



**42<sup>nd</sup> Session of the Working Group on the Universal Periodic Review**

**UN Human Rights Council**

**SRI LANKA**

**Joint submission prepared by:**

**Center for Human Rights and Development (CHRD)**

*and*

**FIDH – International Federation for Human Rights**

**14 July 2022**

The **Center for Human Rights and Development (CHRD)** is a victim-centered organization established in 1997 by a group of committed lawyers. CHRD's primary identity has been shaped by its legal assistance program, around which activities of social mobilization and advocacy are built. The organization's strengths are its grassroots human rights defenders network and holistic approach to working with victims.

The **International Federation for Human Rights (FIDH)** is an international human rights NGO that unites 192 member organizations from 117 countries. Since its foundation in 1922, FIDH has been defending all civil, political, economic, social, and cultural rights set out in the Universal Declaration of Human Rights (UDHR).

## **Introduction**

1. This submission focuses on violations of the right to freedom of expression; violations of the right to freedom of peaceful assembly; impunity for grave human rights violations committed by state actors; and the ongoing commission of torture by law enforcement personnel in Sri Lanka. The submission focuses on developments and that have occurred since the country's third Universal Periodic Review (UPR) in November 2017.
2. During its third UPR, Sri Lanka received a total of 230 recommendations, of which the government accepted 177 and noted 53. Of the total recommendations, 35 were related to the thematic areas of this submission. All but six were accepted by the government. The six that were "noted" (i.e. not accepted) included recommendations to: repeal the Prevention of Terrorism Act (PTA); adopt a national policy to protect journalists and human rights defenders; and take comprehensive measures to ensure that alleged war crimes would be investigated and prosecuted. Recommendations that were supported accepted by Sri Lanka included ones to ratifying the Optional Protocol to the Convention against Torture, reviewing the PTA to bring it in line with international standards, investigating allegations of violations committed during the conflict, and investigating incidents of hate speech.

## **Problematic constitutional amendments**

3. Since Sri Lanka's third UPR, the country's legal and institutional framework has undergone significant changes under President Gotabaya Rajapaksa. Many of the progressive measures enacted under the 19<sup>th</sup> Amendment to the Constitution, which was adopted in 2015, have been reversed to increase the powers of the executive branch. In a move that severely undermined accountability measures and human rights, on 22 October 2020, Parliament, which was dominated by the ruling party Sri Lanka People's Front, passed the 20<sup>th</sup> Amendment.
4. Specifically, the 20<sup>th</sup> Amendment provides for the following: the President is only required to seek the non-binding observations of the Parliamentary Council<sup>1</sup> in making key appointments to members of the Human Rights Commission of Sri Lanka (HRCSL), the Police Commission, and other independent commissions;<sup>2</sup> the President can exercise wide discretion in appointing the Chief Justice and other Supreme Court judges; the National Procurement Commission and the National Audit Commission, which were key institutions that provided accountability for public finance, are abolished; and the President can dissolve Parliament after two and a half years.<sup>3</sup> Although a 21<sup>st</sup> Amendment to the Constitution, which would annul the 20<sup>th</sup> Amendment, was approved by the Cabinet on 21 June 2022, at the time of writing, Parliament had not adopted it, yet. If the current draft version were adopted, the 21<sup>st</sup> Amendment would re-introduce the Constitutional Council, introduce a right to life provision, and incorporate some of the progressive measures from the 19<sup>th</sup> Amendment.

## **Revision of the Prevention of Terrorism Act (PTA) falls short**

5. On 12 March 2021, a regulation was introduced to expand the scope of the Prevention of Terrorism Act (PTA) to include any words, either spoken, read, or by signs or visual representation, which cause or intends to cause "acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups."<sup>4</sup> Violations of the new regulation can be punished with up to two years of detention without trial.
6. On 27 January 2022, the government introduced amendments to the PTA, which failed to address existing gaps in the law and to bring it into line with international law. On 22 March 2022, Parliament approved the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No.12 of 2022,<sup>5</sup> despite a series of fundamental rights petitions filed before the Supreme Court to dispute the law's constitutionality. The amendment to the PTA, which came into effect on 29 March 2022, failed to

meet all five prerequisites described by seven UN special procedures' mandate holders in December 2021,<sup>6</sup> to comply with international human rights standards.

### **Declarations of state of emergency and emergency regulations inconsistent with international law**

7. In early 2022, widespread public discontent intensified over the Sri Lankan government's protracted economic mismanagement, which led to severe shortages of fuel, electricity, medicine, food, and other basic necessities. This resulted in predominantly peaceful nationwide protests that called for the resignation of President Gotabaya Rajapaksa and his brother, Prime Minister Mahinda Rajapaksa.<sup>7</sup> In response to the wave of the anti-government protests, President Rajapaksa declared a state of emergency twice: first on 1 April 2022, which was revoked on 5 April, and again on 6 May 2022.
8. The declaration of a state of emergency under the Public Security Ordinance (PSO) vested the President with the power to issue broad and sweeping emergency regulations.<sup>8</sup> On 9 May 2022, the President adopted emergency measures, which came into effect retroactively on 6 May. These emergency measures were incompatible with several provisions of the International Covenant on Civil and Political Rights (ICCPR) [See below, *paragraphs 44-47*], and were not justified under Article 4 of the ICCPR, under which declarations of a state of emergency should only be made in response to a situation that "threatens the life of the nation."
9. According to the PSO, a declaration of a state of emergency must be immediately presented to Parliament for ratification.<sup>9</sup> Failure to ratify the state of emergency by Parliament within 14 days from its declaration automatically annuls the declaration of a state of emergency.<sup>10</sup> On 20 May, the Presidential Secretariat confirmed that the government had decided not to present the emergency regulations to Parliament and that the state of emergency had been lifted.<sup>11</sup>
10. According to United Nations (UN) records, it appears that the Sri Lankan government failed to notify the UN Secretary-General of any derogations made from their obligations under the ICCPR (Article 4), following the declarations of a state of emergency and the promulgation of emergency regulations.<sup>12</sup>

