muslim minority in Sri Lanka is today facing violence, threats and discrimination. Threats to physical security are ongoing and have increased over the past three years. Discrimination is institutionalized through the lack of constitutional and other legal protections for Muslims, inconsistent enforcement of minorities' rights, and inadequate state response to mob violence. Muslims also 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 Muslim communities.

Since the November elections, power is being consolidated in the Rajapaksa family, President Gotabaya Rajapaksa has appointed his brother, former Sri Lankan president Mahinda Rajapaksa (2005-2015), as Prime Minister and Finance Minister. Statements during the campaign and early actions in office indicate a disregard for human rights protections and the rule of law. The new Government has 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 to high positions persons accused of war crimes by the OHCHR Investigation on Sri Lanka (OISL) in 2015 and pledged immunity to all so accused. A decade has 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. Two months into his tenure, President Rajapaksa stands in violation of the 19th Amendment of the Constitution. There have also been rollbacks of measures to ensure checks and balances and independent commissions as guaranteed in the Constitution.

Numerous UN bodies have recommended concrete actions to prevent religious discrimination 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)

At the conclusion of its past Review, the Committee expressed concerns about discriminatory provisions in domestic legislation. In its April 2019 report to the Committee, the Sri Lankan State asserted that Article 12 of its Constitution guarantees equality and non-discrimination without exception.¹ This extends to all legislative policy decisions.² 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.³ The State claims to be promoting programs for religious coexistence through the Office for National Unity and Reconciliation.⁴ 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. After 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. Furthermore, the Office on Missing Persons and the Reparations Commission, which the newly-elected Government placed under the Ministry of Justice, Human Rights and Legal Reforms, has recently come under additional threat: the Minister in charge (Hon. Nimal Siripala de Silva) expressed his displeasure at the creation of these two bodies.

Unequal protection under the Constitution. The UN Special Rapporteur on minority issues observed in 2017 that, in practice, constitutional protections of non-discrimination and equality were often only available for the Buddhist Sinhalese majority and not for Muslim citizens.⁵ In August 2019, the Special Rapporteur on freedom of religion agreed and linked this to a 2003 Supreme Court decision that “the State was constitutionally required to protect only Buddhism, as other religions were not accorded the same fundamental right of state-provided protection” making “the State [] structurally unable to treat other religions on an equal basis owing to this provision and ruling.”⁶

Article 16 of the Constitution allows unequal protection. Article 16 of the Constitution allows for private religious practices predating the Constitution to remain “valid and operative,” producing such equal rights violations as the Muslim Marriage and Divorce Act (MMDA),⁷ a law that restricts the rights of Muslim women and girls. The law bars any form of Muslim women’s participation in government while permitting child marriage and unconditional polygamy. Three important new bills have been introduced to change this law,⁸ but two other bills has been introduced that would deny religious rights, multiculturalism and diversity.⁹

Unequal prosecution under the ICCPR Act. The ICCPR Act in practice is not equally applied to protect all citizens against incited violence. Instead, as reported by the Special Rapporteur on freedom of religion in August 2019, the Act provides a legal mechanism for members of the Buddhist community to target Muslim Sri Lankans with accusations of inciting violence while remaining immune from prosecution when violence is incited by Buddhist Sinhalese citizens against Muslims.¹⁰ This was true of the Aluthgama riots in 2014 where there was impunity for serious incidents of incitement leading to violence and the widespread destruction of Muslim homes and businesses.¹¹ Perpetrators of violence do not appear to have been prosecuted.¹²

Access to Effective Remedies (Article 2.3)

After this Committee’s 2014 Concluding Observations, the UN Human Rights Council passed Resolutions 30/1, 34/1, and 40/1 in order to implement and establish transitional justice and accountability mechanisms in Sri Lanka. In its 2019 report, the Government made note of actions taken 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.¹³ 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 2018.¹⁴ The Parliament of Sri Lanka passed legislation to establish an Office for Reparations in October 2018 and selected Commissioners in 2019.¹⁵ A Working Group in Sri Lanka drafted legislation for a truth seeking commission, but Sri Lanka did not indicate its timeline of implementation and whether it was expected to pass.¹⁶ 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 Council for the Prime Minister’s office that the State could provide no information regarding any Truth Commission or Judicial Mechanism.¹⁷

Lack of progress implementing transitional justice mechanisms. The OHCHR in its February 2019 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 in 2015.¹⁸ The OHCHR Report noted that multiple mechanisms were not set up, staff for the Office of Missing Persons have been harassed, and even those mechanisms that have been established have experienced significant delays.¹⁹ The Report specifically notes the failure to make progress in the establishment of a truth and reconciliation commission and amnesties.²⁰ A Commission for Truth, Justice, Reconciliation, and Non-Recurrence has not been established.²¹ In October 2018, it was reported that draft legislation to establish a Truth Commission had been approved by the Cabinet; however, it is still under discussion, and it has not been made publicly available.²² No other progress has been reported regarding the Commission. Of the 25 Key Commitments from Resolution 30/1, fifteen (15) have been mostly or completely underachieved, seven (7) have been partially achieved, and three (3) have

been mostly or completely achieved.²³ The lack of progress has brought a delay and denial of justice to victims of past conflict.²⁴ The newly elected government strongly opposes measures necessitated by Resolution 30/1, signaling a credible threat of rollbacks of already completed commitments.²⁵

Transitional justice mechanisms implemented are still deficient. The Government of Sri Lanka's Office on Missing Persons and Office for Reparations needs to be strengthened. The Office on Missing Persons did not fully consider or did not respond to the input of families of the disappeared and the operationalization of the Office has been slow.²⁶ Amnesty International noted in their January 2019 analysis of the OMP that "while the [Government's OMP interim] report makes progressive and self-reflective recommendations ... it falls short in addressing concerns of victims groups."²⁷ The legislation to establish an Office for Reparations allows the Sri Lankan Cabinet and Parliament to intervene politically in the Office's operations.²⁸ Civil society was unable to raise these concerns to the Government during the intervening period of the bill to create the Office for Reparations.²⁹ In April 2019, the Government reported that the Office intended to begin its operations after Commissioners were appointed and Rs.700 Million were allocated to its budget.³⁰ President Rajapaksa has stated that he is going to renegotiate Resolution 30/1 and there is no need to honor the commitments made by the previous government.³¹ As the March 2020 Human Rights Council approached, "there are no claimants for ... co-sponsorship [of a resolution] except from [the previous] Foreign Minister ... [n]or did the Cabinet approve any proposal for it."³²

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). Sri Lanka 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. The 2019 Office of the High Commissioner for Human Rights Report noted with concern that Sri Lanka has had no plans within the past three years for a judicial mechanism for criminal accountability for human rights violations.³³ The Report also detailed the failures and delays in accountability for human rights violations that were perpetrated during the civil war,³⁴ all highlighted by the Government's lack of support for "accountability and truth-seeking components."³⁵ The President has repeatedly stated that UN Human Rights Council Resolution 34/1 (and presumably the related Resolution process) is not good for the country, and thus, he will make it invalid.³⁶

Security forces are not being held accountable for past human rights violations and the new administration has reinforced impunity rather than accountability. President Gotabaya Rajapaksa has set back efforts for accountability for war crimes. Rajapaksa's lawyers went to court to dismiss all criminal and civil cases against him and his family.³⁷ 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.³⁸ 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.³⁹ In the meantime, national television 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.⁴⁰ A spokesman for the National Police Commission of Sri Lanka said on November 27, 2019, that they would decide in the next few weeks whether the investigations would continue on these landmark cases.⁴¹ 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.⁴²

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. Some examples include: (1) the Welikada prison incident in 2012 where 27 inmates were allegedly executed, (2) the abduction of eleven youth from Colombo in 2008/2009 allegedly by the Navy, (3) the murder of Tamil politician Nadarajah Raviraj in 2006, and (4) the murder of Lasantha Wickrematunge, the editor of 'The Sunday Leader' in 2009.⁴³ Both Sri Lankan military officials and politicians have publicly rebuked investigations of military

officials for past human rights violations.⁴⁴ There is also increasing intimidation of victims and witnesses who have come forward to take up cases against the military for abductions and killings.⁴⁵ 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.⁴⁶ 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.⁴⁷

Former combatants with credible charges of responsibility for human rights violations hold high-ranking offices. Members of the Sri Lankan Security Forces with credible accusations of human rights violations have been appointed to prominent positions.⁴⁸ These troubling appointments include Major General Shavendra Silva as Chief of Staff of the Sri Lanka Army,⁴⁹ and the confirmation of rank 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.⁵⁰ President Rajapaksa also immediately appointed another alleged war criminal, Major Kamal Gunaratne, as the defense secretary.⁵¹ Gunaratne and Silva are mentioned in the UN 2015 war crimes investigation.⁵² Former Liberation Tigers of Tamil Eelam (LTTE) Eastern Commander Karuna Amman has been leading the Sri Lanka Podujana Peramuna, (Sri Lanka Freedom Party, SLPP) political campaign in the East.⁵³

Proposed Questions for the List of Issues

Please ask the State what steps they are taking to eliminate one-sided Constitutional protections that do not extend to persons practicing religions other than Buddhism;

Please ask the State what steps are being taken to protect the Muslim minority from discriminatory laws and ensure justice for those victimized by mob violence;

Please ask the State to provide information about the arrests, prosecutions, and convictions under the ICCPR Act since the last Human Rights Committee Review with a breakdown of information by ethnic and religious minorities;

Please ask the State what steps they are taking to establish an accountability mechanism to prosecute past human rights violations;

Please ask the State what processes they will undertake to vet current and prospective office holders to ensure that human rights violators do not remain in positions of power;

Please ask the State about the status of the Victim and Witness Protection Act and how many people have been given protection.

