OLD GHOSTS IN NEW GARB:

SRI LANKA'S RETURN TO FEAR

AMNESTY INTERNATIONAL

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CONTENTS

I. EXECUTIVE SUMMARY 4

II. METHODOLOGY 8

III. BACKGROUND 10

1. 2010-2015: Crackdown on dissent 10
2. 2015-2018: Opening up of the space for dissent 11
3. 2018-2019: Early signs of shrinking space for civil society 12
4. November 2019: Presidential elections 15

IV. INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 16

1. Rights to freedom of expression, peaceful assembly and association, and the space for civil society 16
2. Right to personal security and freedom from arbitrary detention 18

V. SHRINKING SPACE FOR CIVIL SOCIETY 19

1. Undoing commitments to protect, promote and fulfil human rights 19
2. Instruments to control and repress dissent under the new government 23

VI. ASSAULT ON DISSENT 35

1. Targeting human rights organizations 35
2. Targeting journalists and media outlets 38
3. Targeting lawyers 43
4. Targeting political opposition 48
5. Targeting law enforcement officers 49

VII. CONCLUSION 52

VIII. RECOMMENDATIONS 54

I. EXECUTIVE SUMMARY

> ***"The message that's been given to the people is that working on human rights is somehow anti-state. These ideologies are what we as human rights defenders and victims have to confront all the time in this atmosphere. When we work with other ethnicities, they label us traitors, sometimes call us terrorists."*** [1]

The Sri Lankan government has launched a renewed crackdown on dissent. Civil society organizations and human rights defenders are under renewed attack by the Government and face numerous challenges to operate freely and safely. In only a year after a new government came into power in 2019, the authorities have escalated this into a full assault on dissent where a climate of fear and censorship has quickly expanded around the country, targeting key voices critical of the government and human rights defenders.

In this report, Amnesty International highlights the breadth of the repression of dissent as documented between November 2019 and January 2021. The report is based on multiple interviews carried out with human rights defenders, lawyers and journalists, as well as media reports and case files that the organization had access to.

The report exposes the ongoing assault on the rights to freedom of expression, peaceful assembly, association, personal security and freedom from arbitrary detention, and the way in which the space for civil society has alarmingly shrunk over this period. The risks for human rights defenders are compounded by the lack of credible mechanisms for redress domestically and by the government tactics to further undermine independent mechanisms such as the National Human Rights Institution.

Many of the patterns documented by Amnesty International in this report are dangerously similar to what the organization had raised as concerns in the years following the end of the internal armed conflict. The severe crackdown seen in the aftermath of the armed conflict present a dire image of what could come next under the new administration. Since the end of the war, consecutive UN reports laid bare allegations of gross violations of international human rights and humanitarian law committed by both parties to the conflict. These allegations, if proven, could amount to war crimes and crimes against humanity. Keen to maintain a clean image, the Mahinda Rajapaksa government issued blanket denials on alleged international crimes, and began silencing critics, particularly anyone who dared to expose war-related abuses or bribery and corruption allegations.

In 2015, a coalition of political opponents came into power defeating the Mahinda Rajapaksa government. To address continuing grievances of war affected communities and to signal a change in policy towards the international community, the government led by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe co-sponsored in 2015 a consensual resolution at the Human Rights Council that proposed the establishment of mechanisms to ensure truth, justice, reparations and guarantees of non-recurrence. As a part of this transitional justice package, the government set up

1 Amnesty International interview with Sandya Eknaligoda, 7 September 2020

THE COI ON **"POLITICAL VICTIMIZATION"** APPOINTED BY PRESIDENT GOTABAYA RAJAPAKSA IN JANUARY 2020,INTENDED TO WHITEWASH CRIMINALS AND LABEL THEM INSTEAD AS

VICTIMS OF POLITICAL PERSECUTION.

an Office on Missing Persons, an office for Reparations and released military-held civilian land back to owners. Domestic inquiries into crimes under international law picked up pace after years of total inaction, although the government failed to install a truth commission and a hybrid court that it had previously pledged at the UN Human Rights Council (UNHRC).

As cracks in the coalition government began to emerge in 2018, victims of human rights violations feared the return of those who led the previous administration. It also set the stage for renewed attacks on civic space. The coalition government arbitrarily detained social media users, arrested members of the Muslim community using the Prevention of Terrorism Act which it had pledged to repeal, attempted to pass amendments to laws regulating non-governmental organizations (NGOs) and issued emergency regulations that contravened human rights.

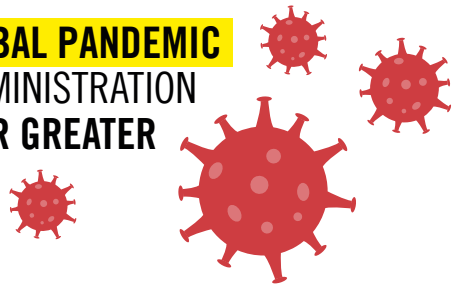
The coalition government lost power in the elections of November 2019, which brought the war-time Secretary of Defence and former President Mahinda Rajapaksa's brother Gotabaya Rajapaksa to power. In a critical incident that sent shockwaves through civil society only days after the change in government, a local staffer at the Swiss embassy in Sri Lanka who had processed a visa for a criminal investigator probing crimes linked to the Rajapaksa family and close associates was detained, sexually abused and interrogated by unknown men. Upon making a formal complaint to the police, she was threatened by law enforcement officials with charges of fabrication and exciting disaffection against the President or the government. A pro-opposition media house was also raided soon after the change in government, providing civil society organizations and human rights defenders pursuing accountability early indicators of what was to come. The early days of the new administration sent a chilling message around the country, pushing many into a state of silence and self-censorship.

By February 2020, the government announced its intention to withdraw support for the UNHRC resolution that pledged to set up transitional justice mechanisms in Sri Lanka and in January 2021 appointed a Commission of Inquiry (COI) to assess the findings of previous commissions, which human rights defenders argue is an attempt to prove to the international community that the mechanisms contained in the UNHRC resolution were no longer necessary. The COI on "political victimization" appointed by President Gotabaya Rajapaksa in January 2020, intended to whitewash criminals and label them instead as victims of political persecution. The COI on "political victimization" interfered in ongoing court cases on human rights violations, including enforced disappearances, in an effort to let military personnel off the hook.

The new Sri Lankan government did not waste any time in introducing new instruments and techniques to muzzle dissent. Members of the military leadership that were in command during the last phase of the war where there were widespread allegations of human rights and humanitarian law violations, were rewarded with promotions and positions of power under the new administration; military officials were also appointed more broadly to civilian positions in institutions such as the Ports Authority and the Civil Aviation Authority among others. For victims of human rights violations committed by the Sri Lankan military, these promotions and appointments further dissuaded them from actively pursuing justice and reparations.

The outbreak of the COVID-19 global pandemic in the early months of the new administration presented an additional cover for greater control and repression. In April 2020, the police announced that legal action would be taken against those criticizing the government's COVID-19 response under the guise of curbing the spread of misinformation. Within a month of going into lockdown, 17 people were arrested allegedly for sharing "fake news", while 53 others were arrested for taking part in a 'Black Lives Matter' public protest after lockdown restrictions were eased. In the war-affected north and the east, families of people who were forcibly disappeared faced obstructions while trying to engage in memorialization activities. Peaceful acts of protest against the government's forced cremation of people suspected of dying of COVID-19, which indirectly discriminated against religious minorities, faced repression from intelligence agencies. Meanwhile, state-sanctioned events and gatherings went ahead unabated while assemblies seen as critical of the government were banned or dispersed.

THE OUTBREAK OF THE **COVID-19 GLOBAL PANDEMIC** IN THE EARLY MONTHS OF THE NEW ADMINISTRATION PRESENTED AN **ADDITIONAL COVER FOR GREATER CONTROL AND REPRESSION**.



The new administration has also relied on existing laws and processes as tools against critical voices, including ironically, the ICCPR Act, being used against social media users simply exercising their right to freedom of expression. For e.g., Ramzy Razeek, a retired government official who often comments publicly on social and political affairs, was arrested, and detained for more than five months without charge and without proper access to a lawyer or medical care despite a deteriorating health condition. This was simply for a Facebook post in which he criticized the forced cremations in the context of COVID-19 and called for an ideological struggle using the pen and keyboard as weapons. Although now released on bail, he lives under fear of charges being filed against him since the case has not yet been closed.

The government was also prompt in amending laws to make them better suited for repression. The 20th amendment to the constitution, passed by parliament in October 2020, undermines the independence of the judiciary and key independent institutions that have the power to act as safeguards against abuse or as recourse for violations of human rights, by removing important checks and balances afforded to appointments. Under the amendment, appointments to independent commissions like the human rights commission, the senior judiciary, the Attorney General, and the police chief are effectively presidential appointments, undermining their independence. The amendment effectively closed down any credible form of domestic recourse available to victims of serious human rights violations through the human rights commission and the justice process. The government has also announced other law reform initiatives which raise concern, including a bill to regulate online media sites, laws forcing social media platforms to remove defamatory posts and comments, and amendments to the law that regulates NGOs that would hinder the right to association.

Amidst this context, Amnesty International has recorded a number of arbitrary arrests and detentions, threats, attacks, harassment and intimidation of human rights defenders, journalists, lawyers, political opponents, and law enforcement officers investigating past abuses. State officials were behind many of these attacks, but non-state actors have also been pointed at for being behind some of the attacks. Amnesty International's findings reveal a pattern of targeting those who have played an active role in investigating, documenting, litigating, or reporting on human rights violations and abuses, and advocating on behalf of the victims.

Unwarranted visits by the authorities have been another common tactic to harass and intimidate human rights groups. Amnesty International recorded at least 18 visits between November 2019 and November 2020, in which the authorities made enquiries about their registration, as well as private information on staff, donors' bank details, while even visiting staff's private residences. The law enforcement officers belonged to sections of the police, including the Criminal Investigation Department (CID), the Terrorism Investigation Division (TID) also known as the Counter Terrorism and Terrorism Investigation Division (CTID), as well as officials with State Intelligence Services (SIS).

A media house critical of the current government was also raided by the police days after the presidential elections in 2019, allegedly looking for evidence of defamatory content against the new President, while journalists with pro-opposition media houses and former state media workers were summoned for interrogations by criminal investigators. Other journalists have received death threats and were summoned for investigations and interrogations after exposing human rights abuses.

Amnesty International recorded additional incidents where human rights lawyers were harassed and arrested by state officials.

The authorities have also aggressively pursued cases against political opponents. Criminal investigators who pursued justice for crimes under international law have also come under increased scrutiny following the change of government. More than 700 police officers with the CID were placed under a travel ban after a key investigator probing human rights violations fled the country fearing for his life, and the former director of the CID was demoted and later arrested for allegedly fabricating evidence in a case. He remains in custody and believes he is being targeted in reprisal for leading investigations in cases of abuses allegedly committed by the armed forces.

The cases documented in this report paint a grim picture of the once safer space for civil society, now rapidly shrinking. As testimonies in this report corroborate, human rights defenders, journalists, lawyers, and other critical voices have been pushed into a state of self-censorship, silence, and exile in the government's efforts to control a single narrative to remain in power. If the situation is left unaddressed, the deteriorating human rights situation will only worsen to a point similar to what the country experienced in the aftermath of the armed conflict where critical voices were harshly punished and where no domestic recourse for remedies was available.

Amnesty International calls on the government of Sri Lanka to immediately stop targeting human rights defenders, journalists, lawyers, political opponents and law enforcement officers investigating past abuses, and to respect, protect, promote and fulfil the rights to freedom of expression, peaceful assembly and association, including by ensuring a safe and enabling environment for civil society. Without an urgent course correction and remedial action, Sri Lanka risks falling again into a damning spiral of repression and violence.

The international community must not ignore the patterns of ongoing human rights violations emerging out of Sri Lanka and should use the upcoming session of the UNHRC to launch a new process or mechanism to pursue the objectives of the 2015 resolution: to end the cycle of impunity and advance accountability for crimes under international law with a view to deterring future violations, particularly against minority communities and civil society groups. The international community must ensure the continued monitoring and reporting on the situation, and the adequate collection, analysis, and preservation of evidence for future prosecutions. Without such a mechanism, Sri Lanka's victims of human rights violations will be deprived of one of their last hopes left for justice and accountability, and face instead a strengthened regime posed to silence and repress any single form of dissent.

II. METHODOLOGY

This report focuses on the space for civil society in Sri Lanka, including those who express dissent or disagreement with a viewpoint, opinion, idea, or policy of government. Dissent is essential for a vibrant society and in the advancement of human rights.

Amnesty International documented incidents and instances of repression of dissent over the period beginning 16 November 2019 to 21 January 2021. However, to place these incidents in context, the report provides background information of the months that preceded the change in political power.

In particular, the report focuses on incidents of repression faced by several groups who are on the frontline of human rights work. These groups include human rights organizations and their members; journalists and media outlets who investigate and expose human rights violations and perpetrators; lawyers who advocate for human rights as counsel for parties aggrieved by human rights violations and as human rights champions in their own right; and law enforcement officials investigating cases of human rights violations and pursuing accountability. The work of these groups constantly exposes human rights violations and challenges the government's narrative. As such, they contribute to maintaining an environment in which society in general can freely and safely engage and debate matters of public interest.

These individuals are human rights defenders (HRDs) who take non-violent action to defend and promote human rights, to the extent that they do not deny any other human rights or take any action that undermines the rights of others.

For the purposes of the research, Amnesty International looked at acts of repression carried out by state institutions, state agents acting in an official capacity, as well as non-state actors and private institutions either overtly supporting government policies and rhetoric or supporting repression through amplifying the government's rhetoric vilifying HRDs.

The incidents and instances recorded by Amnesty International are limited to Sri Lanka, although there are persons interviewed who are now based outside the country, including some who are in exile due to the risks they were facing in the country.

This report is based on interviews conducted by Amnesty International with a cross section of civil society actors, activists, HRDs, journalists and lawyers, as well as secondary sources including media reports.

Amnesty International carried out 20 interviews, including with eight activists and HRDs, 10 lawyers and two journalists. In seeking out interviews, Amnesty International paid attention to the ethnicity, gender, and location of those interviewed for this report in order to ensure the sample was representative. Interviews were carried out with seven Sinhalese, 10 Tamils, two Muslims and one

Burgher.[2] Twelve interviewees were based mostly in Colombo, the capital, five from the north of the country, one from the east and two were living outside Sri Lanka. Twelve interviewees were women and eight were men.

Most of the interviews were carried out on the phone as a result of COVID-19 travel restrictions. Additionally, many interviewees expressed a heightened fear of repression for speaking with an international human rights organization about the deteriorating domestic human rights situation. Phone interviews were therefore preferred as they reduce exposure to physical surveillance. Most of the interviews were carried out via secure communications so that interviewees felt more at ease to openly share their experiences without incurring the risk of digital surveillance. A few interviews were carried out in person.

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Many interviewees opted for anonymization of their testimonies due to fear of reprisals and retaliation for speaking out about ongoing human rights violations and liaising with an international human rights organization. They did not want to draw unnecessary attention to their work and risk increased surveillance by the authorities. In order to mitigate risks and ensure their protection, Amnesty International has withheld identifying information of interviewees, which may include names of victims or witnesses, location details, organizational affiliations, dates, and methods of communication, unless explicit consent was given.

Amnesty International would like to acknowledge and thank the interviewees for their relentless work in pursuit of human rights in Sri Lanka, for braving security risks in speaking with us, and for trusting us with their stories.

The findings of this report complement several other reports on the issue of shrinking space for civil society in Sri Lanka by domestic and international organizations that we relied upon as a part of our research. These include news by local and international media and human rights reports, statements, and official communications, including those by the United Nations.

2 A person of Dutch/Portuguese descent in Sri Lanka

III. BACKGROUND

In 2013, Amnesty International published a report entitled *Sri Lanka's assault on dissent.*[3] The report highlighted violations of the rights to freedom of expression, peaceful assembly, and association in Sri Lanka under the Presidency of Mahinda Rajapaksa. The context then was different. Coming off the heels of an internal armed conflict that lasted close to 30 years, the government of Sri Lanka was under increased international scrutiny for the conduct of hostilities between the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam (LTTE). More than 11 years after the end of the armed conflict, expressing dissent in Sri Lanka remains a high risk that is often met with repression.

1. 2010-2015: CRACKDOWN ON DISSENT

In the immediate post-war period, the government moved quickly to consolidate its power. In January 2010, less than a year after the cessation of hostilities, President Mahinda Rajapaksa called for snap elections to seek a second term. Wartime army commander Sarath Fonseka, who contested the election as the common opposition candidate and lost to President Rajapaksa, was arrested on conspiracy charges days after the election.[4]

Immediately after his re-election for a second presidential mandate, President Rajapaksa sought to amend the Constitution to further strengthen executive power. The 18th amendment to the Constitution was pushed through parliament as an urgent bill. The amendment removed safeguards against political appointments to independent commissions and removed the two-term presidential limit.[5]

In 2011, a report by the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka found credible allegations of serious violations of international humanitarian law (IHL) and international human rights law (IHRL) by both sides to the armed conflict, potentially amounting to international crimes.[6] The government responded to domestic and international uproar calling for independent investigations and accountability for these allegations with blanket denials.[7] In 2014, the UN Human Rights Council (UNHRC passed a resolution calling for the Office of the UN High Commissioner for Human Rights (OHCHR) to undertake a comprehensive investigation into "alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka".[8] The OHCHR investigation found that there were reasonable grounds to believe that gross violations of IHL and IHRL were committed by both parties during the period under investigation.[9] Many of these allegations would, depending on the circumstances, amount to war crimes and/or crimes against humanity.[10]

During this period, the government of Sri Lanka was keen to attract foreign assistance with its balance

3 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf
4 CNN, "Former Sri Lankan general arrested on conspiracy charge", 9 February 2010, http://edition.cnn.com/2010/WORLD/asiapcf/02/08/sri.lanka.opposition/index.html
5 Centre for Policy Alternatives, *The eighteenth amendment to the Constitution: Substance and process*, 25 March 2011, www.cpalanka.org/the-eighteenth-amendment-to-the-constitution-substance-and-process/
6 Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, March 2011, pp. 55-66
7 Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, March 2011, pp. 48-49
8 UNHRC Resolution 25/1 on Promoting reconciliation, accountability and human rights in Sri Lanka.
9 Report of the OHCHR Investigation on Sri Lanka, September 2015, para. 1,113
10 Report of the OHCHR Investigation on Sri Lanka, September 2015, para. 1,113

of payments crisis,[11] and investments for infrastructural development projects.[12] Within the country, the government closed down the space for opposing views – be it on human rights violations committed during wartime or on bribery and corruption allegations after the conflict ended. Critics who exposed alleged human rights violations, including HRDs and journalists, or who advocated the need for accountability in international forums, were branded as "traitors" in state media, attacked, jailed using draconian legislation such as the PTA, forced into exile, abducted and even killed.[13]

In 2013, the Chief Justice Shirani Bandaranayake was impeached and removed from office. She presided over the bench in two cases where the Supreme Court determined that two government bills required reference to all Provincial Councils before being placed before the Parliament, thereby hampering the government's attempts to weaken powers devolved to the Provinces by way of the 13th amendment to the Constitution,[14] The charges against her included charges of personal and professional misconduct, despite the Supreme Court's ruling that the impeachment process was unconstitutional.[15] Reports of threats and intimidation of members of the judiciary also emerged.[16]

Amidst this harsh crackdown against any form of opposition to the regime, including in the run-off to the presidential election in 2015, President Rajapaksa unexpectedly lost the election.