### **Violations of the right to freedom of expression**

11. Violations of the right to freedom of expression have primarily stemmed from the enforcement of two laws, the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007,<sup>13</sup> and the PTA. In some instances, both laws have been used together to target individuals, especially those belonging to minority communities.
12. Several writers and artists have been targeted for allegedly insulting Buddhist sensitivities and were arrested and/or called in for questioning in relation to their work. On 1 April 2019, Shakthika Sathkumara, an award-winning writer who published a fictional short story depicting a Buddhist monk as a homosexual pedophile, was arrested and detained for four months following a complaint filed by a Buddhist monk.<sup>14</sup>
13. In October 2019, the same Buddhist monk who filed the complaint against Sathkumara also sought legal action against Malaka Dewapriya, an award-winning radio playwright and film director. The complainant alleged that the title of the radio drama created by Dewapriya was blasphemous of Buddhist terminology.<sup>15</sup> Police attempted to arrest Dewapriya under the ICCPR Act, but did not take him into custody due to public outcry.<sup>16</sup>
14. Many Tamil youth from the Northern, Eastern, and Central Provinces were arrested and detained under the ICCPR Act and the PTA for prolonged periods of time for Facebook posts containing photographs and poems that memorialized their relatives who had died during the civil war. They were arrested on allegations of attempting to regroup and revamp the proscribed armed organization

Liberation Tigers of Tamil Eelam (LTTE). According to CHRD documentation, from 2018 to 2021, up to 60 Tamil youth were arrested, predominantly on charges under the ICCPR Act, and held in custody for over a year and later released on bail on a staggered basis.<sup>17</sup> Some charges are still pending. The police further misused provisions of the ICCPR Act to obtain prohibition orders from several Magistrate Courts to prevent Tamils in the North and East from memorializing and commemorating those who died in the civil war.

15. Muslims too have been targeted and arrested under the ICCPR Act for social media posts. On 9 April 2020, Ramzy Razeek, a social media commentator, was arrested and detained for five months for a Facebook post in which he advocated for an “ideological jihad using the pen and keyboard as weapons.”<sup>18</sup> Razeek complained to the police of online death threats made against him and his family in connection to the social media post. Instead of investigating the death threats, the police arrested him and claimed that he violated Section 3(1) of the ICCPR Act and cybercrime legislation.
16. Similarly, on 12 January 2020, the Computer Crime Investigation Division of the Criminal Investigation Department (CID) of the police arrested Fazl Nizar, a writer and businessman, for a Facebook post in which he allegedly insulted Buddhist monks. When Nizar appeared before the Fort Magistrate’s Court in Colombo, CID officials stated that he committed an offence under the ICCPR Act.<sup>19</sup>
17. Despite repeated commitments made to repeal the PTA, the government has misused this legislation to target members of the Muslim and Tamil minority communities and to curtail their right to freedom of expression.
18. On 16 May 2020, a young Muslim poet, Ahnaf Jazeem, based in Puttalam, North Western Province, was arrested under the PTA and detained for 18 months on charges of promoting Islamic extremism, based on a Tamil language poetry anthology he had published in 2017. On 15 December 2021, he was released on bail with strict conditions, including being subjected to the monitoring of the Terrorism Investigation Division (TID) of the police.<sup>20</sup> During his detention he was subjected to torture and cruel, inhumane, and degrading treatment through sleep deprivation as well as being handcuffed and tied to the leg of a table for several months. These acts of torture appear to have been committed to obtain a confession for his alleged involvement in the Easter Sunday attacks in 2019, when a series of coordinated suicide bombings in Colombo killed 269 people.<sup>21</sup>
19. On 14 April 2020, the CID arrested Hejaaz Hizbullah, a Muslim human rights lawyer and a vocal government critic, over a speech he made in Puttalam, North Western Province. He was detained without charge under the PTA for 22 months for allegedly causing communal disharmony.<sup>22</sup>
20. The PTA has also been used to indiscriminately arrest Tamils for social media posts, particularly relating to Remembrance Day<sup>23</sup> and Maaveerar Naal (Heroes’ Day).<sup>24</sup> According to a member of Parliament from Batticaloa District, Eastern Province, in 2020 approximately 40-50 people were arrested in the North and East for Facebook posts relating to Remembrance Day and have been charged under the PTA.<sup>25</sup> On 18 November 2020, journalist Murugapillai Kokila Dasan, based in Batticaloa, was arrested and detained under the PTA for posting two pictures on Facebook to celebrate Heroes’ Day, which police alleged promoted LTTE terrorist ideology.<sup>26</sup> In November 2020, in Batticaloa, 19 people were arrested and detained under the PTA for posting birthday wishes online for the deceased leader of the LTTE.<sup>27</sup> In April 2021, Kanapathipillai Mohan, a leading businessman in Chenkalady, Batticaloa, was arrested under the PTA for social media posts he published in relation to Remembrance Day, such as poems and verses in memory of the dead. He remains in custody.<sup>28</sup>
21. In April 2021, the government presented a paper to the Cabinet to propose the adoption of a new law to combat fake and misleading assertions published online.<sup>29</sup> On 20 April 2021, the Cabinet adopted the proposal, which prompted the drafting of a bill to protect society “from the harm caused by false propaganda online.”<sup>30</sup>

22. In June 2021, the CID formed a special team – the Computer Crime Investigation Division - to take action against dissemination of fake news on social media platforms, pursuant to Section 3 of the ICCPR Act (creating religious disharmony), Section 120 of the Penal Code (feelings of disaffection with the state), and Section 98 of the Police Ordinance (false reports to alarm people and create panic).<sup>31</sup>
23. On three occasions between 2019 and 2022, the government blocked all the main social media platforms and messaging apps when a state of emergency was declared following public protests, terrorist attacks, and communal violence.<sup>32</sup> The most recent incident took place on 3 April 2022, when all platforms were blocked for 16 hours following an anti-government protest that escalated when an army bus and jeep were set on fire in front of President Rajapaksa's private residence in Colombo.<sup>33</sup> The move was an obvious attempt to stop protesters from organizing and participating in ongoing anti-government public assemblies that called for the President's resignation.