Equal Rights of Men and Women (Article 3)

In the previous Review, the Committee expressed concerns about discriminatory provisions in domestic legislation.⁵⁴ The Committee further recommended that Sri Lanka adopt a comprehensive approach to prevent violence against women, ensure that sexual violence perpetuated by security forces are thoroughly investigated, prosecuted and punished, and train State officials to respond effectively to violence against women.⁵⁵ The Sri Lankan Government stated that Article 12 of its Constitution and legislative policy decisions guarantee equality and non-discrimination without exception.⁵⁶ Sri Lanka endorsed the Declaration of the Commitment to End Sexual Violence in Conflict and reiterated its commitment to combating impunity for sexual violence.⁵⁷ Issues remain in the laws themselves and their implementation.

Constitutional deficit in Article 16 and the Muslim Marriage and Divorce Act. In 2017, the UN Committee on Economic, Social and Cultural Rights recommended the State immediately amend the Muslim Marriage and Divorce Act, which did not afford female Muslim minors with equal rights under the law, instead allowing child marriage and limiting equal rights to divorce.⁵⁸ The basis of this problem was identified by a report in 2017 by the Special Rapporteur on minority issues who observed: “Problematic in terms of constitutional provisions affecting the private practice of religion, as explained below, are article 16 (1), stipulating that all written and unwritten laws that existed prior to the 1978 Constitution are ‘valid and operative,’ and article 80 (3), which prohibits judicial review of acts once adopted by Parliament.”⁵⁹ Local citizens continued to call for reform of the MMDA in 2019.⁶⁰ A well-known Buddhist monk and Member of Parliament Ratana Thera introduced a private member bill to abolish the MMDA, which Muslim women’s rights activists see as a move to “one country and one law” as an effort to deny religious rights, multiculturalism and diversity.⁶¹

Sexual and Gender-based Violence and impunity for violence against women persists. The Committee on the Elimination of Discrimination against Women observed in its 2017 Report, with concern, that there was a “continuing climate of insecurity, particularly for women in conflict affected zones,” as well as “[s]erious allegations that the military and police perpetrated harassment, violence, including rape, abductions, torture, sexual bribery, sexual slavery, and unjustified surveillance, including home invasions, especially of women in the Northern and Eastern provinces . . .”⁶² 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.⁶³ Sri Lanka was “unable to provide the Committee with requested data on the number of investigations, prosecutions, convictions and the sentences imposed for acts of sexual and gender-based violence against women perpetrated by the armed forces and the police.”⁶⁴ As recently as 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 2015.⁶⁵ Due to the threat to the victim’s life since her rapists have been released, she left the country in November 2019.⁶⁶ 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.⁶⁷ 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 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.⁶⁸

Proposed Questions for the List of Issues

Please ask the State what measures they have taken to address past and ongoing sexual and gender-based violence including sexual bribery;

Please ask the State to provide information on any and all efforts to reform the Muslim Marriage and Divorce Act to uphold the State’s position that Article 12(2) affords rights for all persons and is not abrogated by Article 16;

Please ask the State to provide data regarding the number and status of investigations, prosecutions, convictions and sentences imposed for acts of sexual violence against women perpetrated by the armed forces and police.

Right to Life (Article 6)

In the previous ICCPR Review, the Committee expressed concerns about unlawful use of force, enforced disappearances, and extrajudicial killings by police, state actors, and paramilitary groups. Further, the Committee noted the lack of investigations into incidents of force and killings.⁶⁹ In its 2016 follow-up letter to the Committee, the State noted that there were incidents where the Muslim community was targeted

during the post-war period, including violence in Aluthgama in June 2014, and that they anticipated prosecuting perpetrators.⁷⁰ In its April 2019 report, the Government reported it had passed “the National Authority for the Protection of Victims of Crime and Witnesses in 2016[,] . . . [t]he Policy and Programme Division, Legal Division and Operations Division of the Authority . . . are functional[,] . . . and the GOSL allocat[ed] LKR 17 million and LKR 75 million to the Authority in 2017 and 2018”⁷¹ Little information was provided on investigations of past violations of the right to life and effectiveness of these protection measures. Sri Lanka provided one successful case of protecting a witness from intimidation, that of Santhiya Ekneligoda in 2016.⁷² However, as previously noted, Santhiya’s harasser Gnanasara Thero was subsequently pardoned, and the chief investigator was forced to flee the country for his safety. Ms. Ekneligoda 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.⁷³

The Sri Lankan Government instituted a nationwide curfew in response to the anti-Muslim rhetoric after the Easter bombing attacks in 2019; reports were that the curfew facilitated Sinhala mobs seeking to round up Muslim villagers and attack them while police stood by. Rather than protect people, the curfew made Muslim minorities more vulnerable.⁷⁴ Anti-Muslim riots led to at least one reported death of a Muslim individual. Shortly after the curfew was lifted, mobs killed a Muslim man and vandalized mosques and Muslim-owned stores, leading to the reinstatement of the curfew.⁷⁵ It is unclear whether an investigation was conducted for the individual’s death.

Impunity for extrajudicial killing and excessive use of force. Alleged violations of the right to life regularly go unpunished, and alleged perpetrators continue to hold official positions within the Government. In a recent case, former President Sirisena appointed Lieutenant General Shavendra Silva to Army Commander despite his alleged involvement in war crimes.⁷⁶ Even more recently, newly-elected President Gotabaya Rajapaksa appointed his brother, Mahinda Rajapaksa, as prime minister of Sri Lanka.⁷⁷ In another alarming development, the Rajapaksa brothers used security forces that were known to engage in war crimes and multiple human rights abuses.⁷⁸ 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.⁷⁹ The new government has appointed Major Kamal Gunaratne as the secretary to the defense ministry, which gives the President direct oversight of the ministry in violation of the 19th Amendment. Major Kamal Gunaratne, too, has alleged war crime charges, including leading a notorious unit that allegedly committed war crimes near the end of the war.⁸⁰

Impunity for enforced disappearances. An estimated 16,000 people remain missing, and an estimated 60,000 to 100,000 backlogged cases of alleged enforced disappearances remain.⁸¹ Sri Lanka has enacted domestic legislation to give effect to the International Convention for the Protection of All Persons from Enforced Disappearance,⁸² but the Sri Lankan Government still fails to provide families searching for their loved ones with answers.⁸³ Family members of missing individuals continue to search for their loved ones, believing that they are “detained in a secret detention centre deep in the heart of the Sri Lankan State.”⁸⁴ 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.⁸⁵ Promises to release information and identities of individuals detained by armed forces during and after the armed conflict have not been kept.⁸⁶

Importantly, eyewitness accounts in relation to the whereabouts of surrendering LTTE cadres have been reported.⁸⁷ These accounts suggest that the LTTE cadres were placed in an enclosure fortified with barbed wire to be questioned shortly after their surrender.⁸⁸ Family members claim that these were the last moments in which they saw their loved ones.⁸⁹ In response, President Rajapaksa, who was questioned while a presidential candidate, evaded the question about the whereabouts of the LTTE surrenderees; he instead stated that there were greater concerns in the North and East, such as education and job security.⁹⁰

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.⁹¹ 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.⁹² After 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.⁹³

Proposed Questions for List of Issues

Please describe what measures the Sri Lankan Government is taking to protect the Muslim minority, ensure justice for victims of recent attacks, and prevent anti-Muslim violence;

Please describe what measures the Sri Lankan Government is taking to ensure the safety of witnesses in pending human rights cases;

Please ask the Government to take all necessary steps to ensure effective investigations into unlawful force and violations of the right to life and to hold perpetrators of arbitrary detention, extrajudicial killings, and excessive force accountable for their actions.