2. 2015-2018: OPENING UP OF THE SPACE FOR DISSENT

Maithripala Sirisena, a minister in President Mahinda Rajapaksa's cabinet, stood in the 2015 presidential elections as the common opposition candidate. He was elected on a good governance and anti-corruption mandate.

As they took power, the coalition government brought to Parliament the 19th amendment to the Sri Lankan Constitution in order to rectify the ills of the 18th amendment.[17] Among other important provisions, the amendment restored a Constitutional Council that was charged with making binding recommendations to the President to appoint members of independent commissions and to the senior judiciary as well as the Attorney-General and the Inspector General of Police. The amendment also re-introduced the two-term limit for the president and took away the presidential power to dissolve parliament at will. The amendment introduced the right to information in the Constitution. Subsequently, the government embarked on a comprehensive constitutional reform project and, to this end, appointed a Public Representations Committee on Constitutional Reforms to ascertain public and stakeholders' views. The Parliament adopted a resolution to establish a Constitutional Assembly in March 2016.

In October 2015, the government also co-sponsored a resolution at the UNHRC on "promoting reconciliation, accountability and human rights in Sri Lanka".[18] As a part of its commitments, the government set up a permanent statutory body – the Office on Missing Persons (OMP)[19] – to carry out, amongst other functions, investigations into the fate and whereabouts of missing persons and

11 IMF, *Sri Lanka: History of lending commitments as of December 31*, 2011, www.imf.org/external/np/fin/tad/extarr2.aspx?memberKey1=895&date1key=2011-12-31

12 Groundviews, *Post-war economic progress: Investment, positioning, and reforms in a new Sri Lankan economy*, 18 May 2014, https://groundviews.org/2014/05/18/post-war-economic-progress-investment-positioning-and-reforms-in-a-new-sri-lankan-economy/

13 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf

14 Centre for Policy Alternatives, *Press release on the impeachment proceedings against Chief Justice Dr. Shirani Bandaranayake*, 13 November 2012, www.cpalanka.org/press-release-on-the-impeachment-proceedings-against-chief-justice-dr-shirani-bandaranayake/

15 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, p. 29, www.amnesty.org/download/Documents/12000/asa370032013en.pdf

16 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf

17 Centre for Policy Alternatives, *A brief guide to the nineteenth amendment to the Constitution*, 29 May 2015, www.cpalanka.org/wp-content/uploads/2015/05/A-Brief-Guide-to-the-Nineteenth-Amendment.pdf

18 UNHRC Resolution 30/1 on Promoting reconciliation, accountability and human rights in Sri Lanka

19 The Office on Missing Persons Act, http://documents.gov.lk/files/act/2016/8/14-2016_E.pdf

victims of enforced disappearances. It also set up an Office for Reparations[20] and released some civilian land occupied by the military in the conflict-affected areas.[21] However, other commitments made to the UNHRC, including the creation of a truth commission and, notably, the establishment of an accountability mechanism with the participation of foreign and commonwealth judges, never materialized.

The years 2015 to 2017 saw the opening up of civic space for engagement and dissent. However, by early 2018, the coalition government began to show cracks. It was also at this period that activists interviewed by Amnesty International experienced a distinct shrinking space for civil society.

3. 2018-2019: EARLY SIGNS OF SHRINKING SPACE FOR CIVIL SOCIETY

Some of those interviewed by Amnesty International pointed to three specific events that led to a shrinking space for civil society: the local government elections held in February 2018,[22] the illegal removal of the sitting Prime Minister (known locally as the "Constitutional Coup") in October 2018,[23] and the 21 April 2019 bombings.[24]

> ***"The space started shrinking since local government elections in February 2018 because the Rajapaksas won. That set the precedent that they were coming back… The difference was stark. For example, at protests, they [military intelligence] weren't hiding when they were taking photos and making threats anymore. There was a feeling that they could do anything and get away with it. The fear kept increasing."*** [25]

A. FEBRUARY 2018: LOCAL GOVERNMENT ELECTIONS

In February 2018, Sri Lanka held local government elections to municipal, urban, and divisional councils. A new political party led by former President Mahinda Rajapaksa, the Sri Lanka Podujana Peramuna (SLPP), won over 44% of the total votes and secured the highest number of seats.[26]. The elections had a tangible effect on the space for civil society: the fear of repression for engaging in human rights work increased, with more overt surveillance in the north by military intelligence.

Reports by local human rights organizations indicate that peaceful protests by families of people who were forcibly disappeared in the north and east of Sri Lanka were under surveillance by the security forces.[27] Intimidation tactics, including photographing and video recording, phone calls and

20 The Office for Reparations Act, http://documents.gov.lk/files/act/2018/10/34-2018_E.pdf
21 Secretariat for Coordinating Reconciliation Mechanisms, Land release statistics – as of May 31, 2019, www.facebook.com/pg/scrmsl/photos/?tab=album&album_id=1430114467128736
22 One person interviewed by Amnesty International felt this was a turning point for surveillance to increase in the north and impact the space for dissent
23 Three persons interviewed by Amnesty International felt the "Constitutional Coup" was a turning point for the space to dissent
24 Two persons interviewed by Amnesty International felt the April bombings was a distinct turning point for the space for dissent
25 Amnesty International interview with a human rights defender from the north, 12 August 2020
26 Ada Derana, *Local authorities election results – 2018*, www.adaderana.lk/local-authorities-election-2018/
27 Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances' activists in the north-east*, 30 August 2018, http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/

questioning, were also used against civil society actors working with the families of the disappeared.[28] The reports also indicate that representatives from the protests who attended the UNHRC sessions in Geneva in 2018 were subject to reprisals, harassment and intimidation upon their return,[29] a practice that has been flagged by the UN Secretary-General's report on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights in 2017,[30] 2019[31] and 2020.[32]

In February 2018, the Cabinet of Ministers approved a proposal that would further restrict the right to association by reforming the Voluntary Social Service Act (VSSO Act), which is the domestic law that registers and regulates the work of non-governmental organizations (NGOs).[33] The proposal would have granted the NGO Secretariat powers to force the registration of NGOs[34] and provide the Secretariat with excessive powers to interfere in the life of organizations, including the power to suspend or cancel operations of NGOs and cancel their registrations.[35] The government also failed to consult with any stakeholders in its efforts to amend the law. Human rights activist Ruki Fernando wrote that *"the extraordinary and excessive powers given to the (NGO) Secretariat directly infringe on Freedom of Association, Freedom of Expression, Freedom of Thought, Conscience & Belief and Right to Privacy"*.[36] Widespread resistance by civil society proved successful as the government later shelved the proposed bill.

B. OCTOBER 2018: "CONSTITUTIONAL COUP"

In October 2018 President Sirisena removed and replaced the Prime Minister with former President Mahinda Rajapaksa and sought to dissolve parliament. The Supreme Court determined that this was unconstitutional,[37] therefore Prime Minister Wickremesinghe was eventually reinstated. However, the differences between the President and the Prime Minister hampered further progress on the reform agenda and ultimately contributed to a major security lapse that may have contributed to preventing the bombings on Easter Sunday. For civil society, a change in political powers was imminent, and along with it, the expectation of a return to practices of the past and a shrinking of the civic space.

28 Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances' activists in the north-east*, 30 August 2018, http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/

29 Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances' activists in the north-east*, 30 August 2018, http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/

30 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/36/31, March 2018, paras 72-74

31 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/42/30, September 2019, paras 96, 97

32 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/45/36, September 2020, paras 120-123

33 Groundviews, C*rippling civic organising, mobilising and resistance through Draft Amendment to the Act on NGOs*, 22 March 2018, https://groundviews.org/2018/03/22/crippling-civic-organising-mobilising-and-resistance-through-draft-ngo-act-amendment/

34 Section 3 of the proposal available at: https://drive.google.com/file/d/1HQJTYaXMBzrMFVkABruRnW53WdrwU8ES/view. NGOs are defined in the proposal as any organization formed by a group of persons natural or legal, being citizens of Sri Lanka or any other country, that is non-governmental, non-profit oriented, or the purpose of which is to serve the public specially; that is (among other things) engaged in policy formulation and propagation, and includes any association, council, society, trust, foundation, federation, movement, centre, consortium, company etc.

35 Section 9J, 9L of the proposal available at: https://drive.google.com/file/d/1HQJTYaXMBzrMFVkABruRnW53WdrwU8ES/view

36 Groundviews, *Crippling civic organising, mobilising and resistance through Draft Amendment to the Act on NGOs*, 22 March 2018, https://groundviews.org/2018/03/22/crippling-civic-organising-mobilising-and-resistance-through-draft-ngo-act-amendment/

37 The Supreme Court determination is available at: www.supremecourt.lk/images/documents/sc_fr_351_2018.pdf

C. APRIL 2019: EASTER SUNDAY ATTACKS AND LAW ENFORCEMENT RESPONSES

In April 2019, a series of bombings by a local Islamic group targeting three churches and several hotels took the lives of more than 250 people.[38] Investigations revealed that the national security apparatus was in possession of actionable intelligence on the attacks. However, due to a communications breakdown at the helm of political leadership, this information was not acted upon.[39] The bombings laid bare the significant cracks within the ruling coalition and paved the way for a SLPP victory at the presidential elections later that year. After the bombings, the space for dissent shrunk further and repression under the guise of anti-terrorism measures increased.

The previous government, although it had committed to repeal and replace the draconian PTA with legislation in line with international standards,[40] used the PTA extensively following the attacks. Despite existing laws in Sri Lanka providing ample powers to law enforcement authorities to investigate and prosecute those suspected of being responsible for the attacks, the government adopted new Emergency Regulations.[41]

Amnesty International and other civil society organizations raised concerns that these new regulations would further curtail human rights.[42] In the aftermath of the attacks, as many as 1,800 Muslim individuals were arrested using the PTA and the Emergency Regulations.[43] The PTA paved the way for suspects to be held without charge for up to 18 months; for arbitrary orders to be made by the Minister of Defence restricting freedom of expression and association, with no right of appeal in courts; for special rules of evidence allowing for confessions to be admissible in court; and for the onus to be placed on a suspect to prove to a court that a statement was made under duress.[44] Among other concerns, the organization expressed alarm over the power provided by the Emergency Regulations to detain individuals without charge for up to a year, the curtailment of fair trial guarantees, and diminished safeguards against torture and other ill-treatment.[45]

> ***After the bombings, the space for dissent shrunk further and repression under the guise of anti-terrorism measures increased.***

38 Amnesty International, *Sri Lanka: Solidarity with the victims, unity against the forces of hatred*, 26 April 2019, www.amnesty.org/en/latest/news/2019/04/sri-lanka-solidarity-with-the-victims-unity-against-the-forces-of-hatred-1/; BBC, Sri Lanka's Muslims 'demonised' after Easter bombings, 13 August 2019, https://www.bbc.com/news/world-asia-49249146

39 Report of the Parliamentary Select Committee to look into and report to Parliament on the terrorist attacks that took place in different places in Sri Lanka on 21st April 2019, www.parliament.lk/uploads/comreports/sc-april-attacks-report-en.pdf#page=1

40 UNHRC Resolution 30/1 on Promoting reconciliation, accountability and human rights in Sri Lanka, OP 12

41 Extraordinary Gazette No. 2120/5 issued on 22 April 2019 available at: http://documents.gov.lk/files/egz/2019/4/2120-05_E.pdf; Extraordinary Gazette No. 2121/1 issued on 29 April 2019 available at: http://documents.gov.lk/files/egz/2019/4/2121-01_E.pdf; Extraordinary Gazette No. 2123/4 issued on 13 May 2019 available at: http://documents.gov.lk/files/egz/2019/5/2123-04_E.pdf

42 Amnesty International, *Sri Lanka: Respect human rights in the aftermath of Easter attacks*, 4 May 2019, www.amnesty.org/en/documents/asa37/0297/2019/en/

43 International Crisis Group, *After Sri Lanka's Easter bombings: Reducing risks of future violence*, 27 September 2019, www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence; Human Rights Watch, *Sri Lanka: Muslims face threats, attacks*, 3 July 2019, www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks.

44 Amnesty International, *Sri Lanka: Countering terrorism at the expense of human rights*, 31 January 2019, www.amnesty.org/en/documents/asa37/9770/2019/en/

45 Amnesty International, *Sri Lanka: Respect human rights in the aftermath of Easter attacks*, 4 May 2019, www.amnesty.org/en/documents/asa37/0297/2019/en/

4. NOVEMBER 2019: PRESIDENTIAL ELECTIONS

In November 2019, Gotabaya Rajapaksa, brother of former President Mahinda Rajapaksa and former secretary to the Ministry of Defence during the last stages of the civil war, won the presidential election promising security and stability.[46] Gotabaya Rajapaksa has been accused of being responsible for violations of IHL and IHRL committed while he was Defence Secretary., These allegations have been found to be credible by several UN investigations into the Sri Lankan military's offence against the LTTE.[47] He was also linked to several allegations of human rights violations and crimes under international law, including enforced disappearances, killings of journalists, and extra judicial executions of surrendering combatants at the end of the war.[48]

Gotabaya Rajapaksa has been accused of being responsible for violations of IHL and IHRL committed while he was Defence Secretary., These allegations have been found to be credible by several UN investigations into the Sri Lankan military's offence against the LTTE.

46 Al Jazeera, *Gotabaya Rajapaksa sworn in as Sri Lanka's new president* 18 November 2019, www.aljazeera.com/news/2019/11/18/gotabaya-rajapaksa-sworn-in-as-sri-lankas-new-president

47 Report of the OHCHR Investigation on Sri Lanka, September 2015

48 Report of the OHCHR Investigation on Sri Lanka, September 2015

IV. INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

1. RIGHTS TO FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION, AND THE SPACE FOR CIVIL SOCIETY

The rights to freedom of expression, peaceful assembly and association are protected in the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka has been a party since 1980. Sri Lanka has also enacted a law to introduce the ICCPR into domestic legislation – the International Covenant on Civil and Political Rights Act (ICCPR Act) giving effect to the Covenant in 2007.[49]

Article 19 of the ICCPR sets out the right to **freedom of expression**:

- Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21 of the ICCPR sets out the right to **freedom of assembly:**

- The right of peaceful assembly shall be recognized.

Article 22 sets out the right to **freedom of association:**

- Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

It is important to note that the ICCPR holds that none of these rights are absolute, and all three may be subject to restrictions. However, the restrictions must be provided by law; be necessary and proportionate for a specific pressing need, which are limited to the respect of the rights of others or for the protection of national security, public safety, public order or of public health or morals.[50]

For example, the Human Rights Committee, which is tasked with monitoring states' compliance with the ICCPR, in its General Comment No. 34 on the right to freedom of expression, specifies that "if a state imposes any such restrictions, it must demonstrate the precise nature of the threat, and the necessity

49 The ICCPR Act available at: www.lawnet.gov.lk/wp-content/uploads/2016/12/INTERNATIONAL-COVENANT-ON-CIVIL-AND-POLITICAL-RIGHTS-ICCPR-ACT-NO-56-OF-2007.pdf

50 Further guidance on these restrictions can be found in UN Human Rights Committee General Comments 34 and 37

and the proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat. Moreover, any such restrictions must also not put in jeopardy the right itself".[51] This means that it is not permissible under international human rights law to impose restrictions preventing the expression of opinions or the provision of information simply because it is deemed to undermine the implementation of government policies, harms it politically or puts the government in a negative light.

IHRL and standards also establish and protect the right to defend human rights as an autonomous and independent right. The UN Declaration on Human Rights Defenders recognizes this right and develops provisions contained in international instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights and the ICCPR.[52] While the Declaration does not create new rights and obligations, it articulates existing ones and applies them to the particular role and situation of human rights defenders. It recognizes the crucial role played by them in the defence and promotion of human rights, which often exposes them to additional and specific risks, thus requiring measures explicitly for their protection.

The Declaration also establishes that states bear the ultimate responsibility to protect human rights defenders, to prevent and effectively address allegations of human rights violations and abuses committed against them and related to their human rights work, and to ensure that they can carry out their work in a safe and enabling environment.[53]

Article 14 of Sri Lanka's Constitution guarantees the rights to freedom of speech and expression, including publication, freedom of peaceful assembly and freedom of association. But the Constitution allows for restrictions of all these rights on much broader grounds than those permitted under international human rights law. For example, restrictions on all three rights can be imposed "in the interests of racial and religious harmony".[54] The right to freedom of expression can also be limited "in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence",[55] and freedom of association can be restricted "in the interests of… [the] national economy".[56]

IT IS NOT PERMISSIBLE UNDER

INTERNATIONAL HUMAN RIGHTS LAW

TO IMPOSE RESTRICTIONS PREVENTING THE EXPRESSION OF OPINIONS OR THE PROVISION OF INFORMATION SIMPLY BECAUSE IT IS DEEMED TO UNDERMINE THE IMPLEMENTATION OF GOVERNMENT POLICIES, HARMS IT POLITICALLY OR PUTS THE GOVERNMENT IN A NEGATIVE LIGHT.

51 UN Human Rights Committee, General Comment No. 34, paras 21-36
52 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998
53 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, Art. 2
54 Article 15 (2)-(4) of the Sri Lankan Constitution
55 Article 15 (2) of the Sri Lankan Constitution
56 Article 15 (4) of the Sri Lankan Constitution

2. RIGHT TO PERSONAL SECURITY AND FREEDOM FROM ARBITRARY DETENTION

Article 9 of the ICCPR protects the right to liberty and security of person, including the prohibition of arbitrary detention.

Detention in the context of Article 9 refers to all forms of deprivation of liberty, including in prison, house arrest, a psychiatric facility or when it is carried out in close premises where the person is not allowed to leave.[57] Likewise, it applies to all situations, either pre-trial or post-trial.[58] The arbitrary deprivation of liberty is a peremptory norm of international law and is prohibited in all circumstances, including during armed conflict and other emergencies.[59]

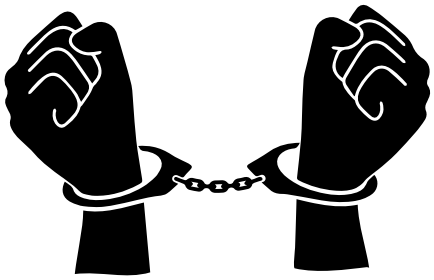
Article 9 also protects the right to security of a person and is applicable to persons in and out of detention. The right to personal security invokes the state obligation to protect a person against attacks from either government officials or private persons.[60] In particular, the Human Rights Committee has held that "it cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction just because he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of Article 9 which would allow State parties to ignore threats to the security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant".[61]

Moreover, the Human Rights Committee has determined that states have a duty to protect individuals in situations where their lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, including that of human rights defenders.[62] In particular, the Committee has held that failing to protect human rights defenders from reprisals, including from death threats, for promoting and striving to protect and realize human rights, would also constitute a violation of the right to life.[63]

The Sri Lankan Constitution recognizes the prohibition of arbitrary arrest and detention in Articles 13(1) and 13(2). However, these articles also allow for caveats that contravene the absolute prohibition of arbitrary deprivations of liberty, namely allowing them if they are imposed "in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society".[64]

57 WGAD Deliberation No. 1 on house arrest (Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1993/24, 12 January 1993)
58 WGAD Deliberation No. 7, para. 57
59 UN Human Rights Committee, General Comment No. 29, para. 11
60 UN Human Rights Committee, General Comment No. 35; Human Rights Committee, *Tshishimbi v. Zaire* (Com. No. 542/1993), 25 March 1996, UN Doc. CCPR/C/53/D/542/1993; Human Rights Committee, *Chongwe v. Zambia* (Com. No. 821/1998), 25 October 2000, UN Doc. CCPR/C/70/D/821/1998
61 UN Human Rights Committee, *Delgado Paez v. Colombia* (Com. No. 195/1985), 12 July 1990, UN Doc. CCPR/C/39/D/195/1985
62 UN Human Rights Committee, General Comment No. 36, para. 23
63 UN Human Rights Committee, General Comment No. 36, para. 53
64 Article 15(7) of the Sri Lankan Constitution

V. SHRINKING SPACE FOR CIVIL SOCIETY



The conformation of a new government with people who were part of the regime during the armed conflict sparked fear among civil society. Early indications of a return to tactics of the past were feared in November 2019 after a local official attached to the Swiss embassy in Colombo alleged that she was detained against her will and interrogated about a visa she processed for a top investigator at the Criminal Investigation Department (CID) of the Police, just days into the new President's term.[65] The investigator had probed cases implicating members of the Rajapaksa family during the previous government.[66] The Swiss embassy staff member was threatened with charges of fabrication and arrested.[67] She was granted bail in 2020 while the case is still ongoing.[68]

Fear that the new administration was laying the ground for further repression of dissent and human rights violations was also heightened by rhetoric that clearly indicated a diminished tolerance for dissenting opinions. Legislative and constitutional reforms were announced that many feared could lead to further erosion to the rule of law, increased powers to the executive and law enforcement, and reduced protection for human rights.