### **Violations of the right to freedom of association and reprisals against human rights defenders**

24. Civil society groups have come under increased surveillance since the lead-up to the 2019 presidential election. NGOs have been forced to provide information to the authorities, including details about their programs, sources of funding, staff, and details of community activists and their family members. As a result, many civil society representatives began to self-censor.
25. The head offices and field offices of several NGOs have been visited by the police and State Intelligence Unit to gather information about the organization's staff.
26. Those working on ending impunity and seeking accountability for past crimes, and especially victims, victims' families, members of minority communities, and civil society networks in the Northern and Eastern provinces, are particularly at risk of intimidation and harassment.
27. In several recent incidents of harassment, perpetrators used white vans to abduct persons of interest, a tactic that was routinely used during the time of the civil war to subject journalists, human rights defenders, and government critics to enforced disappearance. During that period, this tactic led to the silencing of critics and dissidents, with many going into exile.<sup>34</sup>
28. On 14 February 2022, activist Shehan Malaka, who advocated for truth and justice for the victims of the 2019 Easter Sunday attacks, was followed by a white van and threatened by men in civilian clothing while he was walking on a public road.<sup>35</sup> When he realized that he was being followed, Malaka attempted to run away. The men, who later identified themselves as CID officers, accosted him and arrested him without a warrant. He was subsequently released on bail. The authorities later informed Malaka that he had been arrested based on a speech he delivered during a press conference, where he claimed that there may be political motives behind the Easter Sunday attacks.

### **Violations of the right to freedom of assembly**

#### ***Intimidation of protests in the North and East***

29. Since the election of President Rajapaksa, authorities have sought and obtained court orders that have been used to intimidate, arrest, and harass protest organizers and politicians who engaged in events usually held on 19 May<sup>36</sup> to commemorate those who died during the civil war.
30. In an alarming trend, organizers and participants in memorial ceremonies have been arrested on charges brought under both the PTA and the ICCPR Act. In 2020-2021, arrests made under the PTA increased in the North and East when Tamil communities attempted to remember their loved ones who died during the civil war. Memorial events are organized during Maaveerar Naal (Heroes' Day) on 27 November, an annual commemoration day for LTTE cadres who died in the civil war, and for Remembrance Day on 18 May, the date on which the civil war ended in 2009. Arrests were based on

the allegation that event organizers were revamping and regrouping the LTTE. In addition, charges were brought under the ICCPR Act based on the claim that event organizers were promoting LTTE ideology on social media and thus attempting to disturb communal harmony and peace. Arrests were made by the Terrorism Investigation Division (TID) of the police, and those arrested were served with detention orders immediately after the arrest.

31. Protesters in the North and East of the country have been routinely subjected to intimidation and surveillance by security forces and intelligence officers. Methods such as recording personal details of event participants, questioning protest organizers, harassment through phone calls, and filming the attendees have been common practices of intimidation. For example, on 29 April 2022, during a peaceful protest held in Batticaloa, Eastern Province, to seek justice for murdered journalist Dharmaratnam Sivaram, plainclothes police officers recorded footage of the protest.<sup>37</sup>
32. Security forces and intelligence officers have regularly intimidated and harassed Tamils in their homes and threatened those travelling to memorial events to discourage their participation. Intelligence officers have also attended many memorial ceremonies to monitor participants. The presence of these officers has had a chilling effect on participants, given the role of security forces in committing abuses during and after the civil war.
33. Family members of disappeared persons have frequently been targeted and faced state scrutiny for organizing protests. Key activists who demanded justice for disappeared persons have also been targeted through pre-emptive court orders.<sup>38</sup>
34. On 20 March 2022, police attempted to prevent families of persons who disappeared during the civil war from exiting a bus and staging the protest in front of the Jaffna Special Economic Centre in Madduvil, Northern Province, during a visit by then-Prime Minister Mahinda Rajapaksa. Police officers were deployed in the area to block the protesters from surrounding the venue. Some of the family members who were able to exit the bus and hold a peaceful protest were assaulted by the police.

#### ***Measure to curb the anti-government protest movement***

35. From mid-March to mid-July 2022, daily protests calling for the resignation of the President and against the rising cost of living took place in Colombo, especially in front of the Presidential Secretariat. Similar protests were held in other parts of the country, including in Kandy (Central Province), Galle (Southern Province), and Kurunegala (North Western Province). During many of these protests, which were predominantly peaceful, the police used unnecessary and disproportionate force against the demonstrators.
36. On 19 April 2022, during a protest against rising fuel prices that took place in Rambukkana, Sabaragamuwa Province, police fired live ammunition to disperse demonstrators, killing one of them and injuring 14 others.<sup>39</sup> During court proceedings, the disproportionate use of force was documented in many witness testimonies and videos, in which police appeared to chase protesters and fire shots with assault rifles.<sup>40</sup> On 29 April 2022, four police officers, including a Senior Superintendent of Police (SSP) who ordered opening fire during the protest, were arrested by the CID.<sup>41</sup> On 28 June 2022, the HRCSL issued an interim report on the incident, in which it found that the death of the demonstrator was the result of excessive and unjustified use of force by the police.<sup>42</sup>
37. On several instances during the anti-government protests, the police also resorted to the indiscriminate use of less lethal weapons, such as teargas and water cannons. These protests were predominantly peaceful before the police started using teargas and water cannons to disperse the crowd. On 31 March 2022, approximately 50 people, including nine journalists, were injured after police used water cannon and teargas at a protest outside the President's residence in Colombo.<sup>43</sup> On 6 May 2022, during a protest in front of Parliament in Colombo, tear gas and water cannons were

used indiscriminately against peaceful protesters. Several children who were present at the protest were affected by the teargas.<sup>44</sup> The police also used water cannons to destroy a food tent that was set up for protesters. On the previous day, tear gas was used to stop protesters from removing barricades leading to Parliament. The police continued to fire tear gas canisters even after the crowds had dispersed.<sup>45</sup>