Counter-terrorism Measures (Articles 2, 7, 9, 10 and 14)

In the previous ICCPR cycle, the Committee expressed concern regarding the ongoing use of counter-terrorism justifications under the framework of the Prevention of Terrorism Act (PTA) to impose arbitrary detentions.⁹⁴ 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.”⁹⁵ In 2016, the State noted its commitment to developing a new counterterrorism law.⁹⁶ The ICRC and family members of detainees suspected of terrorist activities were being permitted to meet with detainees.⁹⁷ In its April 2019 report to this Committee, the State noted that there was a moratorium on arrests under the PTA in place, and a process had begun to repeal and replace the PTA with a new Counter Terrorism Act (CTA) more aligned with international human rights norms.⁹⁸ The CTA was approved by Cabinet Ministers on September 11, 2018, gazetted on September 21, 2018, but was found by the Supreme Court to require revision to be constitutional in October 2018.⁹⁹ The Government claimed that there is a “de facto moratorium on new arrests under the PTA”, asserting that 58 people are currently on trial.¹⁰⁰ However, following the Easter bombings, the Government arrested hundreds of Muslims in April 2019 under the PTA and the ICCPR Act, which many human rights organizations criticized as abusive and an infringement on legitimate freedom of expressions.¹⁰¹

The Prevention of Terrorism Act and the draft Counter-Terrorism Act. The Prevention of Terrorism Act (PTA) has long been criticized as being out of compliance with international standards, including by this Committee. The draft CTA was fiercely debated in public spaces. Civil Society Organizations challenged specific sections of the CTA, specifically on the basis of the limitations on political opponents, civil society, and public dissent. Moreover, the Act contains broad and loose definitions of terrorism, national security, and the nation's sovereignty. The Government did not address these concerns and enact a CTA in compliance with international standards.¹⁰² Instead, on January 2nd, 2020, the Cabinet of Ministers withdrew the CTA bill, leaving only the PTA in place.¹⁰³ By withdrawing the CTA bill, Sri Lanka is reneging the pledges it made, including to the United Nations Human Rights Council and the European Union.¹⁰⁴

State Counterterrorism Efforts Target and Incite Citizens to Target Muslims. 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.¹⁰⁵ 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, such as the bans on face-covering in public, which promoted an intolerance particularly against Muslim women.¹⁰⁶ This has put Muslim individuals and communities at greater risk of harassment and violence.¹⁰⁷ 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 citizens that supporting and protecting this at-risk population will invite reprisals.¹⁰⁸ There has also been widespread boycotting of Muslim businesses as part of a concentrated anti-Muslim campaign.¹⁰⁹

Arrests and detentions based on religious affiliation. There are ongoing concerns that arbitrary arrests and detention occur disproportionately for Tamils and Muslims, in some cases for reasons that are discriminatory.¹¹⁰ Since the April 2019 bombings, such reasons for arrest and detention included simply “having the holy Qur’an or other Arabic literature.”¹¹¹ Of the 423 arrested after the bombings, 358 were Muslim men, women and teenagers.¹¹² Muslim women were sometimes arrested and detained simply for wearing a niqab (face veil).¹¹³

Proposed Questions for List of Issues

Please ask the State to provide information regarding how development of a new counterterrorism law will correct the patterns of disproportionately targeting minorities evidenced by the PTA and other connected acts including emergency law;

Please ask the State to provide information about those arrested and detained under counterterrorism and emergency laws, including how long they have been detained and the charges they face;

Please ask the Government what measures it has taken to rehabilitate the banned Sri Lanka National Thowheed Jamath (SLNTJ) members and how the Government is assisting the families of those detained members, many of whom are now without economic and social support since their bread winners are in detention;

Please ask the Government how it proposes to release on bail the 62 accused SLNTJ associates who are framed under one PTA case (case no MC/B 427/2019) in Kathankuddy (Batticaloa) many of whom appear to have been arrested because they have attended SLNTJ-run mosques or preaching and have had social relationships with suicide bombers.

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment, Liberty and Security of Person, Fair Trial and Independence of Judiciary (Articles 7, 9, 10 and 14)

In the previous ICCPR Cycle, the Committee has expressed concern about reports of torture and other ill-treatment, including sexual violence, during arrest and detention. The Committee also expressed concerns that penalties for acts of torture are rarely enforced and the Government overlooks perpetrators’ unlawful actions. The Committee also expressed concerns about arbitrary arrest and detention and the denial of transparent due process rights to legal counsel, notification of family members, and clear process timeframes.¹¹⁴ The Government indicated in 2015 that the ICRC and family members of detainees were being permitted to meet with detainees,¹¹⁵ and in its most recent report in 2019 that it had made institutional changes to combat the use of torture, including stronger legislative measures under the Optional Protocol to the Convention Against Torture, increased independence of human rights bodies to conduct investigations, implementation of international mechanism of redress, inclusion of training on torture and ill-treatment, and emphasis and enforcement of its zero tolerance policy. The State also reported that anyone arrested was guaranteed the right to an attorney and to be visited by relatives.¹¹⁶ Additionally, under the Enforced

Disappearances Act Section 15 (4), law enforcement must keep up-to-date, official, detailed records of who has been deprived of their liberty available upon request to judicial or other authorities.¹¹⁷ Allegations of arbitrary arrests and detention and impunity for past mistreatment continue.

Arrests and detentions based on religious affiliation. There are ongoing concerns that arbitrary arrests and detention occur disproportionately for Muslims, in some cases for reasons that appear to discriminate based on religion, such as possession of the Quran.¹¹⁸ Patterns documented by the UN Committee against Torture in 2016 remain. Specifically, the Committee against Torture “remains seriously concerned at consistent reports from national and United Nations sources, including the Special Rapporteur on torture, indicating that torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police, regardless of the nature of the suspected offence.”¹¹⁹

Impunity for the torture and ill-treatment of detainees. While Sri Lanka has an absolute prohibition on the use of torture (“zero tolerance” policy), its use within the security sector is widespread and routine. Reports continue to find that security forces frequently use torture on individuals detained on suspicion of crimes implicating national security.¹²⁰ Detainees are often tortured for the purpose of obtaining confessions, and the confessions are often used in legal proceedings.¹²¹ The election of President Gotabaya Rajapaksa casts doubt on the future of torture and ill-treatment of detainees, especially with the swearing in of former president, Mahinda Rajapaksa, as Prime Minister.¹²² There were widespread reports of torture by State officials during interrogations under President Mahinda Rajapaksa’s administration, to extract information from detainees of alleged ongoing attacks by the LTTE or any anti-government activity.¹²³ In December 2019 and January 2020, two young Muslim male inmates (one in Welikada prison and another in Batticaloa prison) deaths have been reported to the National Human Rights Commission.

Impunity for the use of prolonged detentions. Detainees do not enjoy some of the most fundamental guarantees of due process, such as immediate access to legal assistance from the moment of arrest and before their initial statement was recorded. The legal basis and procedures for depriving people of their liberty are not clearly established. There are not effective safeguards against arbitrariness in this context and there is an urgent need to strengthen mechanisms for independent monitoring and oversight.¹²⁴ It is common for pretrial detention to continue for 3-4 years and in some instances even longer, up to 10 years, and it is often followed by a lengthy trial. Time spent in pretrial detention is not always considered when the final sentence is calculated and is left to the discretion of the judge. In a number of cases, accused persons have spent numerous years in pretrial detention but were subsequently acquitted and released from prison without any acknowledgement of wrongful imprisonment or compensation for the years spent in custody.¹²⁵

Proposed Questions for List of Issues

Please ask the Government to end the widespread practice of coercing confessions through torture and prevent the use of such confessions in legal proceedings;

Please ask the Government to ensure that law enforcement and/or security forces officers are suspended from their normal duties during an investigation of torture or ill-treatment and immediately terminated from employment if allegations are substantiated;

Please ask the Government to clarify and publish all places of detention and refrain from holding individuals at non-official sites;

Please ask the Government to establish clear guidelines for detention and clear methods of challenging the legality of detention.

Land Seizures and Resettlement: Freedom of Movement, Right to Privacy, and Rights of Minorities (Articles 17, 27)

In the 2012 ICCPR Review, the Human Rights Committee did not address land release in its 2014 Cycle Review. 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.¹²⁶ Such measures included releasing at least 1,818 acres of former conflict “High Security Zones” back to its owners.¹²⁷ 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.¹²⁸ The Government includes statistics about how much land has been released¹²⁹ and detail the creation of stakeholder meetings for the release of land,¹³⁰ the creation of five mediation boards on land,¹³¹ and the organization of a Consultation on Land Restitution.¹³² UN and NGO reports question the Government’s claims of progress.