1. UNDOING COMMITMENTS TO PROTECT, PROMOTE AND FULFIL HUMAN RIGHTS

Concrete decisions or measures taken in the first year of the new government clearly indicated that it was withdrawing from existing commitments to protect, promote and fulfil international human rights law, and towards domestic accountability. These measures were accompanied by a rhetoric that was characteristic of the 2010-2015 period.

65 Official Statement by the Embassy of Switzerland, 29 November 2019, www.eda.admin.ch/countries/sri-lanka/en/home/news/news.html/content/countries/sri-lanka/en/meta/news/2019/november/statement; "Sri Lankan critics fear a crackdown is underway, and some flee", The New York Times, 27 November 2019, www.nytimes.com/2019/11/27/world/asia/sri-lanka-rajapaksa-crackdown.html

66 Sunday Observer, *UN Rights Chief hails star CID sleuth*, 10 March 2019, www.sundayobserver.lk/2019/03/10/news/un-rights-chief-hails-star-cid-sleuth

67 SWI, *Swiss embassy worker arrested in Sri Lanka*, 16 December 2019, www.swissinfo.ch/eng/swiss-embassy-worker-arrested-in-sri-lanka/45438680

68 SWI, *Swiss embassy employee in Sri Lanka granted bail*, 31 December 2019, www.swissinfo.ch/eng/diplomatic-spat----_swiss-embassy-employee-in-sri-lanka-granted-bail/45463886

A. DISENGAGING FROM THE UN HUMAN RIGHTS COUNCIL

In February 2020, the Foreign Minister announced Sri Lanka's decision to withdraw from co-sponsorship of the UNHRC Resolution 30/1 and all linked resolutions regarding human rights accountability in Sri Lanka.[69] The Foreign Minister said, *"the government elected in January 2015… jettisoned the home-grown reconciliation process progressing at the time, and in an unprecedented move in the Human Rights Council, and in contrary to Sri Lanka's foreign policy stance on country specific resolutions, co-sponsored the UNHRC resolution 30/1 on the situation of the country,"* that it "*conceded a false narrative of both the circumstances of the 30-year separatist conflict and also the number of casualties*".[70] At the UNHRC and elsewhere, the government was back to its old narrative on the conduct of hostilities and the number of casualties.[71] It took a hostile stance against working collaboratively with the UNHRC and the international community[72] in relation to human rights violations and crimes under international law committed during the war.

From the early days of its tenure, the new government made it very clear that it did not support the UNHRC process and would seek to revisit the previous administration's co-sponsorship of Resolution 30/1 and undo steps taken domestically to give effect to the same. Domestically, accountability measures and ongoing court processes were labelled as "political victimization" and steps were taken to revisit such processes as well.

In January 2020, the government announced its intentions to review the powers of the OMP, one of the main commitments contained in Resolution 30/1, and amend the respective Act establishing it.[73] At the time the Act was enacted, members of the opposition (now in government) protested against the Act.[74] In June 2020, the Prime Minister himself was engaged in fearmongering around the OMP, saying, "Though it's described as an 'office', this is actually an inquisitorial body that can issue summons, examine witnesses, and collect evidence. Officers of the OMP can search without a warrant any armed forces installation, police station, or prison and take into their possession any document or thing they deem necessary. All state bodies including the intelligence agencies and the armed forces are legally bound to cooperate with the OMP even in contravention of the provisions of the State Secrets Act."[75] In December 2020, the President appointed former Supreme Court judge Upali Abeyratne as the new Chairperson to the OMP. Retired Supreme Court Judge Upali Abeyratne served as the Chairman to the Presidential Commission of Inquiry on Political Victimization, when the Commission attempted to interfere in the prosecution of state actors accused of enforced disappearances. The appointment raised concerns among civil society and victims of human rights violations as they said it indicated a clear lack of government support for the Office's mandate and work.[76] Writing to President Gotabaya in January 2020, the OMP urged that any amendments to the Act are only moved "pursuant to wide consultations with families of the missing and disappeared, organisations that work with them and the OMP, and that in doing so it is necessary to keep in mind the needs of the families and their right to know the fate of their missing or disappeared loved ones".[77]

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69 Statement by Foreign Minister Dinesh Gunawardena in Parliament on UNHRC Resolution 30/1 on 20 February 2020, https://mfa.gov.lk/tam/statement-by-foreign-minister-dinesh-gunawardena-in-parliament-on-unhrc-resolution-301-on-20-february-2020/

70 Statement by Foreign Minister Dinesh Gunawardena in Parliament on UNHRC Resolution 30/1 on 20 February 2020, https://mfa.gov.lk/tam/statement-by-foreign-minister-dinesh-gunawardena-in-parliament-on-unhrc-resolution-301-on-20-february-2020/

71 The Hindu, *Sri Lanka war crime probe: Panel rejects 'zero civilian casualties' claim*, 24 October 2015, https://www.thehindu.com/news/international/sri-lanka-war-crime-probe-panel-rejects-zero-civilian-casualties-claim/article7797468.ece

72 LA Times, *Sri Lanka president uses his time in U.N. spotlight to lash out*, 27 September 2013, https://www.latimes.com/world/la-xpm-2013-sep-27-la-fg-un-odd-leaders-20130927-story.html

73 Daily Mirror, *OMP Act to be reviewed*, 7 January 2020, www.dailymirror.lk/breaking_news/OMP-Act-to-be-reviewed/108-180821r

74 Daily Mirror, *OMP Act to be reviewed*, 7 January 2020, www.dailymirror.lk/breaking_news/OMP-Act-to-be-reviewed/108-180821r

75 Newswire, "*Karuna may have given up murdering people, but the yahapalana cabal has not given up trying to divide the country*" PM, 28 June 2020, www.newswire.lk/2020/06/28/karuna-may-have-given-up-murdering-people-but-the-yahapalana-cabal-has-not-given-up-trying-to-divide-the-country-pm/

76 Sri Lanka Brief, *Letter to Michelle Bachelet: Appointment of Justice Abeyrathna to lead the OMP is a direct insult and an act of violence – Sandya Ekneligoda*, 21 December 2020, https://srilankabrief.org/2020/12/the-appointment-of-justice-upali-abeyrathne-as-head-of-the-omp-is-a-direct-insult-and-an-act-of-violence-against-families-of-the-disappeared-sandya-ekneligoda/

77 DailyFT, *OMP says any amendments to Act should be after wide consultations with all stakeholders*, 17 January 2020, www.ft.lk/news/OMP-says-any-amendments-to-Act-should-be-after-wide-consultations-with-all-stakeholders/56-693733

B. YET ANOTHER COMMISSION OF INQUIRY ON HUMAN RIGHTS AND IHL VIOLATIONS

In order to illustrate its commitment to achieve "sustainable peace", the government announced that it would put in place "an inclusive, domestically designed and executed reconciliation and accountability process"[78] comprising a Commission of Inquiry (COI) "to review the reports of previous Sri Lankan COIs which investigated alleged violations of Human Rights and International Humanitarian Law (IHL), to assess the status of implementation of their recommendations and to propose deliverable measures to implement them keeping in line with the new Government's policy".[79]

Accordingly, on 21 January 2021, the President appointed a COI to find out what former COIs "have been appointed to investigate into human rights violations, have revealed any human rights violations, serious violations of the international humanitarian law",[80] identify their findings, and steps which need to be taken to "implement those recommendations further in line with the present Government policy."[81]

Amnesty International has in the past produced ample research that showcases the failures of Sri Lanka's domestic COIs as mechanisms to deliver truth, justice and reparations for victims of human rights violations.[82] Findings of past COIs have not led to any prosecutions of those responsible for atrocities, and as such, OHCHR investigations have revealed how these repeated failures have led to skepticism, anger and mistrust on the part of victims.[83] In her update to the UNHRC in February 2020, the High Commissioner for Human Rights made her skepticism around the COI clear: "Domestic processes have consistently failed to deliver accountability in the past and I am not convinced the appointment of yet another Commission of Inquiry will advance this agenda."[84]

FINDINGS OF PAST COMMISSIONS OF INQUIRY

HAVE NOT LED TO ANY PROSECUTIONS

OF THOSE RESPONSIBLE FOR ATROCITIES...

78 Statement by Foreign Minister Dinesh Gunawardena in Parliament on UNHRC Resolution 30/1 on 20 February 2020, https://mfa.gov.lk/tam/statement-by-foreign-minister-dinesh-gunawardena-in-parliament-on-unhrc-resolution-301-on-20-february-2020/

79 Statement by Foreign Minister Dinesh Gunawardena in Parliament on UNHRC Resolution 30/1 on 20 February 2020, https://mfa.gov.lk/tam/statement-by-foreign-minister-dinesh-gunawardena-in-parliament-on-unhrc-resolution-301-on-20-february-2020/

80 Extraordinary Gazette No. 2211/55 issued on 21 January 2021 available at: http://documents.gov.lk/files/egz/2021/1/2211-55_E.pdf

81 Extraordinary Gazette No. 2211/55 issued on 21 January 2021 available at: http://documents.gov.lk/files/egz/2021/1/2211-55_E.pdf

82 Amnesty International, Twenty years of make-believe: *Sri Lanka's Commissions of Inquiry*, 11 June 2009, www.amnesty.org/en/documents/ASA37/005/2009/en/, *Amnesty International, Sri Lanka: When will they get justice? Failures of Sri Lanka's lessons learnt and Reconciliation Commission*, 7 September 2011, www.amnesty.org/en/documents/ASA37/008/2011/en/

83 Report of the OHCHR Investigation on Sri Lanka, September 2015

84 Statement by Michelle Bachelet United Nations High Commissioner for Human Rights at HRC 43, 27 February 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E. See more on Amnesty International's call for the UNHRC to step up efforts to advance accountability for serious violations in Sri Lanka at: www.amnesty.org/en/documents/asa37/3541/2021/en/

C. DOMESTIC ACCOUNTABILITY LABELLED AS "POLITICAL VICTIMIZATION"

On 9 January 2020, less than two months after taking power, President Gotabaya Rajapaksa appointed a Presidential Commission of Inquiry "to inquire into and obtain information in respect of the alleged political victimization during the period commencing 8th January 2015 and ending 16th November 2019".[85] The President implied that the former government's pursuit of legal action against public officials was politically motivated and that this process has had negative effects on the performance of public officers, employees of public corporations and members of the armed forces and police services.[86]

Since then, the Commission has intervened in cases that are pending before courts. For instance, just days after its appointment, the Commission issued an order preventing the Permanent High Court at Bar from proceeding with the "Navy 11" case against former Commander of the Navy Admiral of the Fleet Wasantha Karannagoda and former Navy Spokesperson Rear Admiral DKP Dassanayake.[87] The case relates to the abduction of 11 Tamil youth in 2008 and 2009 allegedly by members of the Sri Lankan Navy. The Attorney General's department resisted the order by stating that the Commission has no statutory or legal authority to order the Attorney General to refrain from performing his statutory functions with regard to the case.[88] Civil society organizations have expressed concerns that the Commission's interventions unduly interfere with, to prevent, impede and/or otherwise prejudice court proceedings.[89]

The Commission also summoned a key witness in the case of Prageeth Eknaligoda, which is currently before the Permanent High Court at Bar. Prageeth Eknaligoda is a journalist and cartoonist who was forcibly disappeared in 2010 just days before the presidential election in January. All nine members accused in the case belonged to the army military intelligence.[90] The bench objected to the Commission's summons of the witness as it could tamper the witness' testimony, and issued an order holding that the witness cannot be called before the Commission or any other mechanism or court that is below the High Court while the trial is ongoing. The Court also made the witness sign a surety committing not to attend any such summons.[91] Despite the court order, the witness testified before the Commission.[92]

The Commission's actions so far have attempted to unduly interfere in ongoing court proceedings where military members are implicated as suspects. Media has reported that many officials standing trial in cases of human rights violations have complained of being politically targeted before the Commission.[93]

The Commission's actions so far have attempted to unduly interfere in ongoing court proceedings where military members are implicated as suspects.

85 Extraordinary Gazette No. 2157/44 issued on 9 January 2020 available at: http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf
86 Extraordinary Gazette No. 2157/44 issued on 9 January 2020 available at: http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf
87 DailyFT, *PCOI orders AG to halt investigations into former navy chief and spokesperson*, 28 January 2020, www.ft.lk/news/PCOI-orders-AG-to-halt-investigations-into-former-Navy-Chief-and-Spokesperson/56-694500
88 News First, *AG says PCoI has no power to order him*, 28 January 2020, www.newsfirst.lk/2020/01/28/ag-says-pcoi-has-no-power-to-order-him/
89 *Centre for Policy Alternatives v. Attorney General* (SC FR 32/2020), www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fr-32-2020/
90 Colombo Gazette, *Nine intelligence officers served indictments in Eknaligoda case*, 27 November 2019, https://colombogazette.com/2019/11/27/nine-intelligence-officers-served-indictments-in-eknaligoda-case/
91 Amnesty International's trial monitoring
92 Divaina, *Lied to the court due to Shani's pressure... Army retired intelligence officer tells Presidential Commission* (translated from Sinhala article), 19 September 2020, https://divaina.com/daily/index.php/puwath-2/48017-6-56
93 See for example, News First, *PCoI witness claims CID officers pressured him to make statement on Ekneligoda*, 25 August 2020, www.newsfirst.lk/2020/08/25/pcoi-witness-claims-cid-officers-pressured-him-to-make-statement-on-ekneligoda/; Colombo Page, *The police pressured me to give evidence against the President – complainant*, 4 September 2020, www.colombopage.com/archive_20B/Sep04_1599242342CH.php

2. INSTRUMENTS TO CONTROL AND REPRESS DISSENT UNDER THE NEW GOVERNMENT

In the months following the presidential election, the government either took or announced a number of measures that would enable a rapid shrinking of the space for civil society and lay the ground for further repression. Serving and former members of the armed forces, some of whom have been accused of committing human rights violations and crimes under international law during the armed conflict, were appointed to key positions within the administration to carry out public security tasks that should normally be under civilian control. The COVID-19 pandemic presented further opportunities for imposing sweeping measures to restrict the rights to freedom of movement and expression under the guise of ensuring the respect of health guidelines or controlling misinformation. Legal provisions, including some meant to protect civil and political rights, were used as a basis for arrest of dissenters, social media commentators and human rights activists. Legal and constitutional reforms that further erode the rule of law and the protection of human rights were passed amidst the health and economic crises.

Military personnel were appointed to government positions more broadly in times of peace, which was concerning for victims of serious human rights violations at the hands of the Sri Lankan military during the war.

A. MILITARIZATION

Following the November 2019 presidential election, many members of the armed forces, including some who were involved in the last phase of the war where the Sri Lankan forces are accused of committing serious IHL and IHRL violations, have been promoted within military ranks or appointed to positions in the new government. Their promotion and appointment have not only been seen as rewards by the government, but may also have worrying implications for victims of human rights violations who fear military officials in positions of power may block efforts towards accountability and order further reprisals against those pursuing justice.

Promotions of military officials who were involved in the armed conflict and may have been responsible for crimes under international law follow a trend initiated by former President Sirisena when he promoted Major General Shavendra Silva to the post of Chief of Staff of the Sri Lankan Army in January 2019[94] and to the position of Commander of the Sri Lankan Army in August 2019[95] subsequently, he was promoted to the rank of a four-star general in December 2020 by President Gotabaya Rajapaksa.[96] Major General Kamal Gunaratne was appointed as the secretary to the Ministry of Defence in November 2019,[97] and promoted to the rank of General by President Gotabaya Rajapaksa in December 2020.[98] As Commanders of the 58th and 53rd divisions of the Sri Lanka Army respectively during the final phase

94 Amnesty International, *Sri Lanka: Allegations against new army chief of staff highlight the urgent need to address impunity*, 11 January 2019, www.amnesty.org/en/documents/asa37/9665/2019/en/

95 Al Jazeera, *Sri Lankan general accused of war abuses appointed army chief*, 19 August 2019, www.aljazeera.com/news/2019/8/19/sri-lankan-general-accused-of-war-abuses-appointed-army-chief

96 News First, *Army Commander promoted to rank of 04 star General*, 28 December 2020, www.newsfirst.lk/2020/12/28/army-commander-promoted-to-rank-of-04-star-general/

97 Ada Derana, *Kamal Gunaratne appointed new Defence Secretary*, 19 November 2019, www.adaderana.lk/news/59146/kamal-gunaratne-appointed-new-defence-secretary

98 The Morning, *Defence Secretary Kamal Gunaratne promoted to the rank of General*, 28 December 2020, www.themorning.lk/defence-secretary-kamal-gunaratne-promoted-to-the-rank-of-general/

of the armed conflict in 2009, Lieutenant General Silva and General Gunaratne oversaw the divisions during a period in which they were alleged to have committed violations of IHL and IHRL.[99] Neither General has faced any sort of accountability for alleged war crimes committed under his command.[100]

In addition to these promotions, military personnel were appointed to government positions more broadly in times of peace, which was concerning for victims of serious human rights violations at the hands of the Sri Lankan military during the war. At least two retired military officers were appointed to the Civil Aviation Authority, to the Board of Bank of Ceylon and to the Ports Authority,[101] and at least three retired officers were appointed as secretaries to ministries.[102] Additionally, two Task Forces appointed by the President have significant military membership. On 2 June 2020, President Gotabaya Rajapaksa appointed a Presidential Task Force "to build a secure country, disciplined, virtuous and lawful society",[103] in which 10 of the Task Force's 13 members are current or former members of the Sri Lankan military.[104] Following criticism and pushback against appointments made by President Gotabaya Rajapaksa, he then issued a statement urging the public not to pressure either him or the Government to change these appointments.[105] The Task Force for the Archaeological Heritage Management in the Eastern Province is headed by the Secretary to the Ministry of Defence, General Gunaratne, who is named in the OHCHR investigation on Sri Lanka as a commander of a division implicated in war crimes.