38. The police also adopted several methods of intimidation against the participants in anti-government protests. In two instances, the police dismantled protest sites. On 17 April 2022, police removed temporary tents of protesters in Galle, Southern Province. Following the intervention of lawyers, the police agreed to allow the protests to continue with the tents re-installed. On the same day, police also objected to temporary tents in Kandy, Central Province, but later allowed the tents to be installed. The police also deployed police vehicles to intimidate protesters and block access to protest sites. On 16 April 2022, several empty police trucks were parked near the Galle Face Green protest site in Colombo. Following a Bar Association statement that expressed concerns over attempts to disrupt peaceful protests, the police trucks were removed from the location.<sup>46</sup> Similarly, in May 2022, police buses were used to block protesters from demonstrating in front of Temple Trees, the Prime Minister's official residence in Colombo.<sup>47</sup> To prevent a large university student-led protest from proceeding near Temple Trees, the police created barricades using GI pipes hidden with spikes.
39. In stark contrast, on 9 May 2022, police failed to intervene when large mobs supporting then-Prime Minister Mahinda Rajapaksa, armed with sticks and clubs, attacked peaceful anti-government protesters and burned and destroyed protest sites in front of the President's office at Galle Face Green and the Prime Minister's residence at Temple Trees in Colombo. Senior Deputy Inspector General of Police for the Western Province, Deshabandu Tennakoon, was seen among the pro-government supporters who launched the unprovoked attack.<sup>48</sup> Among those attacked were disabled persons, catholic priests, and journalists. Approximately 78 people were hospitalized.<sup>49</sup>
40. These attacks were part of state-sponsored violence to quell anti-government protests. According to a member of Parliament, the Inspector General of Police had instructed the police not to prevent the attacks, even though they had prior information about them.<sup>50</sup> According to the Parliamentarian, only after the President intervened did the police resort to use tear gas and water cannons to disperse the attackers at Galle Face Green. On 17 May, the CID arrested two members of Parliament of the ruling party, the Sri Lanka People's Front, in connection with the attacks.<sup>51</sup>
41. In some cases, the police made arbitrary arrests without a warrant or without giving reasons for the arrests. On 31 March 2022, the police arbitrarily arrested 54 demonstrators who participated in an anti-government protest in front of the President's residence in Colombo.<sup>52</sup> Several of those detained were subjected to cruel, inhuman, and degrading treatment while in police custody. Similarly, on 4 May 2022, 12 demonstrators were arbitrarily detained in front of Parliament in Colombo.<sup>53</sup>
42. The emergency regulations issued in May 2022 [See above, *paragraph 8*] contained several provisions that curtailed the right to freedom of peaceful assembly until they were lapsed. Their blanket prohibitions on assemblies and the penalties issued to those participating in unlawful assemblies were disproportionate and unnecessary as well as in contravention of Article 21 of the ICCPR and Article 14 of the Constitution of Sri Lanka.
43. The emergency regulations also empowered the President to prohibit public processions or public meetings in any area for any period of time.<sup>54</sup> A participant in an unlawful assembly, as defined under Section 138 of the Penal Code, with the common objective of causing destruction to property, death or injury to another, committing theft or criminal assault, could have been sentenced to life imprisonment or imprisonment of up to 20 years under the regulations.<sup>55</sup>
44. Additionally, the overbroad provisions of the regulations provided a legal basis for the arbitrary and forcible removal, including by members of the armed forces, of individuals from public places without

providing any justification.<sup>56</sup> A person removed from a public place by the police or a member of the armed forces could have been arrested and detained.

45. Following the arson attacks that took place on 9 May 2022 subsequent to the attacks on anti-government protesters, the Ministry of Defense issued an order that authorized members of the armed forces to shoot on sight any persons involved in theft of public property or causing damage to life.<sup>57</sup> Similarly, the police were given orders to shoot individuals on the same basis.<sup>58</sup> The shoot-on-sight orders contravened the provision on the right to life pursuant to Article 6 of the ICCPR, which is non-derogable.
46. Since then, there have been several incidents of police brutality and the use of disproportionate and excessive force in connection with the ongoing anti-government protests. On 17 June 2022, a police officer pointed a gun at a civilian protesting in Kurunegala, North Western Province.<sup>59</sup> On 18 June 2022, the army opened fire to control tensions at a fuel station in Vishwamaduwa, Northern Province.<sup>60</sup>
47. On 9 July 2022, thousands of peaceful demonstrators took part in peaceful protests in Colombo to call for the resignation of the President. Video footage showing Army personnel shooting at protesters outside the President's residence as they attempted to forcefully enter the compound emerged and was widely circulated. Three civilians were admitted to the hospital following the protests after suffering gunshot injuries and had to undergo surgery.<sup>61</sup> In addition, six journalists of Sirasa Television were violently attacked by Police Special Task Force (STF) outside the Prime Minister's private residence.<sup>62</sup>

#### ***COVID-19 regulations used to arrest protesters***

48. In other cases, the police used the COVID-19 pandemic as a pretext to arrest peaceful protesters. In July 2021, police arrested approximately 100 trade union leaders, political activists, and teachers participating in peaceful protests against the forced organic fertilizer policy and a law that aimed to militarize university education. The protesters were detained for allegedly violating COVID-19 regulations and were later released on bail.<sup>63</sup>
49. On 8 July 2021, 45 people, including Sri Lanka Teachers Union General Secretary Joseph Stalin, were arrested for protesting in front of Parliament against the proposed law that sought to militarize the university education system.<sup>64</sup> Similar peaceful protests that were organized in Nuwara Eliya, Central Province, resulted in the arrest of four participants.<sup>65</sup>

#### **Impunity for human rights violations persists**

50. During Sri Lanka's third UPR cycle, the transitional justice process has come to a standstill, halting the already sluggish progress of the functioning of the Office of the Missing Persons and the Office for Reparations—thus bringing an end to the entire reconciliation process. In February 2020, the government withdrew its co-sponsorship from UN Human Rights Council (HRC) Resolution 40/1, and announced this decision during the HRC's 43<sup>rd</sup> regular session, pledging that it would address issues concerning accountability through a domestic process.
51. Impunity for violence against members of the media has continued, and there has been very little progress in investigations and court cases relating to the death, disappearance, and assault of journalists, which have dragged on for over a decade. According to Journalist for Democracy in Sri Lanka, during the last phase of the civil war, from 2004 to 2010, 44 journalists and media professionals were killed or disappeared.<sup>66</sup> To date, there has been no single conviction for these crimes, and only two cases have reached the prosecution stage:<sup>67</sup> the case of the murder of journalist Nimalarajan in October 2000, which was pending in the Jaffna Magistrate's Court, was discontinued by the Attorney



General in May 2021; and the case of the disappearance of journalist Prageeth Eknaligoda in January 2010, which remains pending in court.