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 for the Government’s processes returning land to communities in the North and East.¹³³ While the High Commissioner notes 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.¹³⁴ In Mullaitivu, the largest district in the Northern Province, more than half of its available land has been declared as a forest reserve (349,046 acres), while the military still occupies 2265.41 acres.¹³⁵ Communities have concerns about new land grabs, “such as alleged ‘colonization’ through the establishment of irrigation, forestry and archaeological projects.”¹³⁶ Additionally, the continued military presence and operations within occupied lands in the North and East is perceived by locals as permanent militarization.¹³⁷ 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.”¹³⁸ 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.¹³⁹ Cases involving the military and land release in Sri Lankan courts are ongoing or have not resulted in release.¹⁴⁰ Land release is emotionally and politically charged, “with regard to both individual ownership and communities’ sense of belonging to a given area. . . .”¹⁴¹ 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 and the communities affected.”¹⁴²

Deficits in protecting and resettling displaced Muslim refugees. A disproportionate number of Muslim Sri Lankans were forcibly evicted at gunpoint by Tamil Tigers in 1990 in Sri Lanka.¹⁴³ Muslims in Sri Lanka have expressed frustration that there is a lack of transparency about the resettlement process.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ 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.¹⁴⁷

Proposed Questions for List of Issues

Please request that the State engage local stakeholders in transparent processes in the release of land and provide a report to the Committee about these actions;

Please request any State investigations and/or reports assessing the impact of the war on Muslim and Tamil land ownership and the current ownership status of those lands and the status of land returns;

Please request any schedule of compensation provided for loss of land, homes, and livelihoods for displaced Tamils and Muslim populations.

Freedom of Thought, Conscience and Religion (Article 18)

In the prior ICCPR Review, the Committee expressed concerns about “restrictions and conditions placed on the enjoyment of cultural, linguistic and religious freedom of minorities in Sri Lanka.”¹⁴⁸ The Committee specifically named Muslims as a group that has been subject to harassment and attack. The State has acknowledged that freedom of religion has been an issue during its post-war period because of “allegations of inter-religious tensions” in the country.¹⁴⁹ The Government has stated its firm commitment to the criminalization of the advocacy of “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”¹⁵⁰ Sri Lanka commented that it has taken actions to investigate attacks on religious minorities, while at the same time, aiming to compensate victims.¹⁵¹ Sri Lanka reports that “[o]ver one hundred persons were arrested following communal violence in the Kandy district in March 2018 . . . [and] charges will be framed . . . under the ICCPR Act.”¹⁵² Sri Lanka reports that it paid LKR 9.8 million to victims, including 66 homeowners and 65 business owners.¹⁵³ Sri Lanka also provided that it has taken several proactive measures to prevent instances of religious violence by issuing a Circular that charged police stations to take immediate and appropriate action wherever incitement to violence is reported or occurs.

Policy deficits in protecting the Muslim minority. The Special Rapporteur on minority issues 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 are used to the detriment of other religions.¹⁵⁴ The Special Rapporteur on freedom of religion reported in August 2019 that there is a policy of toleration rather than inclusion for religious minorities, which does not create horizontal equality for all citizens.¹⁵⁵ 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.¹⁵⁶ 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 bombings.¹⁵⁷ After the State’s post-bombing face-covering ban, Muslim women and girls have faced discrimination at work, hospitals, and schools.¹⁵⁸ On May 29th, 2019 the Government issued Public Administration Circular No. 13 that banned wearing a niqab in government offices. It was countered by victims and the circular was ultimately cancelled but its impact has lingered and niqab wearing women continue to face harassment, sometimes not leaving their homes and facing seriously limited mobility.¹⁵⁹ Finally, there are ongoing concerns about State failure to protect and resettle displaced Muslim refugees.¹⁶⁰

During the November 16th, 2019 presidential election, evicted Muslims were targeted and attacked while traveling from Puttalam to Mannar and Mullaitheevu to vote.¹⁶¹ 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.¹⁶² Many of the injured were women and children. Attacks like this will likely deter evicted Muslims from voting in the forthcoming parliamentary election.

Proposed Questions for List of Issues

Please request State plans, including timelines, to effectively resettle refugees and asylum-seekers who hail from Muslim-majority countries, including those currently living in the Negombo area;

Please ask the State what steps it is taking to identify perpetrators of attacks on Muslim homes, businesses, mosques, and schools, and to vet any security forces who facilitated those attacks;

Please ask the State to indicate any actions taken in response to debilitating boycotts against Muslim businesses since the April bombings;

Please ask the State to prevent harassment of women who wear niqab, which leads to further marginalization;

Please ask the State to provide a list of incidents where Muslim and other religious groups had more difficulty than the Buddhist majority in registering groups of voters and gaining access to polling booths.

Freedom of Expression, Advocacy of National, Racial or Religious Hatred, Freedom of Assembly, and Freedom of Association (Articles 19, 20, 21, 22)

In its previous ICCPR Review, the Committee raised concerns about “disproportiona[te] and discriminatory restrictions on freedom of peaceful assembly and freedom of association,” particularly in Northern Sri Lanka, urging measures should be taken by the State to protect these rights.¹⁶³ In 2016, the State observed that peaceful assemblies, particularly protests, were permitted in 2015, and that reported excessive police responses against protesters was being investigated by the National Police Commission.¹⁶⁴ In April 2019, the State observed that peaceful assembly, association, and movement are guaranteed in the Sri Lankan Constitution under Article 14.¹⁶⁵ 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.¹⁶⁶ However, the ONUR is functioning with minimal resources and on the verge of closing with a lack of Government support. 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.¹⁶⁷ However, serious restrictions of these fundamental freedoms remain.

Journalists, embassy employees, human rights advocates and lawyers are facing threats. Just days after the November 2019 presidential election, a media outlet has been raided and a Sri Lankan employee of the Swiss Embassy in Colombo was abducted by unidentified men who forced her to unlock her cell phone data and show them information about humanitarian/protection visas.¹⁶⁸ She was eventually charged with treason by the Government.¹⁶⁹ Many journalists, victims and human rights workers are leaving the country.¹⁷⁰ The President himself has spoken openly about wanting to control nongovernmental organizations; he has accused them of interfering with the sovereignty of the nation.¹⁷¹ Current government officials have stated that even the 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.¹⁷² Just weeks before the election, the security apparatus started intimidating civil society organizations and human rights defenders.¹⁷³ Now surveillance is very heavy and includes intimidation of lawyers in courtrooms.¹⁷⁴

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,¹⁷⁵ these efforts are fundamentally undermined by capricious local rules for registering and permitting Muslim religious organizations and places of worship.¹⁷⁶ In August 2019, 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 been told they may not even hold religious gatherings in private homes.¹⁷⁷ Without proper permits, mosques are often closed.¹⁷⁸ 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.¹⁷⁹ In the end, local community opposition often prevails and authorities deny permits.¹⁸⁰

Toleration of the targeting of Muslim 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,¹⁸¹ 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 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.”¹⁸²

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.¹⁸³ 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, who 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.¹⁸⁴ 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.¹⁸⁵ As recently as December 2019, there have been two incidents of violence on Christmas, including Christian pastors being 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.¹⁸⁶

Proposed Questions for List of Issues

Please ask the State what steps it will take to ensure protection of journalists, lawyers, civil society organizations, mothers of the disappeared, and anyone who may voice dissent. Please ask the State to provide information about official guidelines and processes for recognition of religious organizations and obtaining site-permits for places of worship in Sri Lanka;

Please request that the State respond to the reports of Muslim religious assemblies being targeted without perpetrators being brought to justice and describe measures taken to protect the exercise of freedom of expression, assembly, and association for Muslim Sri Lankans;

Please request that the State provide information on investigations resolved by the National Police Commission that pertain to Muslim and Christian expression or assemblies.

Please request that the State provide evidence of the investigation and prosecution of incitement of violence and the use of racial or religious hatred rhetoric by politicians and monks in Sri Lanka.

Rights of the Child (Article 24)

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).”¹⁸⁷ 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.”¹⁸⁸ 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.¹⁸⁹

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.”¹⁹⁰ These concerns echo those of the ICESCR concluding observations in 2017 which urged the State to address regional disparities in education.¹⁹¹ There is concern among Sri Lankans that such disparities are actually fostering a new generation of anti-Muslim sentiments by excluding Muslim students.¹⁹² Specifically, Muslim girls are frequently discriminated against within education institutions.¹⁹³ Muslim girls attending non-Muslim schools are frequently given the ultimatum of removing their shawl or pants to enter the school or to leave and enroll into a Muslim-specific school.¹⁹⁴ To this date, there are incidents reported that Muslim students are harassed for wearing hijabs when they sit for public exams.