More recently, after the COVID-19 pandemic broke out in the country, the President conformed a National Operation Centre for Prevention of COVID-19 Outbreak. While international best practice suggests that such mechanisms should ideally be led by health professionals, President Rajapaksa appointed an army commander as its head. This has set the tone for a militarized approach to the COVID-19 response, which is increasing the risks for human rights.

99 Amnesty International, *Sri Lanka: Allegations against new army chief of staff highlight the urgent need to address impunity*, 11 January 2019, www.amnesty.org/en/documents/asa37/9665/2019/en/ For allegations against General Gunaratne, refer to the Report of the OHCHR Investigation on Sri Lanka, September 2015.

100 Since the change of government, at least three appointments or promotions have been made or awarded to those named in the report of the OHCHR Investigation on Sri Lanka as alleged to have committed international human rights or humanitarian law violations: In addition to the promotions of General Kamal Gunaratne and Lieutenant General Shavendra Silva, Major General Vijitha Ravipriya was appointed the Customs Director-General (www.ft.lk/front-page/Maj-Gen-Vijitha-Ravipriya-appointed-Customs-DG/44-696105). As the officer leading Task Force 8 during the final offence, Major General Ravipriya's Task Force was present during the attacks on the Putumattalan hospital and the United Nations hub (Report of the OHCHR Investigation on Sri Lanka, September 2015, paras 119 and 840).

101 Major General (Rtd.) G.A. Chandrasiri was appointed Civil Aviation Authority Chairman (www.ft.lk/business/Chandrasiri-appointed-Civil-Aviation-Authority-Chairman/34-691866) and later as the Non-Executive Director to the Board of Bank of Ceylon (www.ft.lk/front-page/Retd-Major-General-Chandrasiri-appointed-to-BOC-Board/44-711771). General (Rtd.) R.M.D. Ratnayake was appointed as Chairman of Ports Authority (www.slpa.lk/port-colombo/profile).

102 Extraordinary Gazette No. 2205/15 issued on 11 December 2020 available at: http://documents.gov.lk/files/egz/2020/12/2205-15_E.pdf; Extraordinary Gazette No. 2206/14 issued on 16 December 2020 available at: http://documents.gov.lk/files/egz/2020/12/2206-14_E.pdf

103 Extraordinary Gazette No. 2178/18 issued on 2 June 2020 available at: http://documents.gov.lk/files/egz/2020/6/2178-18_E.pdf

104 The military here includes members from military intelligence.

105 Newswire, *President requests everyone not to pressure him to change appointments made recently*, 2 September 2020, www.newswire.lk/2020/09/02/president-requests-everyone-not-to-pressure-him-to-change-appointments-made-recently/

B. COVID-19: A COVER FOR GREATER CONTROL AND REPRESSION OF DISSENT

With COVID-19 beginning to spread globally, Sri Lanka went into a state of lockdown and "quarantine curfews" in March 2020 in order to prevent a mass-scale outbreak of the virus within the community. As part of the government's response, authorities issued several new regulations limiting human rights in order to protect public health, including restrictions to the right to freedom of expression intended to curb the spread of "fake news" or misinformation.

On 1 April 2020, Acting Inspector General of Police (IGP) C.D. Wickramarathna instructed the Criminal Investigations Division (CID) and the police to take legal action against those who publish posts on social media criticizing government officials and obstructing their duties.[106] After this announcement, the Human Rights Commission of Sri Lanka expressed the following concerns:

> ***"The warning issued by the Police Media Division letter to media institutions that legal action would be taken against those who criticize officials is viewed with deep concern by the Commission as it is bound to have a serious chilling effect on people's freedom of expression. The right to comment on, and indeed criticize, the performance of public officials or of anyone else or any policy is a fundamental aspect of a democratic society. It is through criticism and commentary that we improve governance and strengthen democracy. This principle has been firmly established by a series of authoritative judgments of the Supreme Court of Sri Lanka."[107]***

Within the first month of lockdown, by 17 April 2020, at least 17 people had been arrested for "spreading misinformation and false information" during the government's COVID-19 response operations.[108] The arrests included university student Tharindu Avishka, who was reportedly arrested for allegedly making false claims on his Facebook account that the hospital affiliated to the Kotalawala Defense University had been reserved as a coronavirus quarantine centre for VIPs.[109] In another case, the police also raided the home of a university student in Maharagama following allegations that he criticized on his Facebook account the appointment of Basil Rajapaksa to head the Presidential Task Force on COVID-19.[110] In another instance, a woman was arrested for reportedly claiming on Facebook that President Gotabaya Rajapaksa was "infected with the coronavirus".[111] In the eastern town of

106 Daily Mirror, *Strict action against those criticise state officials on social media*, 1 April 2020, www.dailymirror.lk/breaking_news/Strict-action-against-those-criticise-state-officials-on-social-media/108-186028. Original instructions in Sinhala available at: https://twitter.com/rukitweets/status/1245987392189640712?s=20

107 Letter from the Human Rights Commission of Sri Lanka to the Acting Inspector General of Police: Limiting freedom of expression in a democracy: The need to strike a lawful balance, 25 April 2020, www.hrcsl.lk/wp-content/uploads/2020/02/Letter-to-IGP-Freedom-of-Expression.pdf

108 Ceylon Today, *50-year-old woman arrested for spreading fake news*, 17 April 2020, https://ceylontoday.lk/news-more/13941

109 World Socialist Web Site, *Sri Lanka government intensifies crackdown on social media*, 9 April 2020, www.wsws.org/en/articles/2020/04/09/medi-a09.html

110 World Socialist Web Site, *Sri Lanka government intensifies crackdown on social media*, 9 April 2020, www.wsws.org/en/articles/2020/04/09/medi-a09.html

111 World Socialist Web Site, *Sri Lanka government intensifies crackdown on social media*, 9 April 2020, www.wsws.org/en/articles/2020/04/09/medi-a09.html

Uppuveli in Trincomalee, a youth was arrested by the police on claims that he criticized the area's divisional secretariat for injustices that occurred during the coronavirus eradication and quarantine programme on his Facebook profile.[112]

Noting a concerning proclivity to make arrests of persons critical of the government's COVID-19 response under the guise of "spreading misinformation", the Human Rights Commission recommended that the police reviews the legal bases for these arrests and to ensure that any future arrests are strictly within the law.[113] The Commission added:

> ***"If misinformation which has a negative impact on public order and public health is to be curbed, there must be a sound legal basis for action taken by law enforcement authorities. Also, a careful differentiation must be made between genuine mistakes, statements made in good faith or the public interest (such as by whistle blowers) and those statements that are intentionally calculated to cause mischief."[114]***

According to international human rights law, any restrictions placed on the right to freedom of expression must be provided by law and must be necessary and proportionate to secure one of the limited legitimate aims allowed under international law. The UN Human Rights Committee has held that penalizing a media outlet, publisher or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of the right to freedom of expression.[115]

As such, the instructions from the Acting IGP to arrest individuals criticizing government officials is a violation of freedom of expression. While public health may be invoked as a ground for limiting the right to freedom of expression in order to allow a state to take measures dealing with a serious threat to the health of the population, blanket prohibitions on the dissemination of information, based on vague and ambiguous concepts such as "false news" or "spreading misinformation", are incompatible with international human rights law and standards. International law does not permit general prohibitions of expressions of an erroneous opinion or an incorrect interpretation of events.[116]

Furthermore, the police sought to prevent protests and other public gatherings during the COVID-19 outbreak. Since coming out of lockdown in most areas of the country in May 2020, Sri Lankan authorities issued guidelines on public gatherings.[117] While strongly discouraging public meetings, they

112 World Socialist Web Site, *Sri Lanka government intensifies crackdown on social media*, 9 April 2020, www.wsws.org/en/articles/2020/04/09/medi-a09.html

113 Letter from the Human Rights Commission of Sri Lanka to the Acting Inspector General of Police: Limiting freedom of expression in a democracy: The need to strike a lawful balance, 25 April 2020, www.hrcsl.lk/wp-content/uploads/2020/02/Letter-to-IGP-Freedom-of-Expression.pdf

114 Letter from the Human Rights Commission of Sri Lanka to the Acting Inspector General of Police: Limiting freedom of expression in a democracy: The need to strike a lawful balance, 25 April 2020, www.hrcsl.lk/wp-content/uploads/2020/02/Letter-to-IGP-Freedom-of-Expression.pdf

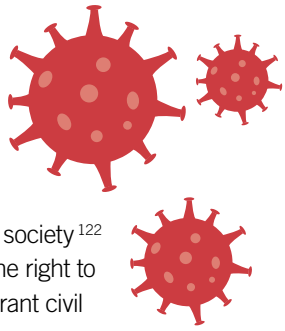
115 UN Human Rights Committee General Comment No. 34, para. 42

116 UN Human Rights Committee General Comment No. 34, para. 49

117 Newswire, *Health Ministry new guidelines for weddings, funerals, places of worship & public meetings*, 27 May 2020, www.newswire.lk/2020/05/27/heath-ministry-new-guidelines-for-weddings-funerals-places-of-worship-public-meetings/

issued instructions around how they must be conducted in the event such meetings were considered essential, including for example physical distancing, the use of face masks, etc.[118]

On 9 June 2020, the police disrupted two anti-racist protests organized by the Frontline Socialist Party (FSP) in solidarity with Black Lives Matter after the police killed George Floyd in the USA. The police obtained an order by the Colombo Fort Magistrate on 8 June 2020 preventing the protest near or in the vicinity of the US embassy in Colombo citing COVID-19 health regulations.[119] After changing the location, the organizers went ahead with the protests in two different locations: one approximately 300m away from the embassy and the other in a different location altogether with the intention to respect the court's order not to hold the protest in the vicinity of the US embassy. Despite the protestors abiding by health guidelines, practising physical distancing while abiding by the court order, the police arrested more than 53 protestors.[120]



The police put those arrested at higher risk as they were brutally tossed into a packed vehicle where keeping physical distancing was practically impossible.[121] Almost eight months after the event, the police have not charged any of the protestors and the case remains at the investigation stage. The next court date is scheduled for March 2021.

The law enforcement's reaction to the protest sparked wide condemnation among civil society[122] who feared that the dispersal and arrest of peaceful protesters was an indication that the right to freedom of peaceful assembly and the space for dissent and protest for Sri Lanka's vibrant civil society was further shrinking.

Just a month later and citing again concerns around the pandemic, on 9 July 2020 the police attempted to obstruct a memorial event commemorating victims of the Navalay church bombing. In 1995, hundreds of civilians were allegedly killed by the Sri Lankan Air Force when they bombed around Navalay, in Jaffna, where internally displaced Tamils were seeking shelter.[123] Even after the court denied the police's request for an interim order to ban the commemoration, the police went ahead to disperse and obstruct the protest.[124]

Since then, the police have repeatedly tried to obstruct peaceful protests organized by families of people who were forcibly disappeared. Most recently, the police obstructed protests held in Batticaloa in the eastern province to mark the International Day of the Victims of Enforced Disappearances.[125] The police sought an interim order from magistrates against the protests, citing, among other reasons, COVID-19 as a reason for the protests to be stopped.

Activist Ruki Fernando spoke of another instance where the pandemic was cited as a reason to restrict gatherings.

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118 Newswire, *Health Ministry new guidelines for weddings, funerals, places of worship & public meetings*, 27 May 2020, www.newswire.lk/2020/05/27/heath-ministry-new-guidelines-for-weddings-funerals-places-of-worship-public-meetings/

119 Newswire, *Police obtain court order against FSPs "I can't breathe"* protest against US, 8 June 2020, www.newswire.lk/2020/06/08/police-obtain-court-order-against-fsps-i-cant-breathe-protest-against-us/

120 The Hindu, *Concern over "police brutality" in Sri Lanka*, 10 June 2020, www.thehindu.com/news/international/concern-over-police-brutality-in-sri-lanka/article31798486.ece

121 Video footage available at: https://twitter.com/Welikumbura/status/1270365827603275776?s=20

122 The Diplomat, *Sri Lanka cracks down on Black Lives Matter solidarity protest*, 11 June 2020, https://thediplomat.com/2020/06/sri-lanka-cracks-down-on-black-lives-matter-solidarity-protest/

123 Groundviews, *Navaly church bombing – 25 years on*, 7 July 2020, https://groundviews.org/2020/07/07/navaly-church-bombing-25-years-on/

124 Tamil Guardian, *Sri Lankan police push back mourners at Navaly church bombing remembrance*, 9 July 2020, www.tamilguardian.com/content/sri-lankan-police-push-back-mourners-navaly-church-bombing-remembrance

125 Groundviews, *Disappearances in Sri Lanka: Struggles by families and reprisals*, 2 September 2020, https://groundviews.org/2020/09/02/sinhalese-tamils-and-muslims-their-quest-is-the-same/?fbclid=IwAR0wmmg3Dje0UTYbeWTgIO9sy9tBLa_9U4olZhzERCuSiXIcCAg3loFXR-o

> ***"A discussion on the 20th amendment to the Constitution was organized in October at a Church compound in Colombo between a small group, but it had to be postponed due to subtle pressure and intimidation exerted by the Police on the priests hosting and organising the gathering there were calls and visits. The Police cited COVID-19, but at the time there were no public restrictions and gatherings and events were going on in other places of religious worship."[126]***

The Sri Lankan authorities acted selectively in applying restrictions on public gatherings. On 19 May 2020, the government of Sri Lanka marked "National Heroes' Day" with many state officials attending the ceremony.[127] Large gatherings were also seen at the funeral of a cabinet minister, despite a curfew being imposed in the district.[128] Sri Lanka also went ahead with parliamentary elections in August 2020.

The right to freedom of peaceful assembly is a fundamental human right, enshrined in a number of international human rights instruments, which holds particular importance in times of crisis as there is an increased need for people to jointly raise their voices in difficult times.

International human rights law stresses, however, that the right to freedom of peaceful assembly is not an absolute right and can be restricted under certain criteria and conditions, including when necessary and proportionate for the protection of public health. This means that, as a rule, there should be no blanket bans on assemblies and each assembly should be assessed on a case-by-case basis. Restrictions must only be imposed to the extent necessary and proportionate to achieve a legitimate end.

Therefore, public assemblies should be allowed to proceed as long as they are peaceful, and people take precautionary measures such as wearing masks and keeping a distance to prevent the spreading of the disease. The use of force to disperse an assembly with a view to prevent the spread of the disease will in most cases be counter-productive and dangerous, since it will lead to uncontrolled movements of people and cause disorder, therefore increasing rather than diminishing the risk of contagion.

Other peaceful acts of protest and dissent were further repressed by the government, having a disproportionate and discriminatory impact on marginalized communities. In December 2020, a wave of peaceful protests emerged across the country against the government's policy of forced cremations. Despite the World Health Organization's guidelines for the safe management of a dead body in the context of COVID-19 allowing for either burials or cremations,[129] the Sri Lankan government embarked on a policy of cremating the bodies of all those who died of or were suspected to have died of COVID-19. Muslim and other religious minorities expressed their opposition to this decision since cremating bodies goes against their religious practices. In protest, people tied white cloths near the entrance to the crematorium in Colombo 8 and other public spaces, but these were reportedly removed

126 Amnesty International interview with Ruki Fernando, 26 November 2020

127 Video footage of National War Heroes' Day Commemoration Ceremony, 19 May 2020, www.youtube.com/watch?v=Qt9JbZKkAp8

128 Newswire, *WATCH: Huge crowds gather in Kotagala to pay last respects to Arumugan Thondaman, despite curfew*, 30 May 2020, www.newswire.lk/2020/05/30/watch-massive-crowd-in-kotagala-to-pay-last-respect-to-former-minister/

129 Amnesty International, *Forced cremations in Sri Lanka*, 10 December 2020, www.amnesty.org/en/latest/news/2020/12/forced-cremations-in-sri-lanka/; Amnesty International, Sri Lanka: Religious minorities must have their final rites respected, 3 April 2020, www.amnesty.org/en/latest/news/2020/04/sri-lanka-religious-minorities-must-have-their-final-rites-respected/

by the police and state intelligence on consecutive days.[130] Similar incidents were reported around the country,[131] as the government was unwilling to permit this peaceful protest to continue unabated.

C. MISUSE OF LEGAL INSTRUMENTS AND PROCESSES

Amnesty International has noted an increased misuse of legal instruments and processes to arrest and detain critical voices since late 2019. This includes the use of British-era legislation that was seldom used until late 2019 and provisions of the ICCPR Act that was introduced in 2007 to give effect to the ICCPR.

In a case cited previously, for instance, days after the presidential elections, a local Swiss embassy staffer alleged that she was detained by a group of unknown men and held against her will after she processed a visa for a CID officer Nishantha Silva.[132] She later accused those men of sexual assault to obtain information about the type of visa she processed.[133] Nishantha Silva led investigations into a number of human rights cases during the previous government, some of them implicating members of the Rajapaksa family or senior military officers. Afraid of his fate under the new government, Silva fled the country soon after the new President was sworn in.

AMNESTY INTERNATIONAL HAS NOTED AN INCREASED

MISUSE OF LEGAL INSTRUMENTS AND PROCESSES **TO ARREST AND DETAIN CRITICAL VOICES SINCE LATE 2019**

After the Swiss embassy staffer was ordered by court to make a formal complaint about the incident to the CID,[134] instead of carrying out an effective investigation into the incident, Sri Lankan authorities arrested and detained the Swiss embassy staffer[135] on the basis of Sections 120 and 190 of the Penal Code, and under section 32 (1) (a) of the Code of Criminal Procedure Act.[136] She has not been charged to date.

130 See for example tweet by former MP Ali Zahir Moulana and civil society member available at: https://twitter.com/alizmoulana/status/1338382914438922244?s=20 and https://twitter.com/Amaliniii/status/1340882447643250690?s=20
131 See for example tweet by civil society member: https://twitter.com/mohadsha/status/1339848963864879105?s=20
132 BBC, *Sri Lankan worker at Swiss embassy arrested over kidnap claim*, 16 December 2019, www.bbc.com/news/world-asia-50815439
133 BBC, *Sri Lankan worker at Swiss embassy arrested over kidnap claim*, 16 December 2019, www.bbc.com/news/world-asia-50815439
134 Swiss embassy staffer ordered to provide a statement news item: www.youtube.com/watch?v=UXIZal68kgw
135 The Hindu, *Colombo-based Swiss embassy staffer arrested*, 16 December 2019, www.thehindu.com/news/international/colombo-based-swiss-staffer-arrested/article30322817.ece
136 Daily FT, *Swiss Embassy employee given bail*, 31 December 2019, www.ft.lk/news/Swiss-Embassy-employee-given-bail/56-692692

Section 120 of the Penal Code deals with exciting or attempting to excite disaffection against the president or the government.[137] However, in 2009, Supreme Court Judge Gooneratne held that the Penal Code provision protects the freedom of expression.[138]

While the Supreme Court has been clear that the application of Section 120 of the Penal Code should not be used to abuse or suppress the right to freedom of expression, even threatening those who express dissent with prosecution and dragging her into lengthy, public, court processes is part of the larger trend of using legal provisions as tools for oppression.

The domestic ICCPR Act has been used in similar fashion as Section 120 of the Penal Code in the past against many critical voices, including human rights defenders, writers, and social media users.

