

# Sri Lanka: Minority Rights within Shrinking Civic Space

Ambika Satkunanathan

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## Introduction

This report will discuss the state of the rights of ethno-religious minorities in Sri Lanka in the context of the erosion of civic space.<sup>1</sup>

Historically, minorities in Sri Lanka have faced discrimination, marginalisation, and violence, which worsened during periods when the space for dissent and civil society activism was also under attack by the government of the day. During President Mahinda Rajapaksa's regime from 2004 to 2015, in the midst of shrinking of civic space and crackdown on dissent, ethno-religious minorities faced numerous threats and obstacles to exercising their rights. Although this changed in January 2015 when the Yahapalanaya<sup>2</sup> regime, led by President Maithripala Sirisena, was elected, civic space began shrinking again during the latter stages of the of the Yahapalanaya regime. Concerns about potential further restrictions on civic space increased when the Rajapaksa family returned to power in November 2019 with the election of Gotabaya Rajapaksa, the brother of former President Mahinda Rajapaksa, as the president.

To contextualise the state of minority rights and illustrate the

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<sup>1</sup> 'Civic space is the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views.'—'Protecting and Expanding Civic Space', *United Nations Office of the High Commissioner for Human Rights*, August 30, 2020, <https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx>.

<sup>2</sup> Good governance regime.

continuity of violations across regimes, this report will first set out the state of minority rights during the Yahapalanaya regime and, thereafter, focus on the situation post-presidential election of November 2019.

This report was written in the midst of the Covid-19 pandemic, which exposed systemic and structural weaknesses of the pre-Covid-19 world in Sri Lanka. During the pandemic, it became evident that rising inequalities that remained unaddressed increased the vulnerability of certain social groups, which due to elements such as race, ethnicity, gender, religion, or sexual orientation became more vulnerable to discrimination, marginalisation, and even violence. The aforementioned groups have also been affected by the resurgence of ethno-nationalism and identity politics, and increasing public support amongst the majority community for a populist and authoritarian government. In this context, the government has used the pandemic as a cover to restrict civic space as well as erode minority rights. Hence, the final section of the report will focus on the impact of the pandemic on civic space and the protection of the rights of minorities in Sri Lanka.

In each of the aforementioned three sections of the report, the political context and the state of civic space will be set out first, and, thereafter, the state of various ethno-religious minorities within that context will be analysed.

## **Methodology**

Due to the pandemic, the report is based on a desk review of resources in the public domain and the author's notes of field visits undertaken during the period under review.

## **The Yahapalanaya Government 2015-2019**

### **Political Context**

The Yahapalanaya government won the presidential and parliamentary elections in 2015 on promises of good governance and anti-corruption after ten years of the Rajapaksa regime which stood accused of violations of humanitarian and human rights law, corruption and executive overreach. To the Tamils, it promised a

political solution to the thirty-year-old ethnic conflict which the Rajapaksa government had ended militarily, and solutions to deal with the violations of the past, for which it received their vote. However, by the end of its tenure, most of those promises had not been fulfilled and the government was dogged by scandals such as the Central Bank bond corruption allegations. In the Southern Sinhala-majority part of the country, this created an atmosphere in which public discontent was effectively used by the Sri Lanka Podujana Peramuna (SLPP), a new opposition party founded by the Rajapaksas, to create public clamour for a nationalist and populist government. Coupled with the SLPP's relentless campaign to portray the Yahapalanaya government as anti-Sinhalese and pro-minority, and the government's failure to counter these misrepresentations, it led to the electoral loss of the Yahapalanaya government in November 2019. At the same time, the lack of decisive action in fulfilling promises made to the Tamils resulted in the Tamil community becoming disillusioned with the Yahapalanaya government's ability to address their needs and concerns.<sup>3</sup> This, in turn, provided space for more nationalist parties to increase their popularity within the Tamil community as well.