52. Members of the military intelligence have been accused of being involved in the abduction and torture of journalist Keith Noyahr in 2008, the killing of journalist Lasantha Wickrematunge in 2009, and the disappearance of journalist Prageeth Eknaligoda in 2010.<sup>68</sup> In those years, President Gotabaya Rajapaksa was serving as Defense Secretary.<sup>69</sup> During the presidency of Gotabaya Rajapaksa, the investigations into the murder of Lasantha Wickrematunge failed to make any progress, and several investigating officers who had allegedly suppressed and destroyed evidence in the Wickrematunge case were given positions in government institutions. Former Inspector General of Police (IGP) Jayantha Wickramaratne, who was accused of concealing and destroying vital evidence in the Wickrematunge case, was appointed as a commissioner to the Office of Missing Persons.<sup>70</sup> Senior Superintendent of Police Prasanna Alwis, who was accused of suppressing evidence and shielding suspects in the Wickrematunge case, was appointed as director of the CID, despite a court warrant issued for his arrest.<sup>71</sup>
53. Lead police officers who oversaw investigations and uncovered seminal evidence in cases of assault of journalists were either arrested or went into exile after having suffered reprisals for their police work. On 30 July 2020, former CID Director Shani Abeysekara, who was overseeing the investigations into the disappearance of journalist Prageeth Eknaligoda, the murder of journalist Lasantha Wickrematunge, the abduction and torture of journalist Keith Noyahr, and the assault of journalist Upali Tennakoon, was arrested and detained for 10 months on false charges of concealing evidence in an unrelated murder case.<sup>72</sup> Police Inspector Nishantha De Silva, who was investigating the murder of Lasantha Wickrematunge and other journalists, went into exile soon after the 2019 presidential election.<sup>73</sup>
54. In the case of Prageeth Eknaligoda, a special trial-at-bar in Colombo commenced in 2019.<sup>74</sup> However, not much progress has been made in this case and several hearings were postponed due to COVID-19 lockdowns. The Presidential Commission of Inquiry on political victimization, which ran a parallel inquiry into the pending court case, ignored a court order that barred a key witness from appearing before the commission, and proceeded to hear his testimony. During the testimony before the commission, the witness reversed his earlier statements that had incriminated military intelligence officers. The Presidential Commission of Inquiry recommended exonerating the accused military intelligence personnel and their commanding officers involved in the case.<sup>75</sup> On 17 June 2022, nine individuals charged in connection with the case - all military intelligence personnel - were released on bail by the Colombo Permanent High Court Trial-at-Bar.<sup>76</sup>
55. In 2020-2021, many victims of past human rights violations were deprived of their right to effective remedy following the Attorney General's decision to discontinue the prosecutions of individual suspected of, or charged with, these abuses. To date, no one has been held accountable for those violations.
56. The Attorney General dropped charges against former Navy Commander Wasantha Karannagoda, who was allegedly involved in a key case of abduction and extrajudicial killings of 11 Tamil youth and the related extortion against their families in 2008 and 2009, during the civil war.<sup>77</sup> The charges against Karannagoda were dropped in October 2021, based on a confidential report provided to the Attorney General.
57. In January 2021, the Attorney General dropped charges against all five defendants, including former LTTE cadre and now-member of Parliament, Sivanesathurai Chandrakanthan (aka Pillaiyaan), charged with the murder of Tamil member of Parliament Joseph Pararajasingham in December 2005.<sup>78</sup>
58. In May 2021, the Attorney General also ordered the release of the six individuals charged with the murder of *BBC* journalist Mylvaganam Nimalarajan in October 2000 – a case that had been pending

in courts for 15 years.<sup>79</sup> The Attorney General's decision to release the six persons, without investigating other suspects or informing the IGP, amounted to a denial of justice for the murdered journalist.<sup>80</sup>

59. Between March 2020 and October 2021, the Attorney General also withdrew indictments in approximately 20 cases, including corruption and misappropriation charges, against former Finance Minister Basil Rajapaksa, who is Gotabaya Rajapaksa's brother.<sup>81</sup>

### **PTA enables the use of torture**

60. The PTA contains several problematic provisions that enable the use of torture by law enforcement agencies. Particularly, Section 7 gives police the power to hold suspects in remand until the conclusion of their trials, and Section 9(1) gives police the power to detain suspects for up to 18 months without trial. During such prolonged detention, suspects are held on the basis of a detention order issued by the President or Secretary of Defense, without any judicial oversight, which increases the likelihood of police subjecting the detainees to physical torture.
61. Moreover, the PTA provides immunity from prosecution for government officials responsible for abuses if they are deemed to have acted in good faith or fulfilling an order under the act, which gives broad cover to security forces' personnel to engage in torture and other abuses with impunity.
62. Because most PTA cases are built on confessions, most of the PTA detainees have been tortured in custody and have undergone cruel, inhuman, or degrading treatment.<sup>82</sup> Those who are released continue to suffer from long-term psychological impacts, in addition to physical scars.
63. Since Sri Lanka's third UPR, the government has taken no steps towards the ratification of the Optional Protocol to the Convention Against Torture, despite accepting recommendations to that end.

### **Recommendations**

64. Repeal the 20<sup>th</sup> Amendment to the Constitution and re-introduce progressive provisions of the 19<sup>th</sup> Amendment through a new constitutional amendment.
65. Stop misusing the ICCPR Act to arrest and detain those who exercise their right to freedom of expression.
66. Amend the ICCPR Act to incorporate provisions of Articles 19, 21, and 22 of the ICCPR, and to allow magistrates to grant bail for offenses under the Act.
67. Amend the PTA to ensure its compliance with the ICCPR.
68. Ensure that terrorism legislation is not used to arrest those who exercise their rights to freedom of expression and freedom of peaceful assembly, including in relation to memorialization activities.
69. Conduct thorough, impartial, and effective investigations into incidents of threats and harassment against human rights defenders and journalists.
70. Ensure that human rights defenders and journalists, particularly those working in the North and East of the country, are not harassed for their work and are able to carry out their work without obstruction and fear of reprisal.
71. Complete pending investigations into the murders and disappearances of journalists from 2004 to 2009 and immediately commence prosecutions against the alleged perpetrators.
72. Conduct impartial and independent investigations into all incidents involving unnecessary or disproportionate use of force by police against protesters, particularly those that resulted in the death or injuries of participants.
73. Provide adequate training to all law enforcement personnel deployed for the policing of assemblies.
74. Ensure that the military and/or police do not engage in the surveillance and intimidation of those exercising their right to peaceful assembly in the North and East of the country.
75. Ratify the Optional Protocol to the Convention Against Torture.