The ICCPR Act, which introduces the ICCPR into domestic legislation, has been another legal provision used to silence and repress critical voices. In particular, Section 3(1) that prohibits advocacy of hatred that constitutes incitement to discrimination, violence or hostility has been misused to suppress the right to freedom of expression. The ICCPR Act fails to mention that the offence must be read in light of the right to free expression under Article 14 of the Constitution and Article 19 of the ICCPR. The Human Rights Commission's legal analysis of the scope of Section 3 says that it "is not a standalone provision but rather should be read in congruity with Freedom of Expression as guaranteed under the Constitution of Sri Lanka".[139] Advocacy of hatred is more than just the expression of ideas or opinions that are hateful towards members of a particular group, it requires a clear showing of intent to incite others to discriminate, be hostile toward, or commit violence against the group in question. When the expression fails to meet this test, even if it is shocking, offensive, or disturbing, it should be protected by the state.

The ICCPR Act was enacted to introduce into domestic legislation the obligations that Sri Lanka committed to abide by after ratifying the human rights treaty. Ironically, the Sri Lankan authorities are using it instead as a tool of repression.[140]

The ICCPR Act was enacted to introduce into domestic legislation the obligations that Sri Lanka committed to abide by after ratifying the human rights treaty. Ironically, the Sri Lankan authorities are using it instead as a tool of repression.

137 Section 120 of the Penal Code reads: "Whoever by words, either spoken or intended to be read, or by signs; or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the President or to the Government of the Republic, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the People of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished with simple imprisonment for a term which may extend to two years."

138 In Supreme Court case SC/FR/768/2009, "The Constitutional guaranteed freedom of speech and expression would not be negated by Section 120 of the Penal Code. Provision of Section 120 of the Penal code and its explanation contained therein guarantee freedom of expression and speech, and the explanation to the section no doubt fortify this position in great measure. Whatever comments and strongly used words against the government which does not excite feelings and cause public disorder by acts of violence cannot be a basis to prosecute a person under Section 120 of the Penal Code… To cause any annoyance or embarrassment to a Head of State or the Government will not form the basis of a prosecution under Section 120 of the Penal Code. Essence of Section 120 is whether the words in question incite the People to commit acts of violence and disorder and not whether the words are defamatory or not… Merely being critical of the Government and its democracy would not constitute an offence under Section 120… To be critical of former President's Government or for that reason of any Government is a right that should be enjoyed by any person in a country committed to preserve democracy, and to protect the basic principles and true nature, scope and extent of fundamental rights guaranteed by our Constitution." Available at: www.supremecourt.lk/images/documents/sc_fr_768_2009.pdf

139 The Human Rights Commission of Sri Lanka (HRCSL) issued an analysis of the scope of Section 3 of the domestic Act in order for law enforcement authorities to understand its application. See more at: www.hrcsl.lk/wp-content/uploads/2020/02/LEGAL-ANALYSIS-OF-THE-SCOPE-OF-SECTION-3-OF-THE-ICCPR-ACT-NO.56-OF-2007-_-English.pdf

140 Civicus, *Misuse of ICCPR Act and judicial system to stifle freedom of expression in Sri Lanka*, 5 July 2019, https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/

CASE: RAMZY RAZEEK ARRESTED FOR A FACEBOOK POST

Ramzy Razeek is a retired government official from Katugastota, in central Sri Lanka, who regularly uses social media to comment on social and political affairs.[141] His posts on Facebook advocate for inter-faith harmony, equality, justice and anti-racism. Razeek suffered a backlash for a post on 2 April 2020, when he called for an ideological jihad (ideological struggle), using the pen and keyboard as weapons, against the government's policy of forced cremations in the context of COVID-19.[142] Following the post, Razeek received multiple death threats and made a formal complaint to the IGP. In a post on 3 April 2020, Razeek announced that he would be silent on Facebook after his eldest daughter was shocked to see the nasty feedback he received for his Facebook post by unknown people.[143]

On 9 April, the CID arrested Razeek under the ICCPR Act and the Computer Crimes Act but they failed to investigate the death threats against Razeek or to provide him with any sort of protection.

Razeek was detained for more than five months without charge or proper access to a lawyer and medical care.[144] He was finally released on bail on 17 September 2020,[145] after having received poor medical care for a fractured arm following a fall while in custody and having to have half of one of his toes amputated due to an infection.[146] Although released, the case against Razeek remains open and he still faces the threat of arrest and formal charges being brought against him.

Provisions of the ICCPR Act were also used as a basis for arrest in criminal cases initiated under the previous administration. Shakthika Sathkumara, an award-winning Sri Lankan writer, was arrested on 1 April 2019 for writing and sharing on his Facebook profile a fictional short story called "Ardha". The story is about Buddhist monks, and hints at homosexuality and child sexual abuse in Buddhist temples.[147] Following a police complaint regarding the story, he was arrested on the basis of Section 3(1) of the ICCPR Act[148] and Section 291(B) of the Penal Code of Sri Lanka,[149] dealing with propagating hatred and inciting racial or religious violence. Amnesty International declared Sathkumara a prisoner of conscience and called for him to be released immediately and unconditionally and the criminal investigation and any pending charges against him to be dropped.[150] In August 2019, Sathkumara was granted bail for two sureties amounting to Rs. 200,000, on the condition that he reports to the Polgahawela Police Station every two weeks. Although Sathkumara is currently released on bail, he still faces the threat of arrest and further detention for charges which have yet to be formally brought

141 Amnesty International, *Sri Lanka: Health concerns for detained blogger –Ramzy Razeek*, 20 May 2020, www.amnesty.org/download/Documents/ASA3723572020ENGLISH.pdf

142 See Translation of Razeek's post at: https://groundviews.org/2020/05/03/freedom-of-expression-vs-hate-speech-fake-and-misleading-news/. Original here: www.facebook.com/ramzy.razeek.5/posts/3367204646642916

143 Facebook post here: www.facebook.com/ramzy.razeek.5/posts/3369814303048617

144 Amnesty International, *Sri Lanka: Health concerns for detained blogger – Ramzy Razeek*, 20 May 2020, www.amnesty.org/download/Documents/ASA3723572020ENGLISH.pdf

145 See for example https://twitter.com/amnestysasia/status/1306491406081339394?s=20

146 Update on Razeek available at: www.facebook.com/1566553880058866/posts/3267409956639908/

147 Amnesty International, *Sri Lanka: Writer faces up to 10 years jail for story: –Shakthika Sathkumara*, 29 July 2019, www.amnesty.org/en/documents/asa37/0800/2019/en/

148 The ICCPR Act available at: www.lawnet.gov.lk/wp-content/uploads/2016/12/INTERNATIONAL-COVENANT-ON-CIVIL-AND-POLITICAL-RIGHTS-ICCPR-ACT-NO-56-OF-2007.pdf

149 The Penal Code available at: www.lawnet.gov.lk/penal-code-consolidated-2/

150 Amnesty International, *Sri Lanka: Writer faces up to 10 years jail for story: –Shakthika Sathkumara*, 29 July 2019, www.amnesty.org/en/documents/asa37/0800/2019/en/; Amnesty International Letter to Secretary Pompeo regarding his Oct. 27 visit to Sri Lanka, 19 October 2020, www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-letter-pompeo-visit-sri-lanka-oct27/

against him – a means through which his harassment continues to date.[151] All charges that stem directly from the exercise of Sathkumara's right to freedom of expression must be dropped.

Recent reports also indicate that Ahnaf Jazeem, a 25-year-old Muslim poet, was arrested by authorities using the draconian Prevention of Terrorism Act in May 2020 for a collection of poems he published under the title "Navarasam".[152] Sinhalese-speaking law enforcement officers have said that the poems written in Tamil contain "extremist" messages.[153] Amnesty International has reviewed the poems and have found that his writings generally speak against violence and the use of weapons. Ahnaf, who has been in custody for over seven months, has had no legal representation since his arrest.[154]

D. LEGAL REFORM: AMENDING LAWS SUITABLE FOR REPRESSION

Legal reforms have so far played a key role in the government's attempt to consolidate its power and limit the space for dissent.

On 2 September 2020, the government gazetted the 20th amendment bill to the Constitution,[155] which was later passed by Parliament in October.[156] The amendment introduced significant changes to the powers of parliament and the President, and has significant effects on the independence of commissions and the judiciary.

Among other changes, the amendment replaces the Constitutional Council constituted by the 19th amendment – introduced by the previous administration – with the Parliamentary Council from the repealed 18th amendment.[157] By way of the amendment, the President will no longer be required to appoint those nominated by the Council, instead the President is only required to seek the observations of the Parliamentary Council. The Constitutional Council was intended to serve as a check on key appointments to independent commissions such as the Human Rights Commission and to the appointments of judges of the Supreme Court and Court of Appeal, the Attorney General and the Inspector General of Police.[158] The amendment therefore effectively removes important checks on appointments to institutions that could have acted as safeguard against abuse or as recourse for violations of human rights.

Lawyers and former members of the Human Rights Commission have expressed concerns that the amendment would significantly weaken autonomous institutions of Sri Lanka and hamper the independence of the judiciary. Prior to the passage of the amendment, a former member of the Sri Lanka Human Rights Commission raised concerns:

> ***"The amendment therefore effectively removes important checks on appointments to institutions that could have acted as safeguard against abuse or as recourse for violations of human rights."***

151 Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April-1 May 2020, www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_8_Advance_Edited_Version.pdf

152 DailyFT, *Poetic injustice: Another writer languishes in prison under PTA*, 14 December 2020, www.ft.lk/news/Poetic-injustice-Another-writer-languishes-in-prison-under-PTA/56-710172

153 Daily FT, *Arrest of Mannar poet under PTA: Academics, writers and activists cry foul*, 6 January 2021, www.ft.lk/news/Arrest-of-Mannar-poet-under-PTA-Academics-writers-and-activists-cry-foul/56-711243

154 Daily FT, *Arrest of Mannar poet under PTA: Academics, writers and activists cry foul*, 6 January 2021, www.ft.lk/news/Arrest-of-Mannar-poet-under-PTA-Academics-writers-and-activists-cry-foul/56-711243

155 20th Amendment bill to the Sri Lankan Constitution available at: http://documents.gov.lk/files/bill/2020/9/27-2020_E.pdf

156 20th Amendment act to the Sri Lankan Constitution available at: http://documents.gov.lk/files/act/2020/10/00-2020_E.pdf

157 Centre for Policy Alternatives, A *brief Q and A on the proposed 20th Amendment to the Constitution*, 17 September 2020, www.cpalanka.org/a-brief-q-and-a-on-the-proposed-20th-amendment-to-the-constitution/

158 Centre for Policy Alternatives, *A brief Q and A on the proposed 20th Amendment to the Constitution*, 17 September 2020, www.cpalanka.org/a-brief-q-and-a-on-the-proposed-20th-amendment-to-the-constitution/

> ***"If the 20th amendment is passed, the Human Rights Commission of Sri Lanka will immediately be in violation of one of the core Paris Principles on the independence of the process of appointment. This means that it will likely be downgraded to B status by GANHRI, because that is one of the main reasons due to which the Commission was downgraded to B status in 2007."[159]***

The amendment also reduces the window for pre-enactment judicial review of laws from two weeks to one.[160] This is concerning as Sri Lanka has no system for post-enactment review of laws.

The UN High Commissioner for Human Rights echoed similar concerns at the 45th UNHRC session[161] in September 2020, although the Sri Lankan delegation responded to the High Commissioner describing her comments on the 20th amendment as "unwarranted and pre-judgmental, [and] based on presumption".[162]

Multiple other law reform initiatives were announced early in 2020 before the general elections, at a time when the opposition still held the parliamentary majority.

In January 2020, it was reported in the media that the Ministry of Defence would propose new laws to stop the publication of defamatory posts and comments on social media and propose a mechanism to immediately remove ethnically and religiously sensitive posts that would otherwise spread hatred via social media.[163]

In November 2020, the Minister for Media announced that a mechanism for the regulation of local websites would be implemented within two weeks.[164] Reportedly, a ministerial consultative committee had cited Singapore's Infocomm Media Development Authority Act and the Protection from Online Falsehoods and Manipulation Act as legal frameworks that would be emulated for the new regulations to curb reporting and content that spread falsehoods and incite racism.[165]

The history of using laws to curtail the right to freedom of expression in Sri Lanka, especially against minority communities, has increased the concern of civil society organizations over these two pieces of legislation. Given Sri Lankan law enforcement's misapplication of laws without due regard to guarantees of freedom of expression, and the disproportionate targeting of minorities, proposals for new media regulations are worrying.

159 Amnesty International interview with former member of the Human Rights Commission of Sri Lanka, Ambika Satkunanadan, 10 September 2020

160 Article 13 (1) of the 20th amendment to the Sri Lankan Constitution

161 Colombo Gazette, *UN Human Rights chief raises concerns on 20th Amendment*, 14 September 2020, https://colombogazette.com/2020/09/14/un-human-rights-chief-raises-concerns-on-20th-amendment/

162 Economy Next, *UN human rights chief's remarks on 20A unwarranted, Sri Lanka tells UNHRC session*, 16 September 2020, https://economynext.com/un-human-rights-chiefs-remarks-on-20a-unwarranted-sri-lanka-tells-unhrc-session-73977/

163 News First, *New laws against defamatory posts on social media – MOD*, 24 January 2020, www.newsfirst.lk/2020/01/24/new-laws-against-defamatory-posts-on-social-media-mod/

164 Daily News, *Website regulatory process soon*, 23 November 2020, www.dailynews.lk/2020/11/23/local/234196/website-regulatory-process-soon

165 Economy Next, *New S'pore-style regulatory framework for Sri Lanka websites; activists concerned*, 24 November 2020, https://economynext.com/new-spore-style-regulatory-framework-for-sri-lanka-websites-activists-concerned-76270/

The current government has also indicated that it plans to amend the existing Voluntary Social Service Organisations Act (VSSO Act), which is the domestic legislation that regulates the right to association and establishes the process for the registration and supervision of NGOs.[166] In August 2020, at a meeting with a group of local civil society organizations, the Director General of the NGO Secretariat reportedly indicated that the intended changes would be in line with laws in India regulating NGOs.[167] He further expressed the need for NGOs to be more regulated through registration, monitoring and evaluation.

The NGO Secretariat is an institution currently under the State Ministry for National Security, Home Affairs and Disaster Management.[168] The ministry has a stated special priority to strengthen regulation of NGOs.[169] Previous attempts to pass regulations on NGOs have faced resistance from civil society due to the restrictions they place on the right to association,[170] and as flagged previously, the attempt would have granted the NGO Secretariat excessive powers to regulate NGOs in a manner inconsistent with international law.

In addition to attempts to amend the VSSO Act, the government has further shown clear signs of increasing its control over NGOs, including attempts to control and dictate the type of work and activities that NGOs can and cannot do, while monitoring them constantly. In February 2020, the Mullaitivu District Secretariat issued a letter to all heads of organizations of NGOs based in the Mullaitivu district, including international organizations.[171] The letter specified that the District Secretariat observed that approximately 90% of the organizations were engaged only in software programmes while there is a demand for physical infrastructure development. It requested the organizations "to minimize the software programme such as women empowerment programme, child right programme, training programme to youth, human rights programme, formation & strengthening of the self-help groups, land rights training programme, Capacity building training programme" and increase social and economic programmes in the district, including, for example, renovation of tanks, renovation of agriculture roads, and repairing and deepening wells. It concluded by saying that any action plans that have less than 70% of social and economic programmes will not receive clearance for approval by the District Secretariat, thereby dictating the manner and activities that can be carried out by NGOs. If organizations fail to meet this criterion, the District Secretariat would impede these organizations from operating programmes in the region.

166 The new Director General of the National NGO Secretariat Raja Gunaratne at a meeting with a group of civil society members in August 2020 revealed the government's intentions to amend the VSSO Act within six months

167 Amnesty International interview with civil society member, 7 September 2020

168 Extraordinary Gazette No. 2202/25 issued on 20 November 2020 available at: http://documents.gov.lk/files/egz/2020/11/2202-25_E.pdf

169 Extraordinary Gazette No. 2202/25 issued on 20 November 2020 available at: http://documents.gov.lk/files/egz/2020/11/2202-25_E.pdf

170 Groundviews, *Crippling civic organising, mobilising and resistance through Draft Amendment to the Act on NGOs*, 22 March, 2018, https://groundviews.org/2018/03/22/crippling-civic-organising-mobilising-and-resistance-through-draft-ngo-act-amendment/

171 A copy of the letter available at: https://twitter.com/Mari_deSilva/status/1232594243107147777?s=20

VI. ASSAULT ON DISSENT

Since November 2019, a number of arrests, arbitrary detention, and other forms of harassment and intimidation by security forces, as well as threats and attacks by non-state actors against individuals or organizations who have played an active role in investigating, documenting, litigating, or reporting on human rights violations and abuses, and advocating on behalf of the victims, have been reported. Amnesty International documented many of these incidents.

The threats and attacks described below are categorized based on the type of work done by those individuals. Human rights organizations have experienced increased visits by law enforcement officers after the change of government as a form of harassment and intimidation. Journalists too have been interrogated for their reporting, and media organizations have been raided by law enforcement authorities. Lawyers have faced intimidation for their professional undertaking and have also faced arrest under draconian laws. A few political opponents were also targeted in the early days of the transition, including for critical statements they made during the presidential election campaign. Finally, law enforcement officers were one of the first groups that faced reprisals for the criminal investigations they conducted into cases of human rights violations, some of which were committed during the armed conflict, or cases potentially implicating the Rajapaksa family.

1. TARGETING HUMAN RIGHTS ORGANIZATIONS

Since the bombings in April 2019, law enforcement authorities have begun visiting human rights organizations, making enquiries about their work and sources of funding. What began as a practice in the north and the east, became a countrywide practice targeting a large number of civil society organizations following the change in government in 2019. These visits are perceived to be intended to harass human rights organizations, and a form of reprisal for the work undertaken by these organizations.

The context in which these visits are taking place is important. Human rights activism, both domestically and internationally, was portrayed as anti-national by the SLPP from before the party came into power in 2019. Once in power, the government has increased their surveillance and monitoring of organizations engaged in human rights work. Because of the manner in which these visits were carried out, they were perceived as further attempts at silencing dissent.

A. STIGMATIZATION AND SMEAR CAMPAIGNS

During his campaign trail for parliamentary elections in 2020, Prime Minister Rajapaksa declared that he would set up a special inquiry on NGOs that were "spreading slander against the Government for foreign currency", promising to begin investigations on how these NGOs are financed.[172] This same rhetoric was used by the government during the Rajapaksa's tenure in government between 2005-2014

172 Colombo Gazette, *Special probe to commence on non-governmental organisations*, 6 July 2020, https://colombogazette.com/2020/07/06/special-probe-to-commence-on-non-governmental-organisations/

and especially in the post-war period, to vilify and delegitimize human rights organizations.[173] During that period, civil society organizations operated under threats and severe restrictions.[174]

In May 2020, President Gotabaya Rajapaksa stated that he would not allow anyone to exert undue pressure on the country's war heroes or to harass them, referring to the armed forces who were involved in ending the armed conflict with the LTTE.[175] The President declared that he would not hesitate to withdraw Sri Lanka from any international body or organization that continuously targets the country and its "war heroes" using baseless allegations.[176] A renewed anti-NGO narrative from the most senior members in the current government is worrying for human rights organizations and the continuation of their work[177] since it delegitimizes their work, makes NGOs lose their appeal with the general population and creates an environment in which threats and attacks can foster.