Proposed Questions for List of Issues

Please ask the State to provide information regarding the enrollment demographics for schools, particularly for those children who belong to minority religions;

**Please ask the Government to ensure that all children, irrespective of their religious and ethnic identity, get to attend schools in their place of living without any discrimination;
Please ask the Government what steps it has undertaken to address Madrasa reforms.**

Electoral Rights (Article 25)

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.¹⁹⁵ 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.¹⁹⁶ 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.”¹⁹⁷ 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.¹⁹⁸ Government officials were reported to undergo training in additional languages, and public institutions were required to display bilingual or trilingual sign boards.¹⁹⁹ However, the administration recently announced that the national anthem sung for the February 4, 2020 Independence Day celebrations will only be sung in Sinhala, not in Tamil.²⁰⁰

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 does not reflect a fair quota system.²⁰¹ Additionally, the curriculum does not include an awareness of the religious pluralism of Sri Lanka.²⁰² 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.²⁰³ Many Muslim children are often forced to go to Madrasa schools due to lack of access to other educational opportunities.

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.²⁰⁴ 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.²⁰⁵ However, the continued dominance of Sinhala as the *de facto* language of Sri Lanka and its institutions is a serious hindrance to minority participation.²⁰⁶ 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.²⁰⁷ However, most official documents, State institutions, and security officers use Sinhala.²⁰⁸

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.²⁰⁹ 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.²¹⁰ 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.²¹¹ Currently, there are no Muslim cabinet ministers or State ministers as part of the new President's administration. Muslim political leaders are continuously harassed as having alleged connections to the Easter attacks, but in reality, it is due to Muslims largely not voting for Rajapaksa.²¹²

Proposed Questions for List of Issues

Please ask the State party what steps have been taken since the last Review to ensure effective implementation of the Official Languages Law and National Trilingual Policy, place a sufficient number of Tamil-speaking public officials and interpreters in every Government institution—including at the provincial level, and allocate adequate financial resources for its implementation;

Please ask the Government what steps it has undertaken to address the Muslim community and its leaders' grievances due to continuous attacks on the community and marginalization.

¹ 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*].

² *Id.* at ¶ 25.

³ *Government Report*, *supra* note 1, 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> (last visited Dec. 4, 2019); 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> (last visited Dec. 4, 2019).

⁴ *Id.* at ¶ 125.

⁵ 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*].

⁶ 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.ohchr.org/SP/CountryVisits/Shared%20Documents/LKA/INT_CV_ESS_LKA_16289_Final_E.pdf [hereinafter *2019 Preliminary Findings of Special Rapporteur on freedom of religion*].

⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka, Art. 16 (May 15, 2015), <https://www.parliament.lk/files/pdf/constitution.pdf> (last visited Dec. 4, 2019); Marriage and Divorce (Muslim) Act, Ch. 134 (Aug. 1, 1954), http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf (last visited Dec. 4, 2019).

⁸ *See, e.g.*, A Bill to Introduce the Minimum Age of Marriage, Gazette of Democratic Socialist Republic of Sri Lanka (Dec. 13, 2019) (Sri Lanka); An Act to Introduce the Minimum Age of Marriage, Gazette of Democratic Socialist Republic of Sri Lanka (Dec. 13, 2019) (Issued on Dec. 16, 2019) (Sri Lanka) (105-2019_E); An Act to Amend the Marriage Registration Ordinance, Gazette of Democratic Socialist Republic of Sri Lanka (Dec. 13, 2019) (Issued on Dec. 18, 2019) (Sri Lanka) (108-2019_E); Civil Procedure Code (Amendment) Act, No. of 2019 (implementing the above acts and amending Section 627).

⁹ For a discussion of all bills introduced thus far, see Saman Indrajith, *Five Bills Presented to Parliament to Scrap Muslim Marriage Laws that Permit Matrimony of Underage Girls*, The Island (Jan. 8, 2020), http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=216754; Saroor, *infra* note 46.

¹⁰ *2019 Preliminary Findings of Special Rapporteur on freedom of religion, supra* note 6.

¹¹ *Id.*

¹² Aanya Wipulasena, *Abuse of ICCPR Act Has ‘Chilling Effect’ on Fundamental Freedoms*, SUNDAY OBSERVER (June 16, 2019), <http://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-%E2%80%98chilling-effect%E2%80%99-fundamental-freedoms> (“[N]ot one person involved in incitement to violence in Aluthgama, Digana or Kurunegala has been convicted under the [ICCPR] law.”); AMNESTY INTERNATIONAL, *FLICKERING HOPE: TRUTH, JUSTICE, REPARATIONS AND GUARANTEES OF NON-RECURRENCE IN SRI LANKA* 15 (2019), <https://www.amnesty.org/download/Documents/ASA3797152019ENGLISH.PDF> [hereinafter 2019 AMNESTY INTERNATIONAL REPORT]; Rohan Gunaratna, *Sinbala-Muslim Riots in Sri Lanka: The Need for Restoring Communal History*, 10 COUNTER TERRORIST TRENDS AND ANALYSES 1, 4 (April 2018), <https://www.jstor.org/stable/10.2307/26402133>.

¹³ *Government Report, supra* note 1, at ¶¶ 7-8.

¹⁴ *Id.* at ¶¶ 9-10.

¹⁵ *Id.* at ¶ 11.

¹⁶ *Id.* at ¶ 12.

¹⁷ Shreen Saroor vs. Prime Minister’s Office, RTIC Appeal/01/2018 (attached in Appendix) at 15-16.

¹⁸ 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*].

¹⁹ *Id.* at ¶¶ 15-17.

²⁰ *Id.* at ¶ 26.

²¹ *Id.* at ¶ 10.

²² *Id.* at ¶ 10; UN Office of the High Commissioner for Human Rights, Presentation of the High Commissioner’s Report on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka (Mar. 20, 2019); *Impunity Fuels Recurrence of Violence*, AMNESTY INTERNATIONAL (May 18, 2019), <https://www.amnesty.org/en/latest/news/2019/05/sri-lanka-impunity-fuels-recurrence-of-violence/>.

²³ SRI LANKA CAMPAIGN FOR PEACE & JUSTICE, NO WILL, NO WAY: STALLED EFFORTS TO DEAL WITH THE PAST IN SRI LANKA 3 (Feb. 2019), <https://www.srilankacampaign.org/wp-content/uploads/2019/02/No-Will-No-Way-Sri-Lanka-Campaign-Feb-2019-Compressed.pdf>.

²⁴ *Sri Lanka: Impunity Fuels Recurrence of Violence, supra* note 22.

- ²⁵ *Sri Lanka: Repeal Abusive Counterterrorism Law: Uphold Pledges to United Nations, European Union*, Human Rights Watch (Jan. 10, 2020), <https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>; Krishan Francis, *Sri Lanka presidential hopeful says won't honor deal with UN*, ASSOCIATED PRESS NEWS (Oct. 15, 2019), <https://apnews.com/b27e1bbb45cc42488b5e6d67415110de>.
- ²⁶ SRI LANKA CAMPAIGN FOR PEACE & JUSTICE, *supra* note 23, at 11.
- ²⁷ 2019 AMNESTY INTERNATIONAL REPORT, *supra* note 12, at 18.
- ²⁸ SRI LANKA CAMPAIGN FOR PEACE & JUSTICE, *supra* note 23, at 12.
- ²⁹ *Id.*
- ³⁰ *Commissioners Appointed to the Office of Reparations*, COLUMBOPAGE: SRI LANKA INTERNET NEWSPAPER, (Apr. 5, 2019), http://www.colombopage.com/archive_19A/Apr04_1554401981CH.php.
- ³¹ *Sri Lanka: Repeal Abusive Counterterrorism Law: Uphold Pledges to United Nations, European Union*, Human Rights Watch (Jan. 10, 2020), <https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>; Krishan Francis, *Sri Lanka presidential hopeful says won't honor deal with UN*, ASSOCIATED PRESS NEWS (Oct. 15, 2019), <https://apnews.com/b27e1bbb45cc42488b5e6d67415110de>.
- ³² *Great New Year Likely for Gotabaya, while UNP Faces Worst Crisis*, THE SUNDAY TIMES (Dec. 29, 2019).
- ³³ 2019 OHCHR Report, *supra* note 18, at ¶¶ 27-29.
- ³⁴ *Id.* at ¶¶ 38-61.
- ³⁵ *Id.* at ¶ 62.
- ³⁶ *UN Resolution cannot be entertained*, TAMIL GUARDIAN, (Dec. 21, 2019), <https://www.tamilguardian.com/content/%E2%80%98un-resolution-cannot-be-entertained%E2%80%99-sri-lankan-president;IsharaSilva,GotabayaRajapaksaatMediabriefing:'Iwilldeliveronmypromises'>, CEYLON TODAY (Oct. 18, 2019) <https://ceylontoday.lk/print-more/42931>.
- ³⁷ *Corruption charges dropped as Gotabaya Rajapaksa has immunity as new Sri Lanka President*, THE STRAITS TIMES (Nov. 21, 2019) <https://www.straitstimes.com/asia/south-asia/corruption-charges-dropped-against-immune-new-sri-lanka-president-Gotabaya-rajapaksa>.
- ³⁸ *CID Director Who Handled High Profile Cases Transferred*, COLOMBO GAZETTE (Nov. 21, 2019), <https://colombogazette.com/2019/11/21/cid-director-who-handled-high-profile-cases-transferred/>.
- ³⁹ 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>; *Top detective who investigated high-profile cases flees Sri Lanka*, ALJAZEERA (Nov. 26, 2019), <https://www.aljazeera.com/news/2019/11/top-detective-investigated-high-profile-cases-flees-sri-lanka-191126115850448.html>.
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
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- ¹⁹⁸ *Government Report*, *supra* note 1, at ¶ 128.
- ¹⁹⁹ *Id.* at ¶¶ 130-32, 145.
- ²⁰⁰ 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/>.
- ²⁰¹ *2019 Preliminary Findings of Special Rapporteur on freedom of religion*, *supra* note 6.
- ²⁰² *Id.*
- ²⁰³ *2017 Report of the Special Rapporteur on minority issues*, *supra* note 5, at ¶ 73.
- ²⁰⁴ Official Language Act No 33 of 1956 (July 7, 1956), <https://www.lawnet.gov.lk/1947/12/31/official-language-2/> (last visited Dec. 4, 2019).
- ²⁰⁵ Tamil Language (Special Provisions) Act of 1958 (Sept. 14, 1958), <https://www.lawnet.gov.lk/1947/12/31/tamil-language-special-provisions-2/> (last visited Dec. 4, 2019).
- ²⁰⁶ *2017 Report of the Special Rapporteur on minority issues*, *supra* note 5, at ¶ 18.
- ²⁰⁷ *Id.* at ¶ 21.
- ²⁰⁸ *Id.* at ¶¶ 22-23.
- ²⁰⁹ *Id.* at ¶¶ 18, 53.
- ²¹⁰ *Id.* at ¶ 62.
- ²¹¹ *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/> (last visited Oct. 12, 2019).
- ²¹² Krishan Francis, *Muslims Leave Sri Lanka Govt to Allow Probe of Terror Claim*, ASSOCIATED PRESS NEWS (June 3, 2019), <https://apnews.com/b0147bc92b5746f9b094532ad939b62d>.