The terror attacks on Easter Sunday that took place in six places around the country on 21 April 2019 caused a considerable shift in the socio-political context, both in terms of civic space and the rights of minorities. The attacks created an atmosphere for the state to take action that restricted civic space, such as declaring a state of emergency, and also for the state and society to engage in and justify anti-Muslim acts. The Yahapalanaya government not only failed to be proactive in identifying and addressing the root causes of anti-minority rhetoric but also through its action, such as the Niqab ban, as well as inaction in countering anti-minority sentiment and action, made discrimination against Muslims to be perceived as publicly acceptable. This consequently created a sense of impunity and emboldened section of the public to openly engage in bigoted behaviour. The outcome was the undermining of the

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<sup>3</sup> 'Sampanthan Says Tamil People Losing Patience with Yahapalanaya.' *Colombo Telegraph*, February 24, 2017, <https://www.colombotelegraph.com/index.php/sampanthan-says-tamil-people-losing-patience-with-yahapalanaya/>.

rights of the minorities and increased and virulent anti-minority action by both state and non-state actors.

### **Civic Space**

Civic space opened up following the end of the Rajapaksa regime and the Yahapalanaya regime assuming power in January 2015. However, towards the last years of the Yahapalanaya regime, the resumption of the curtailment of civic space was seen in the use of the law to curb freedom of expression, while failing to use the same law against those who engage in propagating hate and inciting violence against ethno-religious groups. For instance, writer Shakthika Sathkumara was arrested on 1 April 2019 and remanded in fiscal custody for violating the International Covenant on Civil and Political Rights (ICCPR) Act (2007)<sup>4</sup> by publishing a short story in which he alluded to sexual abuse in Buddhist temples, which was deemed to be inciting religious hatred.<sup>5</sup> Hence, the ICCPR Act was used by the state as a tool to curb freedom of expression and silence critics but not arrest persons inciting ethnic/religious tensions. In response to the misuse of ICCPR Act, the Human Rights Commission of Sri Lanka issued a statement on the correct interpretation of Section 3 of the Act which sets out the offence of advocating for national, religious, or racial hatred that constitutes incitement to discrimination, hostility, or violence. Despite this, the selective use of the ICCPR Act, which has undermined its purpose, has continued.<sup>6</sup>

The declaration of a state of emergency by President Sirisena on 22 April 2019<sup>7</sup> after the Easter attacks and the promulgation

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4 Socialist Republic of Sri Lanka, International Covenant on Civil and Political Rights 2007, Section 3, 'No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.'

5 'Opinion No. 8/2020 Concerning Delankage Sameera Shakthika Sathkumara (Sri Lanka)', Ohchr.org, 2020, [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A\\_HRC\\_WGAD\\_2020\\_8\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_8_Advance_Edited_Version.pdf).

6 'HRCSL Issues Guidelines On Application of Hate Speech Law (S.3 Of ICCPR Act)', Human Rights Commission of Sri Lanka, 2019, <http://www.hrcsl.lk/hrcsl-issues-guidelines-on-application-of-hate-speech-law-s-3-of-iccpr-act/>.

7 Presidential Secretariat, *Extraordinary Gazette No. 2120/3—2019*, 2019, Colombo, <https://www.gazette.lk/2019/04/the-gazette-declaring-state-of->

of emergency regulations under the Public Security Ordinance contributed to the shrinking of civic space. Since Sri Lanka has been under a state of emergency for most of its post-independence life, there is public acceptance of militarisation of policing and law enforcement, and of the military exercising powers that are not subject to judicial review. While it could be argued that the declaration of a state of emergency for a short period due to the Easter attacks can be justified, the promulgation of emergency regulations that clearly and disproportionately impinged on civic rights signalled a reversion to creating a climate in which the executive overreaches and curbs on civic rights are normalised.