A human rights defender was threatened with defamation by a member and close associate of the government after her organization criticized the promotion of a military officer. In June 2020, Yasmin Sooka, an international human rights lawyer and the Executive Director of the International Truth and Justice Project (ITJP), received a letter from Major General Suresh Sallay, Director of the State Intelligence Services of Sri Lanka (SIS), complaining about remarks made in a press release[178] that the Major General believed were "defamatory".[179] In its press release, ITJP alleged that Major General Sallay forced a Tamil doctor in custody in 2009 to give false testimony by denying him medical treatment and threatening him, and that the act constituted cruel and inhuman treatment or punishment, in violation of the Convention against Torture.[180] The letter claimed that the allegations in the press release had "resulted in parties with vested interests making attempts on the life of Major General Sallay", adding that the remarks "had caused a significant damage to the Major General's character and reputation which the Major General has valued at Sri Lankan Rupees One Billion". The Major General demanded that Sooka and ITJP pay him for the damage caused to his reputation.[181] The letter notified Sooka and ITJP "to cease and desist from issuing further defamatory remarks" and that the Major General intends to seek both civil and criminal remedies, if Sooka and the ITJP fail to adhere to their demands.[182]

Yasmin Sooka was a part of the UN Secretary-General's Panel of Experts in 2010, advising on accountability for war crimes committed during the final stages of the war in Sri Lanka. After the defamation charges, more than 60 human rights organizations and 180 prominent individuals signed a letter supporting Sooka and condemning the threats and vilification from the Sri Lankan government.[183]

173 Ada Derana, *GL slams NGOs, AI can't dictate terms to us*, 28 May 2010, adaderana.lk/news.php?nid=8293

174 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf

175 Ada Derana, *I will not hesitate to withdraw from organizations targeting Sri Lanka and war heroes – President*, 19 May 2020, www.adaderana.lk/news/63857/i-will-not-hesitate-to-withdraw-from-organizations-targeting-sri-lanka-and-war-heroes-president

176 Ada Derana, *I will not hesitate to withdraw from organizations targeting Sri Lanka and war heroes – President*, 19 May 2020, www.adaderana.lk/news/63857/i-will-not-hesitate-to-withdraw-from-organizations-targeting-sri-lanka-and-war-heroes-president

177 News First, *Viyathmaga prepares for General Election 2020*, 24 February 2020, www.newsfirst.lk/2020/02/24/viyathmaga-prepares-for-general-election-2020/

178 ITJP, *Press Release: Sri Lanka – yet more problematic military promotions*, 1 June 2020, https://itjpsl.com/assets/press/English-PRESS-RELEASE-1-june-2020Suresh-Sallay-promotion.pdf

179 Daily Mirror, *Maj. Gen. Sallay to institute legal action against Yasmin Sooka and ITJP*, 15 June 2020, www.dailymirror.lk/breaking_news/Maj-Gen-Sallay-to-institute-legal-action-against-Yasmin-Sooka-and-ITJP/108-190040#.Xuckzvvap9E

180 ITJP, *Press Release: Sri Lanka – yet more problematic military promotions*, 1 June 2020, https://itjpsl.com/assets/press/English-PRESS-RELEASE-1-june-2020Suresh-Sallay-promotion.pdf

181 Daily Mirror, *Maj. Gen. Sallay to institute legal action against Yasmin Sooka and ITJP*, 15 June 2020, www.dailymirror.lk/breaking_news/Maj-Gen-Sallay-to-institute-legal-action-against-Yasmin-Sooka-and-ITJP/108-190040#.Xuckzvvap9E

182 Daily Mirror, *Maj. Gen. Sallay to institute legal action against Yasmin Sooka and ITJP*, 15 June 2020, www.dailymirror.lk/breaking_news/Maj-Gen-Sallay-to-institute-legal-action-against-Yasmin-Sooka-and-ITJP/108-190040#.Xuckzvvap9E

183 International Federation for Human Rights, Sri Lanka: Public statement regarding allegations and threats against Yasmin Sooka by the Government of Sri Lanka, 6 July 2020, www.fidh.org/en/issues/human-rights-defenders/sri-lanka-public-statement-regarding-allegations-and-threats-against

B. HARASSMENT AND OTHER FORMS OF INTIMIDATION

Following the change of government in November 2019, Amnesty International recorded an increase in the number of unscheduled visits to human rights and media organizations by the police, including the Criminal Investigation Department (CID), the Terrorism Investigation Division (TID), also known as Counter Terrorism and Terrorism Investigation Division (CTID), as well as officials with State Intelligence. These were seen as attempts to intimidate and harass them.[184]

Between May and November 2019, Amnesty International recorded at least eight visits to human rights organizations predominantly in the war-affected north and east. However, after the November 2019 elections, the visits expanded to other areas of the country. In Colombo, human rights organizations reported multiple, repeated and systematic visits by law enforcement officers making enquiries about their registration details, information on staff and even donors' bank details. Members of human rights organizations who faced these visits told police officers that some of that information had already been provided to the NGO Secretariat.

The organizations targeted for visits were all specifically working on human rights. The timing of some visits coincided with dates immediately before or after court dates of human rights cases some organizations were following in court. Some staff members were even visited in their private homes while others complained that law enforcement officers sometimes came in civilian clothing, posing their visit as an informal chat. Members of some organizations were summoned to the TID, made to wait for long periods and questioned at length.

Amnesty International recorded at least 18 visits paid to human rights organizations in the Western, Eastern and Northern provinces between November 2019-November 2020.

CASE: A JAFFNA-BASED HUMAN RIGHTS ORGANISATION[185]

A Jaffna-based human rights organisation was visited multiple times by the TID. The visits began before the change of government, but became more frequent after the change of leadership in November 2019. In 2020 alone, the organization had three unscheduled visits.

The first visit was two days after a case hearing in which members of the armed forces were accused of enforced disappearances–a case in which the founder of the organization is appearing as counsel for. The leaders of the organization were then also summoned for an inquiry by the local "Grama Sevaka", or local authority. The District Secretariat was asked by the CID Headquarters to prepare a report on the organization.

On the day when some staff members returned to the office for the first time after the COVID-19 lockdown was lifted, law enforcement officers had paid another unscheduled visit to the organisation. The office had been closed for months before that.

As part of the campaign of harassment and intimidation against the organisation and its founder, military officers also wrote to the University Grants Commission (UGC) about the teaching position that its founding member, Kumaravadivel Guruparan, holds at the University of Jaffna.

184 Amnesty International, *Sri Lanka: Attacks on human rights organisations, media organisations and journalists in Sri Lanka*, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

185 Amnesty International interview with Chair of the board of directors, 12 August 2020

In response, the UGC held that Guruparan should not be allowed to teach and practise law at the same time and informed the University of Jaffna of this decision. As a result, Guruparan had no alternative but to resign from his post at the university.[186]

The organization is also experiencing difficulties with receiving donor money for its human rights work and has been asked by the bank to register with the NGO Secretariat (the organization is currently registered under the Companies Act) in order to access funds. Staff members believe this is due to interference by the authorities.

The way in which multiple human rights organizations have been approached by law enforcement authorities over 2020, making similar enquiries, points to a distinct intention, rationale, and modus operandi with regard to a pattern of harassment and intimidation. This form of harassment and intimidation has a chilling effect on organizations, where staff are afraid to engage in work. Staff are also then required to divert their time and resources into responding to the requests by law enforcement officials, and are forced to engage in bureaucracies to receive and access funding which has implications for their human rights work as well as their rights to freedom of association.

2. TARGETING JOURNALISTS AND MEDIA OUTLETS

Chilling episodes of attacks against journalists during 2005-2010, such as the killing in broad day light of Lasantha Wickrematunge while on his way to work in 2009, the enforced disappearance of Prageeth Eknaligoda in 2010, or the conviction of J.S. Tissainayagam under the draconian PTA, were fresh in the memory of media workers. As the new government took power in 2019, journalists feared these episodes could start happening again.

Amnesty International recorded 13 incidents of intimidation of journalists over the period of this investigation. These included attacks by non-state actors supporting the governing party, raids by police on media outlets, summons by law enforcement, smear campaigns against journalists on state and private media, and anonymous death threats. Though the incidents have not reached the level of gravity that characterized the 2010-2015 period, the organization has noticed that media personnel are resorting to self-censorship, while some journalists have already fled the country for fear of reprisals.

A. RAIDING MEDIA OUTLETS AND QUESTIONING JOURNALISTS

On 26 November 2019, only days after the presidential election, the police conducted a search of Newshub.lk, a media organization critical of the current administration, using an expired search warrant. According to media reports, the police searched the organization's electronic equipment and servers for "defamatory content" on the new President Gotabaya Rajapaksa.[187]

186 Amnesty International interview with Chair of the board of directors, 12 August 2020

187 Amnesty International, *Sri Lanka: Attacks on human rights organisations, media organisations and journalists in Sri Lanka*, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

Also in November 2019, two journalists with TheLeader.lk and Voicetube.lk were summoned to the CID without being informed of the reasons for being summoned[188] and questioned at length.[189] According to media reports,[190] one of the journalists, Thushara Witharana, now with Voicetube.lk, was questioned about an article she published on TheLeader.lk website, based on a complaint by a Sinhalese hard-line group.[191] Another employee of TheLeader.lk, Sanjay Dhanushka, was also reportedly summoned and questioned by the CID. He manages the website's video channel.[192] The Editor of Thinappuyal was also reportedly questioned by the police in November 2019 in Vavuniya in the Northern Province about the newspaper's coverage of the LTTE.[193] He was asked by plainclothes police officers to provide details of the newspaper's reporters.[194]

MEDIA PERSONNEL ARE RESORTING TO SELF-CENSORSHIP, WHILE SOME JOURNALISTS HAVE ALREADY FLED THE COUNTRY FOR FEAR OF REPRISALS.

Kanapathipillai Kumanan, a Tamil freelance journalist, described to Amnesty International how he was questioned over the phone in January 2020 by persons identifying as members of military intelligence about details he shares over social media about enforced disappearances. Since then, he asserted that he has received multiple phone calls from military intelligence over information he shares on his social media.[195]

Although journalists in the north were questioned during the previous government over their reporting,[196] the sudden spike in incidents including in Colombo just days after the new government came into power sparked alarm among civil society organizations.

188 International Federation of Journalists, *Sri Lanka: Journalists interrogated by police*, 3 December 2019, www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/press-releases/article/sri-lanka-journalists-interrogated-by-police.html

189 Amnesty International, *Sri Lanka: Attacks on human rights organisations, media organisations and journalists in Sri Lanka*, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

190 Reporters Without Borders, *Sri Lanka: Harassment of journalists surges in first days of Rajapaksa presidency*, 3 December 2019, https://rsf.org/en/news/sri-lanka-harassment-journalists-surges-first-days-rajapaksa-presidency

191 Sri Lanka Mirror, *Thushara leaves CID after giving statement*, 28 November 2019, https://srilankamirror.com/news/16391-thushara-leaves-cid-after-giving-statement

192 Reporters Without Borders, *Sri Lanka: Harassment of journalists surges in first days of Rajapaksa presidency*, 3 December 2019, https://rsf.org/en/news/sri-lanka-harassment-journalists-surges-first-days-rajapaksa-presidency

193 Reporters Without Borders, *Sri Lanka: Harassment of journalists surges in first days of Rajapaksa presidency*, 3 December 2019, https://rsf.org/en/news/sri-lanka-harassment-journalists-surges-first-days-rajapaksa-presidency

194 Reporters Without Borders, *Sri Lanka: Harassment of journalists surges in first days of Rajapaksa presidency*, 3 December 2019, https://rsf.org/en/news/sri-lanka-harassment-journalists-surges-first-days-rajapaksa-presidency

195 Amnesty International interview with Kanapathipillai Kumanan, 12 November 2020.

196 Tamil Guardian, *Sri Lankan military admits to harassing Tamil journalist*, 11 April 2018, www.tamilguardian.com/content/sri-lankan-military-admits-harassing-tamil-journalist; Reporters Without Borders, *Tamil reporter harassed by Sri Lanka's anti-terrorism police*, 29 October 2018, https://rsf.org/en/news/tamil-reporter-harassed-sri-lankas-anti-terrorism-police; Tamil Guardian, *Tamil Guardian correspondent summoned by Sri Lankan police*, 19 April 2019, www.tamilguardian.com/content/tamil-guardian-correspondent-summoned-sri-lankan-police

CASE: INTIMIDATION OF DHARISHA BASTIANS[197]

"Stop harassing journalists. I didn't do anything extraordinary. These were investigations that investigators were pursuing anyway."[198]

Dharisha Bastians is a reputed columnist, journalist and the former editor of Sunday Observer, a state-owned weekly newspaper. She is also a contributor to The New York Times. Bastians had led journalist investigations into human rights cases allegedly involving the Rajapaksa family and the military. She also reported on cases of corruption.[199]

Warned about threats to her physical safety, she left Sri Lanka in November 2019, a few days after the presidential election. At the time she fully expected to return to Sri Lanka and resume her work.

In December 2019, the government accused Bastians of communicating with the Swiss embassy staffer who alleged that she was detained against her will in an attempt to dismiss the incident altogether as a conspiracy and a fabrication to bring the new government into disrepute.[200] Media aligned with the ruling party carried out a vicious smear campaign against Bastians and her family.[201] She was also attacked on social media and labelled as a traitor and criminal.[202] Fearing that there would be reprisals for her work as a journalist, and concerned for her safety, Bastians has been unable to return to Sri Lanka.

In a statement released in June 2020,[203] Bastians revealed how the CID investigating the incident involving the Swiss embassy staffer attempted to seize her laptop without a warrant on two occasions. It was only on the third occasion that they had come with a formal search warrant. Bastians further revealed that the CID scrutinized and publicly exposed her call logs to the media – a breach of Bastians' rights to privacy. Moreover, the state breached the protection of journalistic sources, and may have put Bastians' sources at risk.

Bastians stated that "as a journalist, I was horrified at the public exposure of my telephone records, which could seriously endanger and compromise my sources and contacts, then, now and in the future."[204]

A co-worker of Bastians at the Sunday Observer was also summoned and interrogated for hours by the CID in February 2020 over Bastians and any possible links to the incident involving the Swiss embassy staffer.[205]

197 Amnesty International interview with Dharisha Bastians, 3 September 2020
198 Amnesty International interview with Dharisha Bastians, 3 September 2020
199 Amnesty International, *Sri Lanka: End persecution of journalist Dharisha Bastians targeted for reports, defense of human rights*, 24 June 2020, www.amnesty.org/en/documents/asa37/2568/2020/en/
200 The Hindu, *Sri Lanka CID seizes journalist's laptop over Swiss kidnap claim*, 16 June 2020, www.thehindu.com/news/international/sri-lanka-cid-seizes-journalists-laptop-over-swiss-kidnap-claim/article31845337.ece
201 For example, see Divaina, *How Austin Fernando paved the way for the Geneva resolution… British investigation team seeks Government's response on Tiger diaspora… Dharisha Bastians's project against Gotabaya* (translated from Sinhala article), 2 February 2020, http://divaina.com/sunday/index.php/arakshawa/13105-2020-01-31-06-12-29
202 Amnesty International, *Sri Lanka: End persecution of journalist Dharisha Bastians targeted for reports, defense of human rights*, 24 June 2020, www.amnesty.org/en/documents/asa37/2568/2020/en/
203 Statement by Dharisha Bastians available at: https://twitter.com/tingilye/status/1272542914522968069?s=20
204 Statement by Dharisha Bastians available at: https://twitter.com/tingilye/status/1272542914522968069?s=20
205 Colombo Gazette, *CID grills journalist over former Sunday Observer Editor*, 11 February 2020, https://colombogazette.com/2020/02/11/cid-grills-journalist-over-former-sunday-observer-editor/

> ***"There was a time when the assault on press freedom in Sri Lanka took the form of physical violence. Since 2019 the new persecution of journalists has taken a very different shape; the Government is using legal maneuvers, false charges and attacks on our integrity based on disinformation to silence journalists and end our careers"[206]***

B. THREATS AND ATTACKS BY NON-STATE ACTORS

Since November 2019, Amnesty International also recorded a number of threats and attacks against journalists by non-state actors and parties aligned with the government.

According to media reports,[207] on 6 December 2019, a journalist attached to a local daily, Lankadeepa, and his family were physically assaulted by unknown individuals in Aluthgama, in the south of Sri Lanka. They allegedly demanded that the journalist stops reporting on alleged illegal manufacture and trade in toddy.[208]

According to reports, on 10 December 2019, Maduka Thaksala Fernando, the former head of Lake House (also known as Associated Newspapers of Ceylon Ltd.) new media division, was assaulted by a group of individuals with ties to the ruling political party. He was allegedly threatened not to return to the media house, which is owned by the government of Sri Lanka.[209] In an interview given to the media he said: "They held me by my neck and dragged me out of the Resa newspaper editorial where I was at the time they came searching for me… Then they took me near a corridor towards the press, which is usually deserted, and pushed me to the wall while holding onto my neck and said I have no right to step into the place ever again and assaulted me. I was scared and I wanted to get out of there, so I didn't argue with them because there were about 10 to 15 people and I was alone."[210]

In January 2020, a group of journalists were threatened with death in leaflets[211] left by an unknown group at the Batticaloa Press Club[212] that read, "Beware! Beware! These are the reporters who received money from the Tigers abroad and acting against the state. We will soon execute them."[213] The leaflets left many of the journalists in fear for their lives.

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206 Amnesty International interview with Dharisha Bastians, 3 September 2020

207 Anadolu Agency, *Sri Lankan journalists fear new gov't silencing dissent*, 11 December 2019, www.aa.com.tr/en/asia-pacific/sri-lankan-journalists-fear-new-gov-t-silencing-dissent/1670591; The Sunday Times, *Lankadeepa journalist who exposed illegal toddy trade attacked*, 8 December 2019, www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20191208/281651076981676; see also Amnesty International, *Attacks on human rights organisations, media organisations and journalists in Sri Lanka*, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

208 Amnesty International, *Attacks on human rights organisations, media organisations and journalists in Sri Lanka*, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

209 Colombo Telegraph, *President Gota's goons assault Lake House new media head*, 10 December 2019, www.colombotelegraph.com/index.php/president-gotas-goons-assault-lake-house-new-media-head/; Committee to Protect Journalists, *Journalists beaten by unidentified groups, interrogated by police in Sri Lanka*, 16 December 2019, https://cpj.org/2019/12/journalists-beaten-by-unidentified-groups-interrog/; Amnesty International, Attacks on human rights organisations, media organisations and journalists in Sri Lanka, 16 January 2020, www.amnesty.org/en/documents/asa37/1678/2020/en/

210 Anadolu Agency, *Sri Lankan journalists fear new gov't silencing dissent*, 11 December 2019, www.aa.com.tr/en/asia-pacific/sri-lankan-journalists-fear-new-gov-t-silencing-dissent/1670591; Newshub.lk, *Media repression returns: Lake House ex-new media chief assaulted (video)*, 11 December 2019, https://newshub.lk/en/2019/12/11/media-repression-returns-lake-house-ex-new-media-chief-assaulted-video/

211 Photos of the leaflets available at: https://twitter.com/rukitweets/status/1220296740844318720?s=20.

212 Amnesty International, Sri Lanka: *Joint letter to President Rajapaksa on the harassment and intimidation of journalists*, 25 February 2020, www.amnesty.org/en/documents/asa37/1860/2020/en/

213 International Federation of Journalists, *Sri Lanka: Tamil journalists receive death threats*, 24 January 2020, www.ifj.org/media-centre/news/detail/category/press-releases/article/sri-lanka-tamil-journalists-receive-death-threats.html

In July 2020, the first suspect in the Welikada Prison massacre case,[214] former Officer-in-Charge of the Police Narcotic Bureau IP Neomal Rangajeewa, reportedly manhandled a journalist who had attempted to take a photograph of him.[215] He had forced the journalist to delete all photographs of him.[216] The journalist lodged a complaint with the police regarding the incident.[217] Rangajeewa reportedly apologized for the incident,[218] and the Director General of the government information department condemned the incident.[219]

In October 2020, two journalists were reportedly physically attacked by illegal loggers when they attempted to cover a story around illegal logging in the Mullaitivu district in the north.[220] The journalists, Shanmugam Thavaseelan and Kanapathipillai Kumanan, were admitted to hospital after lodging a complaint with the police. The journalists believe that the loggers enjoy political protection for their illegal activity.[221]

Prior to 2015, Sri Lanka was considered by Reporters Without Borders as one of the most dangerous countries for journalists,[222] where impunity for crimes against journalists was prevalent.[223] Journalists were killed, abducted and threatened.[224] General Comment No. 34 recalls the obligation on states parties to the ICCPR to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.[225] This requires the state taking action on any complaints of incidents of violence, threats and intimidation, as required by Article 9 (1) of the ICCPR relating to the right to security and liberty of person. To date, there is no indication that the government of Sri Lanka has taken any action on these incidents.