- 
- 1 The Parliamentary Council consists of members of Parliament.
  - 2 Under the 19<sup>th</sup> Amendment, which was abolished with the passage of the 20<sup>th</sup> Amendment, appointments to independent commissions were made by a Constitutional Council that comprised of legislators from different political parties and civil society.
  - 3 Under the 19<sup>th</sup> Amendment, the President could only dissolve Parliament after four and a half years of a five-year term.
  - 4 Gazette No. 2218/ 68, 12 March 2021; [http://www.documents.gov.lk/files/egz/2021/3/2218-68\\_E.pdf](http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf)
  - 5 Prevention of Terrorism (Temporary Provisions) (Amendment) Act No.12 of 2022: <https://www.parliament.lk/uploads/acts/gbills/english/6246.pdf>
  - 6 UN Special Rapporteurs et al, OL LKA 7/2021, 9 December 2021; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26863>
  - 7 On 9 May, Prime Minister Mahinda Rajapaksa resigned after weeks of protests that called for his resignation.
  - 8 Public Security Ordinance No.25 of 1947, Section 5; [https://ihl-databases.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/afad7ae740f9b625c12577370039c9e1/\\$FILE/Public%20Security%20Ordinance.pdf](https://ihl-databases.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/afad7ae740f9b625c12577370039c9e1/$FILE/Public%20Security%20Ordinance.pdf)
  - 9 Public Security Ordinance, Section 2(3).
  - 10 *Ibid.*, Section 2(4).
  - 11 Newswire, *No more State of Emergency in Sri Lanka*, 21 May 2022; <https://www.newswire.lk/2022/05/21/no-more-state-of-emergency-in-sri-lanka/>
  - 12 UN Treaty collection, *Depositary Notifications (CNs) by the Secretary-General*, last accessed on 28 June 2022; <https://treaties.un.org/pages/CNs.aspx?cnTab=tab1&clang=en>
  - 13 International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007; <https://citizenslanka.org/wp-content/uploads/2015/12/International-Covenant-on-Civil-Political-Rights-ICCPR-Act-No-56-of-2007E.pdf>
  - 14 Amnesty International, *Drop all charges against Shakhthika Sathkumara*, 24 August 2020; <https://act.amnestyusa.org/page/65823/action/1?locale=en-US>
  - 15 Sunday Observer, *Grilling of playwright Malaka Dewapriya: Continued use of ICCPR to crack down on artistes*, 20 October 2019; <http://www.sundayobserver.lk/2019/10/20/news-features/grilling-playwright-malaka-dewapriya-continued-use-icpr-crack-down>
  - 16 Economy Next, *Playwright Dewapriya released after recording long statement*, 17 October 2019; <https://economynext.com/playwright-dewapriya-released-after-recording-long-statement-46941/>
  - 17 Cases litigation handled by CHR D from 2019 to 2022 under its Free Legal Assistance Program.
  - 18 Daily Express, *Ramzy Razeek released on bail after 5 months of Sri Lankan detention*, 19 September 2020; <http://dailyexpress.lk/global/2183/>
  - 19 Free Media Movement, *Media Freedom Rights Monitoring Report*, 1 January 2021; [http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD\\_Jan\\_ENG.pdf](http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD_Jan_ENG.pdf)
  - 20 CIVICUS, *Assault on Civic Freedoms continue in Sri Lanka as an economic crisis hits the country*, 29 March 2022; <https://monitor.civicus.org/updates/2022/03/29/assault-civic-freedoms-continue-sri-lanka-economic-crisis-hits-country/>
  - 21 Daily Mirror, *In conversation with Poet Ahnaf Jazeem "The poems I wrote were against the ISIS ideology"*, 11 March 2022; <https://www.dailymirror.lk/plus/In-conversation-with-Poet-Ahnaf-Jazeem-The-poems-I-wrote-were-against-the-ISIS-ideology/352-232803>
  - 22 Amnesty International et al, *Release Hejaaz Hizbullah and Others Denied Due Process under Abusive Law*, 28 July 2021; <https://www.amnesty.org/en/wp-content/uploads/2021/07/ASA3745252021ENGLISH.pdf>
  - 23 Remembrance Day is marked each year on 18 May, the date in which the civil war ended in 2009. It is the day in which Sri Lankan Tamils honor the memory of those who died during the civil war.
  - 24 Maaveerar Naal (Heroes' Day) is held each year on 27 November, the date in which the first LTTE cadre died in combat in 1982. Heroes' week is held annually from 21 to 26 November to commemorate the death of those who died fighting for the LTTE.
  - 25 Daily FT, *TNA MP lambastes Govt. for creating bogeyman of minorities to hide inabilities*, 7 December 2020; <https://www.ft.lk/news/TNA-MP-lambastes-Govt-for-creating-bogeyman-of-minorities-to-hide-inabilities/56-709860>
  - 26 Free Media Movement, *Media Freedom Rights Monitoring Report*, 1 January 2021; [http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD\\_Jan\\_ENG.pdf](http://www.fmmsrilanka.lk/wp-content/uploads/2021/04/MFRMD_Jan_ENG.pdf)
  - 27 Inform, *Repression for Dissent in Sri Lanka in November -December 2020*; [https://www.inform.lk/wp-content/uploads/2021/03/RoD\\_Nov-Dec2020.pdf](https://www.inform.lk/wp-content/uploads/2021/03/RoD_Nov-Dec2020.pdf)
  - 28 Litigation handled by CHR D from 2019 to 2022 under its Free Legal Assistance Program.
  - 29 News.lk, *Cabinet paper to enact laws to curtail fake and misleading assertions publicize through internet*, 21 April 2021; <https://www.news.lk/news/political-current-affairs/item/32090-cabinet-paper-to-enact-laws-to-curtail-fake-and-misleading-assertions-publicize-through-internet>
  - 30 News First, *Cabinet approves to draft 'Fake News Law'*, 20 April 2021; <https://www.newsfirst.lk/2021/04/20/cabinet-approves-to-draft-fake-news-law/>
  - 31 Daily News, *Sri Lanka to curb fake news on social media*, 7 June 2021; <http://www.dailynews.lk/2021/06/07/local/251037/sri-lanka-curb-fake-news-social-media>
  - 32 The ban was imposed on Facebook, Twitter, WhatsApp, YouTube, Instagram, Facebook messenger, Telegram, TikTok, and Viber.
  - 33 Netblocks, *Social media restricted in Sri Lanka as emergency declared amid protests*, 2 April 2022; <https://netblocks.org/reports/social-media-restricted-in-sri-lanka-as-emergency-declared-amid-protests-JA6ROrAQ>
  - 34 Al Jazeera, *Rajapaksa's brother probed over killings*, 18 January 2015; <https://www.aljazeera.com/news/2015/1/18/rajapaksas-brother-probed-over-killings>
  - 35 Observatory for the Protection of Human Rights Defenders, *Sri Lanka: Arbitrary arrest and subsequent release on bail of Shehan Malaka*, 25 February 2022; <https://www.fidh.org/en/issues/human-rights-defenders/sri-lanka-arbitrary-arrest-and-subsequent-release-on-bail-of-shehan>