After the state of emergency was allowed to lapse on 23 August 2019, the President used Section 12 of the Public Security Ordinance (PSO) to ‘call out’ the armed forces to maintain law and order. Unlike the declaration of the state of emergency, which has to be ratified by the parliament within fourteen days at first instance and thereafter every month, the president has to merely issue a gazette notification each month to exercise his power under Section 12 of the PSO. Hence, the gazette is not subject to scrutiny or debate by the parliament. The calling upon of the armed forces to maintain law and order, i.e., effectively engage in policing, went unnoticed, and there was no challenge to it by civil society or even the Human Rights Commission of Sri Lanka. The President’s use of Section 12 of the PSO could have gone unnoticed due to the fact it did not have to be ratified by Parliament, as well its use being normalised as it had been used for an extended period by the Mahinda Rajapaksa regime.

There are other factors that enabled a relatively easy transition to an authoritarian government post-November 2019. These include the failure of the Yahapalanaya government to demilitarise the north of the country, inhabited primarily by Tamils, with all military camps remaining at the end of the Yahapalanaya government. The involvement of the military in activities that are outside their purview, such as business ventures, was also allowed to continue during the Yahapalanaya government.<sup>8</sup> Further, the

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[emergency-from-april-22-the-public-security-ordinance-emergency-order.html](#).

<sup>8</sup> Joint Civil Society Submission to the UN Periodic Review of Sri

continued existence of the informal intelligence apparatus, which is not held accountable to any democratic oversight entity or process, also meant that civil society organisations, particularly in the north, continued to receive ‘visits’ from officers from the different intelligence as well as law enforcement entities.<sup>9</sup> For instance, families of the disappeared who by June 2020 had been protesting for over 1000 days at multiple locations in the Northern Province complained of regular monitoring by the intelligence agencies during their protests.<sup>10</sup> The same was stated by persons protesting for the release of land in Keppapilavu, Mullaitivu in the Northern Province (more on this under Land Rights section later).

## **The Rights of Ethno-Religious Minorities**

### ***Rights of the Muslim Community***

In the context of historical rights violations and organised state violence against both Tamil and Muslim communities in Sri Lanka, for which perpetrators have rarely been held accountable, the Yahapalanaya government’s failure to bring to account those responsible for even recent incidents of anti-Muslim violence, such as riots in Digana and Aluthgama, entrenched and normalised impunity. This further encouraged continued harassment, discrimination, and the use of violence against Muslims, such as during the period after the Easter attacks on 21 April 2019.<sup>11</sup> Anti-Muslim attacks are not new, as the propagation of hate and incitement to violence, by both state and non-state actors, has occurred throughout the history of Sri Lanka. Prior to the Yahapalanaya regime, during the Mahinda Rajapaksa regime,

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Lanka (28<sup>th</sup> Session)’ *United Nations Human Rights Office of the High Commissioner*, March 30, 2017, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4469&file=EnglishTranslation>.

<sup>9</sup> Ibid.

<sup>10</sup> ‘Families decry surveillance as Sri Lankan intel out in force at disappeared protest’, *Tamil Guardian*, December 11, 2019, <https://www.tamilguardian.com/content/families-decry-surveillance-sri-lankan-intel-out-force-disappeared-protest>.

<sup>11</sup> ‘Sri Lanka: Muslims Face Threats, Attacks’, *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

there were campaigns against the Muslim community fuelled by social as well as mainstream media and the Buddhist clergy that received either overt or tacit support of the state. This indicates the existence of deep-seated communalism and prejudice, within the state structure and society that have to be addressed.

Three weeks after the Easter attacks, anti-Muslim riots occurred on 13 May 2019 in certain Muslim-majority towns, mainly in the North Western Province and some areas in the Western Province. This resulted in damage to property and the death of an individual, Fouzul Ameer, a carpenter, who was hacked to death at the entrance to his home.<sup>12</sup> Persons from areas, such as Kottaramullai and Thummodara in the North Western Province, stated that they had heard of rumours of a possible attack the previous night and had contacted the police and state authorities numerous times requesting protection, which never materialised.<sup>13</sup> The violence took place while a curfew had been declared in these areas, and it is common practice for the police to establish checkpoints when a curfew is declared to prevent the movement of people. In this context, the ability of mobs to attack Muslim villages points to grave negligence and/or collusion on the part of the state.