OBLIGATION ON STATES PARTIES TO THE ICCPR TO **ENSURE THAT PERSONS ARE PROTECTED** FROM ANY ACTS BY PRIVATE PERSONS OR ENTITIES THAT WOULD IMPAIR THE ENJOYMENT OF THE FREEDOMS OF OPINION AND EXPRESSION

214 Amnesty International, *Sri Lanka: Impunity fuels recurrence of violence*, 18 May 2019, www.amnesty.org/en/latest/news/2019/05/sri-lanka-impunity-fuels-recurrence-of-violence/

215 Newswire, *WATCH: Ex-OIC of PNB Neomal Rangajeewa accused of manhandling photojournalist*, 10 July 2020, www.newswire.lk/2020/07/10/watch-ex-oic-of-pnb-neomal-rangajeewa-accused-of-threatening/

216 Reporters Without Borders, *Sri Lanka: Journalist manhandled by notorious police inspector currently on trial*, 15 July 2020, https://rsf.org/en/news/sri-lanka-journalist-manhandled-notorious-police-inspector-currently-trial

217 DailyFT, *Manhandling of photojournalist draws condemnation*, 13 July 2020, www.ft.lk/news/Manhandling-of-photojournalist-draws-condemnation/56-703030

218 Sri Lanka Mirror, I*P Rangajeewa apologizes to photojournalist over harassment*, 11 July 2020, www.srilankamirror.com/news/18869-ip-rangajeewa-apologizes-to-photojournalist-over-harassment

219 DailyFT, *Manhandling of photojournalist draws condemnation*, 13 July 2020, www.ft.lk/news/Manhandling-of-photojournalist-draws-condemnation/56-703030

220 Journalists for Democracy, *Journalists fear for their lives after assault by illegal loggers (video)*, 13 October 2020, www.jdslanka.org/index.php/news-features/media/968-sri-lanka-journalists-fear-for-their-lives-after-assault-by-illegal-loggers; Tamil Guardian, *Tamil Guardian correspondents attacked in Mullaitivu*, 12 October 2020, www.tamilguardian.com/content/tamil-guardian-correspondents-attacked-mullaitivu

221 Amnesty International interview with Kanapathipillai Kumanan, 12 November 2020

222 "Violence silences voices of Sri Lankan journalists", The New York Times, 4 April 2009, www.nytimes.com/2009/04/05/world/asia/05lanka.html#:~:text=The%20press%20advocacy%20group%20Reporters,after%20Iraq%2C%20Somalia%20and%20Pakistan

223 "Where are the murders of journalists most likely to go unpunished?", The Guardian, 16 April 2014, www.theguardian.com/news/datablog/2014/apr/16/where-are-the-murders-of-journalists-most-likely-to-go-unpunished-iraq-syria

224 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf

225 UN Human Rights Committee General Comment No. 34, para. 7

UN Human Rights Committee General Comment No. 34 holds, *"States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress."*[226]

3. TARGETING LAWYERS

Amnesty International recorded six incidents of lawyers who were either harassed by state officials inside courtrooms or by law enforcement officers visiting lawyers' offices; were threatened by state officials who are suspects in cases; were threatened online for their work by non-state actors; or were arrested by the police on suspicion of charges under the draconian PTA.

A. THREATS, PRESSURE AND INTIMIDATION

Of the six cases recorded by Amnesty International, five involve threats, pressure, and intimidation of lawyers, by both state and non-state actors.

Some of the lawyers interviewed by Amnesty International described feeling a sense of fear in courtrooms and in their offices. Law enforcement officers have paid unscheduled visits in late 2019 and in 2020 to human rights organizations or offices of human rights lawyers representing victims of cases involving serious human rights violations implicating state officials. The practice, which began towards the end of the previous government, is continuing more intensely to date.

> ***"Several times the CID came to my office and asked whether I am working on disappearances. This was two weeks before the Presidential elections. They asked for staff details, ID numbers, project proposals, funding details... They came with a list of organisations that work on human rights. Told me the TID and CID will come visit the office again later because they have to send information to the Ministry of Defence. After elections they called and asked for information."***[227]

226 UN Human Rights Committee General Comment No. 34, para. 23
227 Amnesty International interview with lawyer from the north, 31 July 2020

CASE: INTIMIDATION OF KUMARAVADIVEL GURUPARAN[228]

Kumaravadivel Guruparan is a senior lecturer and head of the department at the University of Jaffna's Faculty of Law. In 2017, Guruparan filed habeas corpus applications on behalf of petitioners in the case of 24 Tamil youth who were forcibly disappeared by the military at Navatkuli in the Jaffna district in the north, in 1996. Although cases in relation to the incident were first filed in 2002, it was transferred to Anuradhapura, citing safety concerns for the implicated army officers, where it was eventually closed without an outcome. Explaining the delay for re-filing the petitions, the petitioners explained that *"until 2015 the security situation prevailing in the country did not inspire confidence in approaching this court. The petitioner filed this petition after the changein Government in 2015 expecting that those who approach the court for relief will not be harassed."*[229]

> ***"The UGC told me that the Department of Law would be advanced to become a Faculty and I would be made Dean if I agreed to drop the case"[230]***

Guruparan believes this is due to his decision to appear as counsel for petitioners in the Navatkuli case. State actors have historically put pressure on justice officials and intimidated lawyers in the case to block its progress. In 2018, petitioners received visits from law enforcement authorities. Two days after a case hearing in August 2019, a Jaffna-based human rights organization, of which Guruparan is a founder, was visited by the police. Guruparan believes that the visit was a subtle intimidation tactic. Since then, the organization has received multiple visits.

Guruparan resigned from the university on 16 July 2020, so that he can continue his private practice.

228 Amnesty International interview with Kumaravadivel Guruparan, 13 August 2020
229 Guruparan statement on Twitter, 12 July 2018, https://twitter.com/rkguruparan/status/1017214876773539840?s=20
230 Amnesty International interview with Kumaravadivel Guruparan, 13 August 2020

CASE: THREATS AGAINST ATTORNEY ACHALA SENEVIRATHNE[231]

"We are very suspicious; we are now wary of how we live our lives. What will happen to the cases?... What will happen to the lawyers? What will happen to the investigation files? What would have happened to the files that have passed a lot of hands?" [232]

Attorney Achala Senevirathne represents families in a case involving the enforced disappearance of 11 youth in 2008-2209 (known as "the Navy 11" case) in which senior military commanders are implicated.

In August 2018, three years after a renewed investigation was launched into the case, the CID arrested Lt. Commander Chandana Prasad Hettiarachchi, alias "Navy Sampath", as the main suspect.[233] The CID accused Chief of Defence Staff Admiral Ravindra Wijeguneratne of shielding one of the main suspects, and the court also ordered his arrest.[234]

In February 2019, former Commander of the Sri Lanka Navy, Admiral Wasantha Karannagoda, was named also as a suspect in the case, accused of having known about the enforced disappearance by naval personnel he had command responsibility over but had chosen to take no action.[235] Navy Commander Wasantha Karannagoda filed a Fundamental Rights application seeking an order against his arrest[236] and moved the Court of Appeal through a writ application to impose an interim injunction preventing the Colombo High Court Trial-At-Bar from pursuing the case against Admiral Karannagoda.[237]

Achala has been threatened with violence and sexualized abuse on social media. She has also said that the navy officials accused in the case have telephoned her from within prison and threatened her. She described how during 2018-2019 there were unmarked vehicles parked outside her house before case hearings. After several complaints to different mechanisms, there was an order made by the National Authority for the Protection of Victims of Crime and Witness in June 2019 for the police to provide Achala with security, as they assessed her case to be of high risk. Almost one and a half years later, in October 2020, the police initiated a police check-in system at her residence, which Achala described as very ad-hoc and unreliable. Achala believes this mechanism places her at more risk due to the random, unscheduled intrusions into her personal life by different policemen.

"For years there was no recourse. I am fed up of making complaints to authorities because there is no genuine, effective recourse for people like me, nowhere to go. I don't trust there is any protection." [238]

231 Amnesty International interviews with Achala Senevirathne, 11 August 2020, 11 December 2020
232 Amnesty International interviews with Achala Senevirathne, 11 August 2020, 11 December 2020
233 Centre for Policy Alternatives, *The need for accountability in Sri Lanka's criminal justice system: A glance at seven emblematic cases*, 1 March 2019, www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf
234 Centre for Policy Alternatives, *The need for accountability in Sri Lanka's criminal justice system: A glance at seven emblematic cases*, 1 March 2019, www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf
235 Sunday Observer, *WANTED: Manhunt for ex-navy chief*, 24 February 2019, www.sundayobserver.lk/2019/02/24/news/wanted-manhunt-ex-navy-chief
236 Ada Derana, *SC issues order preventing Wasantha Karannagoda's arrest*, 7 March 2019, www.adaderana.lk/news/53658/sc-issues-order-preventing-wasantha-karannagodas-arrest
237 Ceylon Today, *Court of Appeal imposes interim injunction*, 26 June 2020, https://ceylontoday.lk/news/case-against-former-navy-commander-admiral-wasantha-karannagoda-court-of-appeal-imposes-interim-injunction
238 Amnesty International interviews with Achala Senevirathne, 11 August 2020, 11 December 2020

Attempts to intimidate lawyers are not new to Sri Lanka. Amnesty International has recorded threats and other forms of intimidation in the past against prominent lawyers. These include, for example, threats against J.C. Weliamuna, Jayampathi Wickramarathne, M.A. Sumanthiran, Romesh de Silva and other lawyers.[239]

C. ARREST

Amnesty International recorded for the first time the arbitrary arrest of a lawyer who is a minority rights advocate appearing as counsel on behalf of many Muslim victims of human rights violations. This is unprecedented in Sri Lanka.

CASE: THE ARBITRARY ARREST AND DETENTION OF ATTORNEY HEJAAZ HIZBULLAH[240]

On 14 April 2020, when most of Sri Lanka was celebrating the Sinhala and Tamil New Year confined to their homes during the lockdown imposed to contain the spread of COVID-19, senior lawyer and civic and minority rights activist[241] Hejaaz Hizbullah received a phone call from authorities at the Ministry of Health. He was instructed to stay at home since he was told he may have come into contact with the coronavirus.[242] Officials from the Ministry of Health never visited, but the CID arrived and placed Hizbullah under arrest. The authorities did not inform Hizbullah of the reasons for his arrest. Before they left, the CID went inside Hizbullah's chambers and searched through case files without a warrant.

For the past five years, Hizbullah served as the lawyer for Mohamed Ibrahim. Hizbullah handled legal cases related to his business. Mohamed Ibrahim's sons, Inshaf and Ilham, were two of the seven bombers who set off six explosions across Sri Lanka on 21 April 2019, striking three churches and three five-star hotels on Easter Sunday and killing more than 250 people. The attacks were later claimed by the armed group calling itself Islamic State, but the local attackers' connection with the group remains uncertain.[243]

Hizbullah and Mohamed Ibrahim were also part of the "Save the Pearls" organization,[244] a charity that, according to Hizbullah's family, supports the education of underprivileged children, hoping to lure them away from criminal activities and the use of drugs. Mohamed Ibrahim served as the organization's treasurer as part of his wider philanthropic activities, a role he later handed over to his son Ilham, one of the bombers. Ilham was asked to step down from the role in 2016 by the organization's board, barely a few months after taking over the post. Hejaaz, a member of the board, only attended eight of its 52 meetings in five years.[245]

The authorities did not inform Hizbullah of the reasons for his arrest. Before they left, the CID went inside Hizbullah's chambers and searched through case files without a warrant.

239 Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, www.amnesty.org/download/Documents/12000/asa370032013en.pdf
240 Amnesty International interview with Hejaaz Hizbullah's family members, 16 June 2020
241 Hejaaz Hizbullah has been involved in a number of important constitutional cases including the challenge to the dissolution of Parliament during Sri Lanka's 2018 constitutional crisis. He has also represented clients in several human rights cases involving the arrest and detention of members of minority communities. He has been an outspoken voice on issues of reconciliation, co-existence and minority rights.
242 In Sri Lanka, Public Health Officers appointed by the Health Department were employed in COVID-19 containment efforts.
243 Amnesty International, *On Hejaaz Hizbullah: The latest victim of Sri Lanka's draconian Prevention of Terrorism Act*, 15 July 2020, www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/
244 More on "Save the Pearls" organization: www.facebook.com/SAVE-The-Pearls-666917720105975/
245 Amnesty International, O*n Hejaaz Hizbullah: The latest victim of Sri Lanka's draconian Prevention of Terrorism Act*, 15 July 2020, www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/

Hizbullah has been in detention for 10 months. He is accused of aiding and abetting Mohamed Ibrahim and Inshaf Ahamed to commit a terrorist attack and of engaging in activities detrimental to religious harmony.[246] Under the draconian PTA, a "Detention Order" allows for suspects to be detained without charges for up to 90 days and without being produced before a court. The Detention Order itself can be renewed for up to 18 months. Although the Detention Order must be authorized by the minister holding the portfolio of defence, the first, second and third Detention Orders issued to detain Hizbullah were authorized by the President, who at the timewas not the Minister for Defence.[247]

The police have thus far been unable to substantiate any of the allegations against Hizbullah under the PTA with credible evidence being put before a court.

Hizbullah has been a vocal critic of the government's treatment of the Muslim community that has been marginalized for several years. Under consecutive governments, Sri Lanka's minority Muslim community has come under attack, with incidents reported in Aluthgama in 2014, in Gintota in 2017, Ampara, Digana and Theldeniya in 2018, and in Minuwangoda and in the North Western province in 2019. The day before his arrest, Hizbullah joined several others in writing to the Sri Lankan President about his government's decision to ban Muslims from burying their dead, ostensibly as a precaution to manage the COVID-19 pandemic. Hizbulllah's family believes his arrest is part of a campaign of silencing dissent targeting religious minorities.

Since his arrest, Hizbullah was denied unrestricted access to counsel and his family until the Attorney General informed the court that Hizbullah will not be denied access to counsel.[248] Many international organizations have voiced their concerns for Hizbullah and the lack of safeguards and due process.[249]

Lawyers must be able to take part in their professional activities without fears of reprisals. The UN Basic Principles on the role of lawyers state that lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly. In particular, they state, lawyers have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions."[250]

Lawyers must be able to take part in their professional activities without fears of reprisals. Where lawyers are banned from teaching due to their professional work representing victims, that constitutes a violation. The UN Declaration on HRDs holds that HRDs are entitled to rights and protections for providing professionally qualified legal assistance or other advice and assistance in defence of human rights.[251]

246 Amnesty International has seen copies of the Detention Orders
247 Amnesty International has seen a copy of the Detention Order
248 Daily News, Lawyers allowed access to detained attorney, 16 December 2020, www.dailynews.lk/2020/12/16/law-order/236288/lawyers-allowed-access-detained-attorney
249 See for example *Six UN Special Rapporteurs' communication to the government of Sri Lanka*, 22 June 2020, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25347
250 UN Basic Principles on the role of lawyers, available at: www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx
251 UN Declaration on HRDs, available at: www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx

4. TARGETING POLITICAL OPPOSITION

Following the change of government in December 2019, political opponents were targeted by the new administration in a way that violated their rights to freedom of expression and association. Within a month of the new administration taking power, opposition politician and former senior minister Rajitha Senaratne was arrested on criminal allegations of fabricating evidence and later released on bail.[252] However, in May 2020, he was re-arrested after the Colombo High Court revoked the bail order.[253] By June, he was released on bail for the second time.[254] The Attorney General's department filed indictments in the Colombo High Court against the former minister for making false allegations against then presidential candidate Gotabaya Rajapaksa during a media briefing.[255] Two men who spoke at the press briefing claimed they were a victim of and a driver used in "white van" abductions. [256]

Instead of investigating the allegations of enforced disappearances, the authorities penalized those making the allegations. Sri Lanka ratified and passed domestic laws giving effect to the International Convention on the Protection of All Persons from Enforced Disappearance. As such, Sri Lanka has an international obligation to undertake an investigation into allegations of enforced disappearances and bring those responsible to justice in fair trials.

INSTEAD OF INVESTIGATING THE ALLEGATIONS OF

ENFORCED DISAPPEARANCES

THE AUTHORITIES PENALIZED THOSE MAKING THE ALLEGATIONS.

In early January 2020, former State Minister Ranjan Ramanayake,[257] a popular, vocal critic of the Rajapaksa government who posed a threat to the new government, was arrested for possessing his government-provided official firearm with an expired licence.[258] Following the search carried out at his residence, the police seized hard drives and CDs which contained recordings of Ramanayake's conversations with judges, journalists, police investigators, politicians and local celebrities.[259] According to media reports, officers from the Colombo South Crime Division were searching for material that could embarrass the former government.[260] Ramanayake is under investigation as to whether the recordings

252 News First, *Rajitha Senaratne granted bail*, 30 December 2019, www.newsfirst.lk/2019/12/30/rajitha-senaratne-granted-bail/

253 Economy Next, *Rajitha Senaratne re-arrested in White Van press conference case*, 13 May 2020, https://economynext.com/rajitha-senaratne-re-arrested-in-white-van-press-conference-case-69924/

254 Colombo Page, *Rajitha Senaratne released on bail*, 10 June 2020, www.colombopage.com/archive_20A/Jun10_1591766605CH.php

255 Colombo Page, *Court serves indictments on Rajitha and former SPC chairman over the white van press conference case*, 28 August 2020, www.colombopage.com/archive_20B/Aug28_1598598754CH.php

256 Colombo Gazette, *Indictments served on Rajitha over white van case*, 28 August 2020, https://colombogazette.com/2020/08/28/indictments-served-on-rajitha-over-white-van-case/

257 In a separate case, former Minister Ramanayake was convicted in January 2021 for contempt of court by the Supreme Court for calling the judiciary corrupt. He was sentenced to four years' rigorous imprisonment. See Al Jazeera, *Sri Lanka jails former minister for saying judges are corrupt*, 13 January 2021, www.aljazeera.com/news/2021/1/13/sri-lanka-jails-former-minister-for-saying-judges-are-corrupt

258 Colombo Page, *UNP MP Ranjan Ramanayake arrested for processing a firearm with expired license*, 4 January 2020, www.colombopage.com/archive_20A/Jan04_1578148986CH.php

259 The New Indian Express, *Sri Lanka ex-minister held over phone calls recording scandal*, 17 January 2020, www.newindianexpress.com/world/2020/jan/17/sri-lanka-ex-minister-held-over-phone-calls-recording-scandal-2090807.html

260 Colombo Page, *UNP MP Ranjan Ramanayake arrested for processing a firearm with expired license*, 4 January 2020, www.colombopage.com/archive_20A/Jan04_1578148986CH.php

were used for blackmail or other criminal activity, including whether he interfered with the judiciary.[261] The tapes, which were in the custody of the police, were leaked in parts to the media,[262] raising due process concerns and the independence of the police as the custodian of evidence.