Shreen Saroor v. Prime Minister's Office

RTICAppeal(In-Person)/01/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – heard as part of a formal meeting of the Commission on 15.05.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr. S.G. PUNCHIHEWA
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Shreen A. Saroor
Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Ms. Shreen Saroor
Sankhitha Gunaratne, RTI Manager, TISL (accompanying Appellant)
Lakwijaya Bandara, TISL
Mangala Shanker, ALAC, TISL

Public Authority - Mr. Suren Gnanaraj, State Counsel, AG's Department
Hashini Jayasekera, Information Officer/ Assistant Secretary, PMO

RTI Request filed on	21.06.2017
IO responded on	22.06.2017 (Acknowledgment) 07.07.2017
First Appeal to DO filed on	22.07.2017
DO responded on	27.07.2017 (Letter received on 31.07.2017)
Appeal to RTIC filed on	06.10.2017

Brief Factual Background

The Appellant filed an information request with the Prime Minister's Office (PMO) on 21.06.2017 seeking the following information from the Secretariat for Coordinating Reconciliation mechanisms:

- A. Copies of proposals and/ or draft legislation and/ or concept notes and/ or documentation relevant to the commitments made by the Government of Sri Lanka in the United Nations Human Rights Council Resolution 30/1 (UN HRC 30/1) to:
 - a. Establish an office on missing persons
 - b. Establish a truth – seeking mechanism
 - c. Establish a judicial mechanism with a special counsel
 - d. Establish any other mechanism for the purpose of delivering truth, justice, reparations, or guarantees of non –recurrence
- B. Copies of reviews and/ or correspondence and /or documentation prepared by national and/ or international consultants and / or experts with respect to the above mentioned proposals and/ or draft legislation and/ or concept notes and/ or documentation.
- C. Copy (s) of a roadmap of action plan with regard to the implementation of the UN HRC 30/1.

The Information Officer (IO) responded on 07.07.2017 stating that the two acts on the Office on Missing Persons were public documents and accessible on documents.gov.lk and citing the exemption of Section 5 (1) (m) for the remaining items requested stating that the matters are under consideration to be submitted to the Cabinet of Ministers for a decision. The Appellant then appealed to the Designated Officer (DO) on 22.07.2017. The Appellant stated that she received a letter from the DO on 31.07.2017 which contained two copies of letters sent to the Secretaries of the Ministry of National Integration & Reconciliation and the Ministry of Foreign Affairs in relation to her RTI request. The Appellant in her appeal to the Commission, did not consider this a decision of the DO and had stated that she had not received a decision from the DO. Not satisfied with the purported response of the DO, the Appellant appeal to the RTI Commission on 06.10.2017.

Matters Arising During the Hearing

The PA had filed written submissions with the Commission dated 03.05.2018. Therein the PA noted that the Appellant's appeal to the DO had indeed been responded to by letter dated 27th July 2017 and had attached a copy of the said letter. The PA noted that it had duly transferred the request of the Appellant to the Ministry of National Integration and Reconciliation and the Ministry of Foreign Affairs by letters dated 27. 07.2017 (with copy to the Appellant). It stated that it had acted in compliance with Regulation 4 clause 6 of the RTI Regulations gazetted under Gazette No. 2004/66 dated 03.02.2017 which states:

“If the request relates to information which the Information Officer is aware is held by another Public Authority, the Information Officer shall duly in written format transfer the request to the concerned Public Authority and inform the citizen making the request accordingly within 7 days form the date of receipt of the request.”

Furthermore it noted that Regulation 4 clause 7 states that;

“A Public Authority shall not be required to collect information to respond to a request but it shall not refuse a request.....”

Accordingly the PA submitted that after transfer of the requests, the Appellant could not have legal recourse against the first PA under the RTI Act, its Rules and Regulations. Furthermore, the PA submitted that the appeal was bad in law as the Appellant had not disclosed the response by the DO. It also submitted that the appeal was time barred as the decision of the DO had reached the Appellant by 31.07.2017 but her Appeal was dated 06.10.2017 which was more than the two month time limit provided for an Appellant to appeal to the Commission according to Section 32 (1) of the RTI Act. No.12 of 2016.

The PA also noted in its written submissions that strictly without prejudice to its submissions regarding information not in its possession, custody, or control, it had proactively obtained some information from the appropriate PAs and would make available the following at the hearing of the Appeal:

With regard to Item A:

A. (a) Establish an Office on Missing Persons

- Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016 (OMP Act)(available on website)
- Office on Missing Person (Establishment, Administration, and Discharge of Functions) Amendment Act, No. 9 of 2017 (available on website)
- Order under Section 1 (2) of the OMP Act (as amended) and published in the Gazette No. 2036/21 dated 12th September 2017

(b) Establish a truth seeking mechanism

- The Final Report of the Consultation Task Force on Reconciliation Mechanisms (CTF), 17th November 2016 (available on website)

(c) Establish a reparation office

- Cabinet Memorandum dated 5th March 2018 and the Cabinet Decision dated 6th March 2018

(d) Establish a judicial mechanism with a special counsel

- The Final Report of the Consultation Task Force on Reconciliation Mechanisms, (CTF) 17th November 2016 (available on website)
- (e) **Establish any other mechanism for the purpose of delivering truth, justice, reparations or guarantees of non – recurrence**
 - International Convention for the Protection of All persons from Enforced Disappearances Bill which was passed in Parliament on the 7th of March 2018
 - Joint Cabinet Memorandum dated 11th December 2017 and Cabinet Decision dated 12th December 2017 on Sri Lanka’s accession to the Ottawa Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti – Personnel Mines and on their Destruction
 - The Cabinet Memorandum dated 10.11.2017 and the Cabinet Decision dated 14.11.2017 on Sri Lanka’s accession to the Optional Protocol to the Convention against Torture and other cruel, inhuman and degrading treatment or punishment.

With regard to Item C:

Copy (s) of a roadmap of action plan with regard to the implementation of the UN HRC 30/1

- National Action Plan for the Protection and Promotion of Human Rights 2017 – 2021 launched on 01.11. 2017 (available on website)

At the Hearing the Appellant stated that she had asked for this information since as a human rights activist, she had conducted many workshops with affected people who were interested in obtaining information about what was going on with regard to transitional justice initiatives in Sri Lanka. The Appellant further stated that she and others had participated in the CTF process and therefore wanted to know if the CTF recommendations had been taken into consideration in the transitional justice initiatives being undertaken by the government.

She also observed that she and other activists working with families of the disappeared had been concerned regarding the fact that the Office of Missing Persons Act was ultimately passed into law without allowing affected persons the right to access confidential information submitted to the OMP and that it was important that all institutions established under the package of transitional justice reforms function transparently and with accountability. She pointed out that, often, activists in the periphery were not involved with law reforms planned in Colombo and that therefore she and the other activists had filed an RTI request for the above documents.