- 
- 36 Remembrance Day was celebrated on 18 May. In 2015, President Maithreepala Sirisena changed the date to 19 May.
- 37 Newswire, *Police in civil caught filming protest in Batticaloa*, 29 April 2022; <https://www.newswire.lk/2022/04/29/police-in-civil-caught-filming-protest-in-batticaloa/>
- 38 Amnesty International, *Still no answers: an update on the rights of victims of enforced disappearances in Sri Lanka*, 2022; <https://www.amnesty.org/en/wp-content/uploads/2022/03/ASA3752782022ENGLISH.pdf>
- 39 FIDH and CHRD, *Sri Lanka: Hold police accountable for use of lethal force against protesters*, 20 April 2022; <https://www.fidh.org/en/region/asia/sri-lanka/sri-lanka-police-use-lethal-force-against-protesters>
- 40 Daily Mirror, *Unrest in Rambukkana: State level contradictions galore as victims await justice*, 25 April 2022; <https://www.dailymirror.lk/recommended-news/Unrest-in-Rambukkana-State-level-contradictions-galore-as-victims-await-justice/277-235614>
- 41 News First, *#Rambukkana Shooting: SSP & Constables to appear in Court; They were arrested from Police Hospitals*, 29 April 2022; <https://www.newsfirst.lk/2022/04/29/rambukkana-shooting-ssp-they-were-arrested-from-police-hospitals/>
- 42 *Ibid.*
- 43 Guardian, *Sri Lanka: 50 injured as protesters try to storm president's house amid economic crisis*, 1 April 2022; <https://www.theguardian.com/world/2022/apr/01/sri-lanka-protesters-try-to-storm-presidents-house-as-economic-crisis-deepens>
- 44 UNICEF, *UNICEF condemns violence against children during protests*, 7 May 2022; <https://www.unicef.org/srilanka/press-releases/unicef-condemns-violence-against-children-during-protests>
- 45 AFP, *Sri Lanka police tear gas student protesters outside parliament*, 5 May 2022; <https://www.france24.com/en/live-news/20220505-sri-lanka-police-tear-gas-student-protesters-outside-parliament>
- 46 Newswire, *Police trucks removed: BASL says any attempt to disrupt protests will have grave repercussions*, 16 April 2022; <https://www.newswire.lk/2022/04/16/says-any-attempt-to-disrupt-protests-will-have-gravesions/>
- 47 News First, *Sri Lankan Cops remove police buses & trucks from Mynagagama*, 4 May 2022; <https://www.newsfirst.lk/2022/05/04/sri-lankan-cops-remove-police-buses-trucks-from-mynagagama/>
- 48 Economy Next, *Sri Lanka protesters assault top cop Deshabandu Tennakoon*, 10 May 2022; <https://economynext.com/sri-lanka-protesters-assault-top-cop-deshabandu-tennakoon-94053/>
- 49 Channel News Asia, *Dozens injured as Sri Lanka government supporters run riot*, 9 May 2022; <https://www.channelnewsasia.com/asia/sri-lanka-colombo-curfew-clash-economic-crisis-2673271>
- 50 News Wire, *Ramesh Pathirana names two officials who deliberately failed to stop Galle Face attack*, 18 May 2022; <https://www.newswire.lk/2022/05/18/es-two-official-who-deliberately-failed-to-stop-galle-face-attack/>
- 51 News First, *SLPP MPs Sanath Nishantha & Milan Jayatilake arrested*, 17 May 2022; <https://www.newsfirst.lk/2022/05/17/slpp-mp-sanath-nishantha-arrested/>
- 52 Al Jazeera, *Police fire tear gas as Sri Lanka protesters defy curfew*, 3 April 2022; <https://www.aljazeera.com/news/2022/4/3/protesters-rally-in-sri-lanka-despite-curfew-social-media-curbs>
- 53 Daily Mirror, *Dozen arrested for protesting near Parliament*, 4 May 2022; [https://www.dailymirror.lk/top\\_story/Dozen-arrested-for-protesting-near-Parliament/155-236256](https://www.dailymirror.lk/top_story/Dozen-arrested-for-protesting-near-Parliament/155-236256)
- 54 Emergency (miscellaneous Provisions and Powers) regulations, No. 1 of 2022, Gazette No. 2278/ 23, Regulation 11 (11).
- 55 *Ibid.* Regulation 12 (1).
- 56 *Ibid.* Regulation 36 (1).
- 57 Ministry of Defense, *Legal actions to be taken against unlawful acts irrespective of political affiliations – Defence Secretary*, 11 May 2022; [https://www.defence.lk/Article/view\\_article/4538](https://www.defence.lk/Article/view_article/4538)
- 58 Reuters, *Sri Lanka police given orders to shoot to maintain order*, 11 May 2022; <https://www.reuters.com/world/asia-pacific/sri-lanka-police-given-orders-shoot-maintain-order-2022-05-11/>
- 59 News First, *(Video) Cop manhandles unhappy motorcyclist at Kurunegala filling station*, 17 June 2022; <https://www.newsfirst.lk/2022/06/17/video-cop-manhandles-unhappy-motorcyclist-at-kurunegala-filling-station/>
- 60 News First, *Fuel crisis : Protests and demands as military moves in*, 19 June 2022, <https://www.newsfirst.lk/2022/06/19/fuel-crisis-protests-and-demands-as-military-moves-in/>
- 61 Sunday Times, *55 people injured in demo; three suffer gunshot injuries*, 10 July 2022; <https://www.sundaytimes.lk/220710/news/55-people-injured-in-demo-three-suffer-gunshot-injuries-488657.html>.
- 62 News First, *News 1st journalist attacked by STF & Police*, 9 July 2022; <https://www.newsfirst.lk/2022/07/09/news-1st-journalist-attacked-by-stf-police/>
- 63 FIDH et al., *Sri Lanka: End arbitrary arrests, reprisals against human rights defenders and activists advocating for education rights*, 28 September 2021; <https://www.fidh.org/en/issues/human-rights-defenders/end-arbitrary-arrests-reprisals-against-human-rights-defenders-and>
- 64 Economy Next, *Sri Lanka police arrest over 45 for organising protests in violation of ban*, 8 July 2021; <https://economynext.com/sri-lanka-police-arrest-over-45-for-organising-protests-in-violation-of-ban-83828/>
- 65 *Ibid.*
- 66 Journalist for Democracy in Sri Lanka, *Media workers killed*; <http://www.jdslanka.org/index.php/killed-media-workers/40-killed-media-workers/85-media-workers-killed-in-2009>
- 67 Daily Mirror, *The Hague Tribunal; protests in Sri Lanka and challenging impunity for crimes against journalist*, 13 May 2022; [https://www.dailymirror.lk/opinion/The-Hague-Tribunal-and-Protests-in-Sri-Lanka-Challenging-impunity-for-crimes-against-journalists/231-236894#.Yn5W4kNW\\_48.twitter](https://www.dailymirror.lk/opinion/The-Hague-Tribunal-and-Protests-in-Sri-Lanka-Challenging-impunity-for-crimes-against-journalists/231-236894#.Yn5W4kNW_48.twitter)
- 68 Investigations by the CID uncovered that a military intelligence unit called the Triploi Platoon, essentially a “death squad,” was behind the attacks on journalists. See: Human Rights Watch, *Open wounds and mounting dangers*, 1 February 2021; <https://www.hrw.org/report/2021/02/01/open-wounds-and-mounting-dangers/blocking-accountability-grave-abuses-sri-lanka>
- 69 Sunday Observer, *Phone records lead CID to big arrest in Keith Noyahr abduction case*, 15 April 2018;