In January 2021, President Gotabaya Rajapaksa responded to a critical speech made in parliament by opposition parliamentarian Harin Fernando MP[263] by saying that he is ready to don his former role as wartime Defence Secretary.[264] This period was known to have been brutal against government critics. The opposition criticized the President's comments and called on the police chief to ensure Fernando's protection.[265]

5. TARGETING LAW ENFORCEMENT OFFICERS

Since late 2019, a large number of police officers who were conducting criminal investigations, including into human rights abuses and crimes under international law committed during the armed conflict, were banned from travelling abroad. The former Director of the CID was also targeted for his work over the past few years seeking criminal accountability for human rights violations.

A. TRAVEL BANS

In the days following the presidential election, Nishantha Silva, a police officer from the CID who led investigations into several high-profile criminal and human rights cases, fled the country to Switzerland out of fear of reprisals.

Following the departure of Nishantha Silva, and fewer than 10 days after the new government took power, the authorities placed a travel ban on 704 CID officers.[266] The list was sent to the Immigration and Emigration Office at Colombo International Airport for their scrutiny of people attempting to leave the country without first seeking permission.[267] The measure was seen as an attempt to prevent these officers from fleeing abroad with incriminating evidence against members of the new administration, and an attempt to stop the pursuit of justice against human rights violations.

FOLLOWING THE DEPARTURE OF **NISHANTHA SILVA**, AND FEWER THAN 10 DAYS AFTER THE NEW GOVERNMENT TOOK POWER, THE AUTHORITIES PLACED

A TRAVEL BAN ON 704 CID OFFICERS.

261 The New Indian Express, *Sri Lanka ex-minister held over phone calls recording scandal*, 17 January 2020, www.newindianexpress.com/world/2020/jan/17/sri-lanka-ex-minister-held-over-phone-calls-recording-scandal-2090807.html

262 News First, *Several more voice recordings of Ranjan Ramanayake leaked*, 8 January 2020, www.newsfirst.lk/2020/01/08/several-more-voice-recordings-of-ranjan-ramanayake-leaked/

263 Speech by Harin Fernando MP on 6 January 2021, available at: www.youtube.com/watch?v=orjiDqc9Vfc

264 President Gotabaya is quoted as saying, "People and Maha Sangha (Buddhist clergy) expect from me the role played by me as the Defence Secretary, before I assumed Presidency", The Hindu, *Ready to don former role, says Gotabaya Rajapaksa*, 10 January 2021, www.thehindu.com/news/international/ready-to-don-former-role-says-gotabaya-rajapaksa/article33544807.ece

265 Economy Next, *SJB calls on police chief to protect Harin Fernando*, 10 January 2021, https://economynext.com/sjb-calls-on-police-chief-to-protect-harin-fernando-77720/

266 Daily FT, *Govt. places ban on overseas travel for 704 CID officers*, 26 November 2019, www.ft.lk/News/Govt-places-ban-on-overseas-travel-for-704-CID-officers/56-690386

267 Daily FT, *Govt. places ban on overseas travel for 704 CID officers*, 26 November 2019, www.ft.lk/News/Govt-places-ban-on-overseas-travel-for-704-CID-officers/56-690386

The travel ban was placed on the same day as the incident involving the Swiss embassy staffer, who was allegedly abducted by unidentified persons in a white van and was questioned about the visa she processed for Nishantha Silva. She later partially recanted her testimony. However, the incident, and the subsequent travel ban on criminal investigators, had a chilling effect on HRDs and others critical of the government as many recalled the use of white vans with no licence plates to forcibly disappear dissenting voices, including during the previous Rajapaksa administration. The targeting of embassy staffers and travel bans on criminal investigators for their professional work was also unprecedented. Many civil society actors feared that a threshold in repression was crossed with the targeting of police officers and embassy staff immediately after elections and feared for their own safety.

> ***"Since before the presidential elections, the basic fear started. They are the main accused for the genocide and the crimes at the end of the war. They are seen as the perpetrators of these issues, and we have been fighting for justice for these crimes. If they come to power, they will do anything to silence us. White van abductions, killings. This fear was raised before and during the presidential elections."*** [268]

B. TRANSFERS AND ARRESTS

Days after the presidential elections in November 2019, the director of the CID, Shani Abeysekera, was demoted by the National Police Commission to serve as the personal assistant to the Deputy Inspector General of Police (DIG) to the Southern Province.[269] Abeysekera oversaw the investigations into a number of emblematic human rights cases, including the enforced disappearance of cartoonist Prageeth Ekneligoda, the assault on journalist Upali Tennakoon,[270] the killing of journalist Lasantha Wickrematunge,[271] and the enforced disappearance of 11 youth (the "Navy 11").[272] The government accused Abeysekara of carrying out a political agenda;[273] he is seeking redress before the Supreme Court, alleging that he was removed from his post for politically motivated reasons.[274]

268 Amnesty International interview with HRD from the north, 12 August 2020

269 Daily FT, *Govt. places ban on overseas travel for 704 CID officers*, 26 November 2019, www.ft.lk/News/Govt-places-ban-on-overseas-travel-for-704-CID-officers/56-690386

270 Upali Tennakoon was the chief editor of the *Rivira* weekly newspaper. Upali and his wife Dhammika were assaulted in January 2009 allegedly by four persons on motorcycles.

271 Lasantha Wickrematunge was an outspoken critic of the Sri Lankan government and editor of the *Sunday Leader* newspaper. He was shot and killed on his way to work in January 2009.

272 Colombo Gazette, *Shani's transfer seen as politically motivated*, 23 November 2019, https://colombogazette.com/2019/11/23/shanis-transfer-seen-as-politically-motivated/

273 Newswire, *Former CID director Shani Abeysekera arrested*, 31 July 2020, www.newswire.lk/2020/07/31/former-cid-director-shani/

274 Colombo Gazette, *Former CID Director Shani Abeysekara files FR*, 15 July 2020, https://colombogazette.com/2020/07/15/former-cid-director-shani-abeysekara-files-fr/

On 31 July 2020, the Colombo Crimes Division (CCD) arrested Abeysekara over allegations made by a Police Sub-Inspector that Abeysekara had fabricated evidence in a case involving the former Deputy Inspector General of Police.[275] However the Police Sub-Inspector later claimed before a magistrates' court that officers of the CCD had threatened to arrest him unless he made a false statement implicating Abeysekera in fabricating evidence.[276] After Abeysekara contracted COVID-19 while in custody, Amnesty International urged authorities to provide him with adequate medical care, including hospital care which he was initially denied access to.[277] He was instead transferred to a remote prisoner treatment centre against his wishes and without his family being informed of his health situation or whereabouts.[278] Amnesty International has seen with concern that most of those who were placed under travel bans, transferred, demoted or arrested, were carrying out investigations including into human rights abuses committed during the armed conflict. Many were moved to positions where they would no longer be able to pursue accountability, further undermining the right to truth, justice and reparations for victims of human rights violations.

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275 Newswire, *Former CID director Shani Abeysekera arrested*, 31 July 2020, www.newswire.lk/2020/07/31/former-cid-director-shani/

276 Daily FT, *CCD accused of pressuring CID sleuth to falsely implicate Shani*, 5 August 2020, www.ft.lk/front-page/CCD-accused-of-pressuring-CID-sleuth-to-falsely-implicate-Shani/44-704124#.XyoO2kfxLZ0

277 Amnesty International, *Sri Lanka: Former police investigator jailed with Covid-19: Shani Abeysekara*, 27 November 2020, www.amnesty.org/en/documents/asa37/3403/2020/en/

278 Amnesty International, *Sri Lanka: Former police investigator jailed with Covid-19: Shani Abeysekara*, 27 November 2020, www.amnesty.org/en/documents/asa37/3403/2020/en/

VII. CONCLUSION

The space for dissent that began shrinking even as early as February 2018 under the former government quickly took a turn for the worse since the change in power brought about by the presidential elections of November 2019. Since then, the government has embarked on a concerted, far-reaching effort to consolidate power, and tighten control within government and its institutions. Among other measures, the government has avoided international scrutiny and accountability for human rights violations, as it did during its previous term in power. To this end, the closing down of civic space, including the cracking down on and vilifying of critics, has become central instrument of the government's policy to keep any opposition at bay.

The strain on the rights to freedoms of expression, association, peaceful assembly and the right to personal security and freedom from arbitrary detention have been brought about through a multi-pronged approach.

At the UNHRC, the government of Sri Lanka stopped its co-operation with Resolution 30/1 that made commitments to promote reconciliation and accountability for violations predominantly committed during the last stages of the armed conflict. Instead, the new government set up a local Commission of Inquiry (COI) to review the failures of former commissions – a disingenuous, empty promise from the outset. The President appointed a COI that labelled perpetrators as "political victims". The COI has already interfered in key cases that probed enforced disappearances of minority youth and a journalist, seemingly in an attempt to absolve "war heroes" implicated in these crimes.

With the change in power in 2019 came a slow, but distinct transition to militarization of public security and the appointment of military personnel to government positions – a phenomenon not seen before in Sri Lanka. Key actors implicated in human rights violations in the government's offensive against the LTTE were rewarded with positions of power, while also being in charge of civilian tasks. For victims of human rights violations committed during the war and post-war period, these old ghosts in new garb had a further chilling effect on the ability to express dissent and criticize the government.

As COVID-19 started spreading around the country, Sri Lanka went into a general lockdown just four months into the new government's tenure. The pandemic presented an opportunity for the government to further suppress human rights, through "quarantine curfews," banning protests and memorialization attempts by victims of the war and restrictions on free expression under the guise of "spreading misinformation". Even acts of solidarity in support of Sri Lanka's marginalized Muslim community and their right to practise their religious beliefs to bury the dead in the COVID-19 context were suppressed by the state.

The practice of abusing laws such as the Penal Code and the PTA to curtail the right to freedom of expression resumed in the recent years and the ICCPR Act has been used to silence minority communities under the guise of curbing "religious extremism". Additionally, the government passed an amendment to the Constitution that further concentrated power in the President. The amendment removed checks and balances to the appointments and removals processes of independent commissions such as the National Human Rights Commission, the national police commission, the senior judiciary, and to the offices of the Attorney General and the Inspector General of Police. Through a single amendment, the government took away any veneer of independence afforded to these key positions and commissions, the occupants of which now must serve at the mercy of the executive or risk removal.

What compounded the fast-deteriorating human rights situation in the country was the closing up of the limited avenues that were available as relief and recourse. With the judiciary and the independent commissions en route to being politicized, victims of past and ongoing human rights violations now have no alternative but to turn to the international community for protection and support.

The government attempted to strengthen its grip on the rhetoric and flow of information to international forums, including through foreign media, that could hurt its brand and undermine the electoral gains made. Those who were on the frontlines of pursuing accountability for human rights violations, including law enforcement officers investigating crimes under international law, human rights organizations and journalists exposing violations, and lawyers appearing on behalf of victims, were all targeted by the government as well as private actors for their human rights work. Political opponents were arbitrarily detained, journalists were dragged into criminal cases, criminal investigators were remanded over trumped-up charges and a lawyer was arbitrarily arrested without any credible evidence of wrongdoing simply for providing legal counsel. Increased surveillance, threats, intimidation, interrogations, and arrests – acts of harassment that many could recall from the 2005-2015 period –were all back within just one year. These acts had a domino effect on critique, dissent, and discourse in general, with many groups of actors choosing to remain silent, practise self-censorship and, in some instances, choosing to leave the country out of fear of reprisals.

What compounded the fast-deteriorating human rights situation in the country was the closing up of the limited avenues that were available as relief and recourse. With the judiciary and the independent commissions en route to being politicized, victims of past and ongoing human rights violations now have no alternative but to turn to the international community for protection and support. Following President Gotabaya's victory at the November 2019 elections, many UN member states chose to adopt a "wait and see" approach on Sri Lanka's human rights record, despite ample evidence incriminating the current regime in gross human rights violations and crimes under international law committed during the war and after. In just over a year, human rights have come under assault and the situation is worsening.

Against this backdrop, the international community must act decisively to ensure human rights compliance and protection of victims of human rights violations at the UNHRC and beyond. At the 46th UNHRC session, the Council must launch a new process or mechanism to pursue the objectives of Resolution 30/1: to end the cycle of impunity and advance accountability for international crimes with a view to deterring future violations, particularly against minority communities and civil society groups. Central to the new approach must be continued monitoring and reporting on the situation, as well as the collection, analysis, and preservation of evidence for future prosecutions. The Sri Lankan government must act in line with its international human rights obligations, engage with the international community to embark on genuine efforts for course correction and put human rights concerns at the centre of its policies. Dismissing legitimate concerns will not foster reconciliation, peace or progress the government is keen to make. Nor will it support the legacy the Rajapaksa family would want to leave behind.

VIII. RECOMMENDATIONS

Amnesty International urges the Sri Lankan authorities to,

- End the targeting and prosecution of law enforcement officers who were involved in criminal investigations of human rights abuses and crimes under international law during the previous government and lift the arbitrary travel bans placed on them;

- Drop all politically motivated charges and close investigations into human rights defenders, journalists, lawyers, law enforcement officials and political opponents, unless there is credible evidence of wrongdoing presented in fair trials;

- Respect, protect, promote and fulfill the rights to freedom of expression, peaceful assembly and association, including by ensuring a safe and enabling environment in which media outlets, journalists, civil society organizations and human rights defenders are protected, can work effectively to defend and promote human rights without fear of reprisal;

- Explicitly recognize the legitimacy of human rights defenders and publicly support their work, acknowledging their contribution to the advancement of human rights, including by carrying out public awareness campaigns about their role and legitimate work;

- Guarantee a safe and enabling environment in which human rights defenders are effectively protected, and where it is possible to defend and promote human rights without fear of punishment, reprisal or intimidation;

- In consultation with human rights defenders and civil society organizations, establish a national protection mechanism for defenders at risk which incorporates preventative, collective and gender-sensitive approaches, using protection methods agreed in consultation with affected groups;

- Ensure that women human rights defenders and other human rights defenders facing discrimination receive the specific protection they need against threats and violence, recognizing the particular challenges and risks they face;

- Issue prompt instructions to all branches of law enforcement to end intimidation, harassment of and attacks on human rights defenders, civil society organizations, media outlets, journalists, and lawyers around the country, including unlawful surveillance and other reprisals for their work;

- Ensure that the justice system is not misused to target or harass human rights defenders and refrain from bringing criminal charges or any other proceedings or administrative measures against them that stem solely from the peaceful exercise of their rights;

- Conduct an impartial, thorough and effective investigation into allegations of attacks, intimidation and harassment of human rights defenders, civil society organizations, media outlets, journalists and lawyers and hold to account anyone suspected of being responsible for violations and abuses in line with international standards for fair trial, without recourse to the death penalty;

- Ensure that the investigation into allegations of threats and attacks against human rights defenders considers their human rights work as a possible motive for the attack;

- Extend an invitation the UN Special Rapporteurs on the rights to freedom of expression, peaceful assembly and association, and on the situation of human rights defenders to conduct visits to Sri Lanka without restrictions on duration or scope, and ensure they are allowed to meet with human rights defenders without hindrance;

- Repeal the Prevention of Terrorism Act and end its use immediately;

- Stop using the ICCPR Act and the Penal Code to stifle freedom of expression;

- Ensure that no restrictions are placed on public assemblies and demonstrations except in line with COVID-19 prevention measures provided by law and when such restrictions are strictly and demonstrably necessary and proportionate for the purpose of containing the spread of the virus;

- Refrain from imposing blanket bans on the dissemination of information, including those based on vague and ambiguous concepts such as "false news" or "spreading misinformation", and repeal or amend directives, regulations and legislation that impose criminal penalties simply for sharing or distributing information;

- Refrain from targeting critics with draconian measures that unduly limit the rights to freedom of expression and peaceful assembly in the name of countering COVID-19;

- Co-operate with the UNHRC to take steps to promote reconciliation, accountability and human rights in Sri Lanka, while ensuring that transitional justice mechanisms set up already are able to operate effectively and independently;

- Stop using Commissions of Inquiry to interfere in ongoing domestic criminal court cases;

- Ensure that military personnel implicated in gross violations of human rights and crimes under international law are not rewarded, and are adequately investigated through a thorough, effective and impartial inquiry and held to account in line with international fair trial guarantees and without recourse to the death penalty;

- Amend legislation to ensure independence of the justice sector in order for victims to access justice;

- Provide safeguards to protect the independence of the NHRI in order for victims of human rights violations to have domestic avenues for redress.

Amnesty International urges UN Country Team in Sri Lanka to,

- Support victims of human rights violations in Sri Lanka by publicly and privately raising concerns with the government, and by having regular meetings with civil society and human rights defenders;
- Publicly condemn attacks, threats, and intimidation against human rights defenders;
- Ensure that perpetrators alleged to have committed human rights violations by the UN's own findings are not invited to panels, meetings and publicly congratulated at the risk of alienating domestic victims;
- Ensure co-ordinated communications from all UN agencies;
- Work with the government to implement all recommendations mentioned above and support and strengthen the work of the OHCHR;
- Support civil society groups and organizations and lobby the government to institutionalize civil society space, wherever possible.

Amnesty International urges the UNHRC to,

- Launch a new process or mechanism to pursue the objectives of Resolution 30/1 to end the cycle of impunity and advance accountability for crimes under international law with a view to deterring future violations, particularly against minority communities and civil society groups. Central to the new approach must be continued monitoring and reporting on the situation, as well as the collection, analysis, and preservation of evidence for future prosecutions.

The Sri Lankan government must act in line with its international human rights obligations, engage with the international community to embark on genuine efforts for course correction and put human rights concerns at the centre of its policies. Dismissing legitimate concerns will not foster reconciliation, peace or progress the government is keen to make. Nor will it support the legacy the Rajapaksa family would want to leave behind.

AMNESTY INTERNATIONAL IS A GLOBAL HUMAN RIGHTS MOVEMENT. AN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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OLD GHOSTS IN NEW GARB: SRI LANKA'S RETURN TO FEAR

The Sri Lankan government has launched a renewed crackdown on dissent. Civil society organizations and human rights defenders are under renewed attack and face numerous challenges to operate freely and safely. In only a year after a new government came into power in 2019, the authorities have escalated this into a full assault on dissent where a climate of fear and censorship has quickly expanded around the country, targeting key voices critical of the government and those pursuing justice for human rights violations.

The report exposes the ongoing assault on the rights to freedom of expression, peaceful assembly, association, personal security and freedom from arbitrary detention. The risks for human rights defenders are compounded by the lack of credible mechanisms for redress domestically and by the government tactics to further undermine independent mechanisms.

Amnesty International calls on the government of Sri Lanka to immediately stop the assault on dissent, and to respect, protect, promote and fulfil human rights obligations, including by ensuring a safe and enabling environment. Without urgent course correction and remedial action, Sri Lanka risks falling again into a damning spiral of repression and violence. The international community must use the upcoming session of the UNHRC to ensure continued monitoring and reporting on the situation, and the adequate collection, analysis, and preservation of evidence for future prosecutions.

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