Counsel for the PA reiterated the submissions made in the written submissions of the PA. He clarified that with regard to information about the OMP, the request had been transferred to the Ministry of National Integration and Reconciliation to which the subject had been assigned and with regard to all other information, the request had been transferred to the Ministry of Foreign Affairs.

Counsel further stated that there had been a decision of the DO and two further letters which were copies of the transfer requests to the two concerned Ministries dated 27.07.2017, which had been sent to the Appellant. The Appellant had also written to the two ministries reminding them about her request as a follow up. Counsel submitted that unless this fact was noted, it would seem as if the PA had written to the Ministries and was waiting for a response from them in order to collect and provide the information. This, he noted, would give a wrong impression.

The Appellant noted that while she received the response of the DO on 31.07.2017, she had not considered it as a response but only as a referral. She admitted that it had been a mistake on her part. She further stated that her reason for appealing to the Commission past the time period was due to her making follow up calls and requests with the said Ministries. She further noted that she and other activists were struggling to promote transitional justice since nothing concrete was being presented. The Appellant submitted that in the context of her information request she was not exactly aware of what information was available at that time and therefore had requested for all information that was available with the PA.

The RTI Manager of TISL noted that the PA had refused information citing Section 5 (1) (m) of the Act which states,

(m) the information is of a cabinet memorandum in relation to which a decision has not been taken;

She submitted that in order to invoke the exemption the officer would have had to have perused the documents in question, which would imply that the information being sought was under the custody of the PA.

Counsel for the PA clarified in response that the reply of the information officer in regard to the citation of Section 5(1)(m) as an exception to refuse the information was on the basis of broadly assessing the information requested as including some documents that would have been before Cabinet at the time rather than in terms of knowing the specifics of the same.

When queried by the Commission as to what extent Section 5(1)(m) would apply at this stage of hearing of the appeal, to any of the documentation requested, Counsel for the PA stated that he was not aware of the exact status in regard to the matter and that as far as he was aware, all information that the PA had been able to obtain was now being furnished to the Appellant at the instant hearing. He contended that otherwise, the PA would be compelled to collect information from other Ministries and compile the information which was not a duty of the PA under the RTI Act, its Rules or Regulations. He reiterated that the information now being placed by the Public Authority before the Commission was out of respect for the RTI Commission upon receiving its notice to appear in this appeal.

Order

This information request pertains to matters relevant to Sri Lanka's transitional justice process and therefore concern information that is vital to the public interest.

In particular, where the drafting of laws are concerned, this Commission reiterates its observations in *Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage* (RTIC Appeal/51 /2018, RTIC Minutes, 27.02.2018) that 'in many countries in the region as well as globally, draft laws are required to be presented before the public in advance and before the Bill is gazetted, in order to obtain public feedback on its contents which is a beneficial process leading to public consensus around the framing of legislation.' This observation was made in the context of the fact that the definition of information in Section 43 of the Act expressly includes 'draft legislation' within its ambit.

In her appeal to the Commission dated 06.10.2017, the Appellant has referred to the two letters sent by the Public Authority to the Secretaries of the Ministry of National Integration & Reconciliation and the Ministry of Foreign Affairs dated 27th July 2017 in relation to her RTI request and this Commission is inclined to accept her explanation that the omission to file the letter of the Public Authority on that same date apprising her that the information requests had been transferred to the relevant Public Authorities (which letter had not been annexed to the appeal) was inadvertent rather than deliberate.

The Public Authority has also raised the question of delay on the part of the Appellant to appeal to the Commission within the time limits laid down in Section 32(1)(a) on the ground that the Appellant had not 'established that she was prevented by a reason beyond his or her control from filing the appeal in time' as required by Section 32(2). The Appellant has explained that she had been occupied in attempting to get the requested information through following up with the relevant Ministries to which the said information requests had been directed by the Public Authority during the months in question, before she filed an appeal to the Commission upon failing in that attempt.

We will note this explanation of the Appellant of record as a satisfactory ground to explain delay under and in terms of Section 32(2) of the Act. It is also a relevant factor that Sri Lanka's RTI Act is (relatively) still a new law and both citizens and Public Authorities are getting accustomed to the procedures and practices that need to be followed in filing information requests and appeals.

In regard to the material that has been furnished to the Commission, it is noted that its contents include the Cabinet Memorandum No 18/0430/702/008 dated 5th March 2018 relating to the establishing of an Office of Reparations signed by the Prime Minister and Minister of National Policies and Economic Affairs which information is information that would have been legitimately 'within the possession, custody and control' of the Public Authority in this appeal (viz; the Office of the Prime Minister) under and in terms of Section 3 of the Act.

It is further noted that the said Cabinet decision thereof on 6th March 2018 states that approval had been granted to establish an Office of Reparations as proposed in the Memorandum and that the Legal Draftsman had been instructed to draft legislation based on the draft attached as Annexure 1 to the Memorandum which has also been furnished to this Commission. The furnishing of the said draft legislation on reparations as a result of this information appeal merits special mention, given this Commission's observations in *Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage (supra)* as noted above.

Appeal adjourned for 10th July 2018 at 3 pm. It is directed that the Information Officers of the Ministries of National Integration & Reconciliation and the Ministry of Foreign Affairs appear before this Commission on this date as a necessary consequence of the forwarding of the Appellant's information requests to the said Ministries by letters dated 27. 07.2017.

RTICAppeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 10.07.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Director-General: Piyathissa Ranasinghe

Appellant: Ms. Shreen A. Saroor

Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Ms. Shreen Saroor
Sankhitha Gunaratne, RTI Manager, TISL
Lakwijaya Bandara, TISL

Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department
Sithara Gamage Information Officer (IO) Prime Minister's Office

Matters Arising During the Hearing:

The Commission queried as to whether there is any indication whether the documents requested will be released into the public domain in response to which the Commission was informed that the Reparations Bill had been gazetted and was due to be taken up in Parliament in the coming weeks.

Considering the information request it was noted that information with respect to the establishment of a truth seeking mechanism would most probably be in the custody of the Ministry of National Integration and Reconciliation.

A clarification was sought from the Appellant as to the documents that are yet to be provided. It was noted that the information requested in relation to the establishment of an Office on Missing Persons and a mechanism for the purpose of reparations is redundant given that the Office on Missing Persons Act No 14 of 2016 had been passed and the draft Office for Reparations Bill has been tabled in Parliament. Further it appeared that information in relation to the truth – seeking mechanism was the only viable item of information requested for that needed to be addressed and that since it was unlikely that a judicial mechanism with a special counsel would be established documentation in relation to such is unlikely to be available. Accordingly, it was suggested that sub items a, c and d of item A be considered as provided or non-existent with which the Appellant agreed.

With respect to item C i.e. the Roadmap of Action Plan with regard to the implementation of the UN HRC 30/1 it was envisaged that the information would most probably be in the custody of the Ministry of Foreign Affairs as it was the Ministry which submitted the document before the UN.

The Appellant submitted that she envisages information with respect to reforms to the penal code would be needed. It was noted that whether or not this would fall within the UN Resolution was debatable as although it may be argued and the argument accepted that the Resolution clearly envisaged mechanisms for reparations for war crimes and crimes against humanity whether reforms to the Penal Code would fall within that would have to be substantiated. The Appellant then submitted that the proposed Counter Terrorism Act should also come within the ambit of the UNHRC 30/1 and that although there was international consultation there was no evidence to show progress made thereafter. As such it became evident that a specification of the items of information required was necessary, limiting the said request to that which can be reasonably expected to emanate from the UN HRC 30/1 Resolution.

The Appellant submitted that there are huge gaps in terms of what was intended by the Road map and what is practically being done. The Commission noted that it can direct only an issuance of what is available in the possession, custody and control of the PA and that issues or contradictions of the substantial content in the documents themselves do not fall within the purview of the Commission's jurisdiction.

Attention was drawn to the fact that although it was made out on the previous occasion and in the written submissions of the PA that the information was not in its possession, custody, or control of the PA that subsequently the draft Office for Reparations Bill was provided the Bill was in fact produced before Parliament under the hand of the Prime Minister i.e. as a memorandum of the Prime Minister's Officer. Therefore the question remains as to how much of the information yet to be provided falls within the purview of the Prime Minister's Office and the extent of co-ordination conducted by the PA in the present instance in relation to the implementation of the UN Resolution.

In connection with the discussion on the issuance of Notices on the Ministry for Reconciliation and Ministry of Foreign Affairs, the IO of the PA submitted, that the subject of reconciliation had been passed between several Ministries. Similarly the OMP was until recently under the Presidential Secretariat until its transfer to the Ministry of National Integration, Reconciliation and Official Languages.