- 
- <http://www.sundayobserver.lk/2018/04/15/news-feature/phone-records-lead-cid-big-arrest-keith-noyahr-abduction-case>
- 70 Newswire, *Ex-Police Chief's appointment to the Office of Missing Persons sparks concern*, 31 May 2021; <https://www.newswire.lk/2021/05/31/ex-police-chiefs-appointment-to-the-office-of-missing-persons-sparks-concern/>
- 71 Economy Next, *Ahimsa's objections on CID Director's appointment; Constitutional Council wants NPC's observations*, 25 June 2020; <https://economynext.com/ahimsas-objections-on-cid-directors-appointment-constitutional-council-wants-npcs-observations-71410/>
- 72 Media.lk, *Shani-Mendis released on bail after 10 months*, 16 June 2021; <https://medialk.com/english/2021/06/16/shani-mendis-released-on-bail-after-10-months/>
- 73 Asia News, *Rajapaksa crimes investigator flees from death threats*, 26 November 2019; <https://www.asianews.it/news-en/Rajapaksa-crimes-investigator-flees-from-death-threats-48645.html>
- 74 A trial-at-bar consists of proceedings brought before three High Court judges to consider novel points of law in trials of criminal cases of exceptional public importance.
- 75 Daily FT, *Justice for Prageeth*, 27 January 2022; [https://www.ft.lk/view\\_editorial/Justice-for-Prageeth/58-729682](https://www.ft.lk/view_editorial/Justice-for-Prageeth/58-729682)
- 76 News First, *Ekneligoda Disappearance: Army Intel personnel granted bail; Witness remanded*, 17 June 2022, <https://www.newsfirst.lk/2022/06/17/ekneligoda-disappearance-army-intel-personnel-granted-bail-witness-remanded/>
- 77 Al Jazeera, *Sri Lanka drops charges against ex-navy chief over 11 killings*, 14 October 2021; <https://www.aljazeera.com/news/2021/10/14/sri-lanka-charges-former-navy-chief-11-killings-civil-war-tamils>
- 78 Amnesty International, *Sri Lanka: Collapse of Joseph Pararajasingham murder case a failure of justice*, 13 January 2021; <https://www.amnesty.org/en/latest/news/2021/01/sri-lanka-collapse-of-joseph-pararajasingham-murder-case-a-failure-of-justice/>
- 79 Sunday Times, *Suspects in journalist Nimalarajan's murder case released*, 6 May 2021; <https://www.timesonline.lk/news-online/Suspects-in-journalist-Nimalarajans-murder-case-released/2-1133232>
- 80 Sri Lanka Working Journalist Association, *Sri Lanka: Reopen the investigation into the murder of journalist Mylvaganam Nimalarajan*, 24 May 2021; <https://samsn.ifj.org/sri-lanka-reopen-the-investigation-into-the-murder-of-journalist-mylvaganam-nimalarajan/>
- 81 This included cases of corruption against several current and former members of Parliament of the ruling party, including: Johnston Fernando, Mahindananda Aluthgamage, Rohitha Abeygunawardena, Wimal Weerawansa, Udaya Gammanpila, and Pavithra Wanniarachchi. In these cases, the Attorney General informed the courts that there was insufficient evidence to continue with the prosecution.
- 82 Human Rights Commission of Sri Lanka, *Prison study by the Human Rights Commission of Sri Lanka*, December 2020; <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>