It became evident that information requested comes within/ overlaps with functions/ subjects allocated to three PAs including the Ministry of National Integration, Reconciliation and Official Languages.

Order:

The Appellant is directed that the remaining items of the information request that are yet to provided/ responded on are streamlined to limit the documentation requested to that reasonably envisaged by UNHRC Resolution 30/1. Namely,

- A. Copies of proposals and/ or draft legislation and/ or concept notes and/ or documentation relevant to the commitments made by the Government of Sri Lanka in the United Nations Human Rights Council Resolution 30/1 (UN HRC 30/1) to:
 - b) Establish a truth – seeking mechanism
- B. Copies of reviews and/ or correspondence and /or documentation prepared by nation and/ or international consultants and / or experts with respect to the above mentioned proposals and/ or draft legislation and/ or concept notes and/ or documentation. (i.e. establishment of a truth – seeking mechanism)
- C. Copy (s) of a roadmap of action plan with regard to the implementation of the UN HRC 30/1.

The Appellant agreed that sub items a and d of item A are deemed to be provided/ redundant. With respect to sub item c the Appellant agreed that existence of such information was a remote possibility.

It is directed that the Information Officers of the Ministry of National Integration & Reconciliation and the Ministry of Foreign Affairs appear before this Commission on this date as

a necessary consequence of the forwarding of the Appellant's information requests to the said Ministries by letters dated 27.07.2017.

Next Date of Hearing: 04.09.2018

RTIC Appeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 04.09.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Director-General: Piyathissa Ranasinghe

Appellant: Ms. Shreen A. Saroor

Notice Issued to:Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Sankhitha Gunaratne, RTI Manager, TISL
Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department
C A H M Wijeratne legal/ information officer on behalf of the
Ministry of Defence

Matters Arising During the Hearing:

The Appellant had submitted written submissions dated 03.09.2019 streamlining the information request as directed on the previous occasion.

The PA was queried as to whether it had submitted all documents in its possession to which Counsel representing the PA responded in the affirmative.

The PA submitted that there is no formal document/s in relation to the truth seeking mechanism and that it was not in a position to give a strict timeline in relation to when the documents will come into existence. It was submitted that the progress in relation to the truth seeking mechanism has been limited to a series of discussions. Furthermore, it was said that generally a concept paper is first prepared which is submitted to the Cabinet and subsequent to Cabinet approval, the Legal Draftsman's Department is given directions to commence the drafting of legislation. The

PA submitted that the instant discussions are not at this stage and that it is therefore, not in a position to share any documentation.

It was asked on behalf of the Appellant as to whether, the minutes of the said meeting may be made available to which query, Counsel for the PA submitted that he is not aware and does not have instructions as regards to the availability of such minutes but that he could endeavor to ascertain the existence of such.

With respect to item B of the information request, the PA submitted that all documentation in its possession in relation to this item has been provided. The Appellant requested that any meeting minutes with regard to this item too should be provided if available.

On the issue of whether the release of the draft Counter Terrorism Act can be encompassed within the reach of the information request which is the subject matter of this appeal, the PA submitted that new documents cannot be requested at the point of appeal to the Commission. The information requested must be limited to that requested from the IO. Counsel on behalf of the PA further submitted that if one requires a specific document in light of new material made available to the Appellant at the point of appeal, then the appellant must follow the process under the Act and submit a fresh request to the IO as otherwise there would be difficulty in concluding an appeal.

Responding, the Commission observed that an Appeal is limited to the information request of that particular appeal but that in the instant case, since the information request of the Appellant is worded to include all documentation relevant to the Resolution 30/1 of the UNHRC and given that the said resolution concerns review of the Public Security Ordinance and the review and repeal of Prevention of Terrorism Act, which would reasonably include any anti-terrorism legislation which is to replace it, it may be maintained that the information request is sufficiently broad to contemplate legislation the government is contemplating in that regard.

The PA submitted that this information was not available in the custody of the PA at the time of the information request and that all information in relation to the request which was in its possession has been handed over to the Appellant. The PA submitted that since the written submissions of the Appellant were recently filed, he be permitted to get instructions on any draft anti-terrorism legislation that is informally circulating in the public domain and its formal availability at this point.

The Appellant drew the attention of the Commission to the fact that she had raised the specific point on in response to the Commission's query on the previous occasion to indicate the information envisaged with more specificity.

The Commission drew the attention of the Public Authorities to the fact that available drafts of pending legislation should be shared publicly as per *Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage* (RTIC Appeal/51 /2018, RTIC Minutes, 27.02.2018).

RTIC Appeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 30.10.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Director-General: Piyathissa Ranasinghe

Appellant: Ms. Shreen A. Saroor
Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Shreen Saroor
Sankhitha Gunaratne Manage RTI TISL
Lakwijaya Bandara TISL Legal Officer
Rasara Jayasuriya TISL
Kulani Ranaweer TISL
S C C Elankovan Consultant

Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department

Matters Arising During the Hearing:

Counsel for the PA submitted that given the present political context in which a new Prime Minister has been sworn in by the President and new Cabinet of Ministers also sworn in, he has no instructions. Consequently he requested a further date to clarify his instructions.

The appeal was re-fixed for 11.12.2018.

RTIC Appeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 11.12.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Director-General: Piyathissa Ranasinghe

Appellant: Ms. Shreen A. Saroor
Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Shreen Saroor
Sankhitha Gunaratne Manage RTI TISL
Lakwijaya Bandara TISL Legal Officer
Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department

Matters Arising During the Hearing:

At the outset, the PA requested for a further date given that the political context is the same as on the previous occasion.

The Appellant submitted that in her request she was very clear about information on other initiatives by the PA on guaranteeing non-recurrence post war and it is in this regard that the Draft Counter Terrorism Bill had been requested. Further, she observed that, a few days prior to this hearing, Prime Minister Ranil Wickremesinghe had stated that the draft Constitution is ready which will also be important for the purposes of the instant appeal as this relates to action taken in guaranteeing non-recurrence. The Appellant submitted that it is in this context that she is requesting the draft.

Next date of Hearing: 02.04.2019

RTIC Appeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 02.04.2019

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice RohiniWalgama

Director-General: Piyathissa Ranasinghe

Appellant: Ms. Shreen A. Saroor
Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/ Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Shreen Saroor

Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department

Matters Arising During the Hearing:

At the time of the hearing the draft Counter-Terrorism Bill had been released in to the public domain. On querying the status of the information on the progress in relation to the Truth and Reconciliation mechanism, it was submitted on behalf of the PA that there is a Cabinet paper pending before the Cabinet which the Cabinet has deferred making a decision on. The Commission noted that given the fact that it is pending a decision, exemption in terms of the RTI Act would apply. The Appellant submitted that she would be willing to accept any information available in draft form. Counsel for the PA was queried as to whether there was any indication when a final decision would be reached to which counsel responded in the negative.

The matter is adjourned.

Next Date of Hearing: 03.09.2019.

RTIC Appeal(In-Person)/01/2018 - *Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 03.09.2019

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Justice RohiniWalgama

Director-General: D.G.M.V Hapuarachchi

Appellant: Ms. Shreen A. Saroor
Notice Issued to: Mr. E.M.S.B. Ekanayake, Designated Officer/
Secretary to the Prime Minister

Appearance/ Represented by:

Appellant - Shreen Saroor
Sankhitha Gunaratne Manage RTI TISL
Lakwijaya Bandara TISL Legal Officer
Public Authority - Suren Gnanaraj, State Counsel, Attorney General's Department
A.S.M.S. Mahanama, Secretary, Ministry of National Integration,
Official Language

Matters Arising During the Hearing

The Appellant stated that she is yet to receive information on the following items as previously determined to be within the ambit of her information request dated 21.06.2017.

- Information regarding the establishment of a truth – seeking mechanism
- Information regarding the establishment of a judicial mechanism with a special counsel

The Counsel on behalf of the Prime Minister's Office stated that to date it had not received any documentation in relation to the establishment a truth-seeking mechanism. Furthermore, it was stated that while there were informal discussions for the establishment of a judicial mechanism with a special counsel there was no documentation to this effect. The representative for the Ministry of National Integration confirmed that there is no documentation from the government for the establishment of a truth seeking mechanism or a judicial mechanism with a special counsel.

The Appellant stated that there was a report produced before the Human Rights Committee on the Draft Truth Seeking Mechanism which was under discussion. However, the Commission noted that the mere fact that a mechanism was under discussion does not warrant an inference that a document emanated from such discussions.

Order

Under section 3(1) of the RTI Act, information can be provided if it is in the possession, custody or control of the Public Authority. Section 3(1) states that:

“.....every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.”

However, the Prime Minister’s Office as well as the Ministry of National Integration confirmed that they have no information on the truth seeking mechanism or the judicial mechanism for a special counsel. Therefore, it is noted of record that information in this respect is not within the possession, custody or control of the Public Authority.

Appeal is concluded.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).