Although more than 70 persons<sup>14</sup> were arrested for the violence, there were allegations that many who were responsible, especially those from within the community who participated in the violence in Kottaramullai and Thummodara were not arrested. Even those who were arrested were not detained under the ICCPR Act for incitement to violence, which would be a non-bailable offence, but under the Penal Code and were granted bail within a few weeks of arrest. The granting of bail in this instance should be contrasted with another case of refusal of bail to a seventeen-year-old pregnant Muslim woman wearing a hijab. She was arrested for allegedly covering her face when she covered her mouth with a

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<sup>12</sup> 'Police stood by while mobs rampaged: HRCSL', *Sunday Observer*, May 26, 2019, <http://www.sundayobserver.lk/2019/05/26/news/police-stood-while-mobs-rampaged-hrcsl>.

<sup>13</sup> Randev, 2019, 'HRCSL provides guidelines to acting IGP', *The Morning—Sri Lanka News*, <http://www.themorning.lk/hrcsl-provides-guidelines-to-acting-igp/>.

<sup>14</sup> 'Sri Lanka extends nationwide curfew after anti-Muslim riots' *BBC Asia*, May 15, 2019, <https://www.bbc.com/news/world-asia-48269240>.

handkerchief while experiencing a moment of nausea, but she was not given bail for nearly two months. To date, there is no known case of prosecution of perpetrators of the May 2019 anti-Muslim violence. The aforementioned inaction and action of various state entities raise questions about their impartiality and prima facie point to possible anti-Muslim prejudices embedded within these institutions. These are also examples of state inaction that has created a sense of impunity amongst the public and, thereby, emboldened people to engage in anti-Muslim acts.

After the Easter attacks, a large number of Muslim men were arrested seemingly without reasonable cause. For example, there were cases of men being arrested for possessing items such as chlorine, which was suspected to be explosive materials, the Quran and documents in Arabic, having a song (Qaseeda) on the hundred names of Allah on their phone, and a dagger. Due to this, members of the Muslim community had burnt Qurans and magazines and other documents that were in Arabic for fear of being arrested.<sup>15</sup>

The Muslim men were mostly arrested and detained under the Prevention of Terrorism Act (PTA), which has been flagged for decades as a law that violates key human rights, in particular due process rights, and violates the accused's right to enjoy a fair trial.<sup>16</sup> Historically, the PTA was used against the Tamil community with torture in custody and extraction of forcible confessions from detainees documented through the years.<sup>17</sup> In 2019, after the Easter attacks, this law was used to arrest a large number of Muslim men and numerous instances of violation of due process rights were reported. Given the seriousness of terror offences, the arrest of anyone under the PTA also serves to curb challenges to such an arrest due to concern amongst the public and human rights defenders of possible state backlash or being

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<sup>15</sup> Author's notes based on complaints received and dealt with during her tenure as Commissioner of the Human Rights Commission of Sri Lanka.

<sup>16</sup> 'Arrest under PTA: HRCSL responds to President', *The Island*, June 27, 2016, [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=147686](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=147686).

<sup>17</sup> 'Sri Lanka: Repeal Abusive Counterterrorism Law', *Human Rights Watch*, January 10, 2020, <https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>.

labelled terrorists themselves.<sup>18</sup> This has led to lawyers showing reluctance to represent PTA detainees and the judiciary adopting a rather conservative approach in dealing with these cases.

Following the Easter attacks, persons who were stopped at checkpoints narrated instances of being taken to the police station for interrogation because they had a laptop in their possession or their national identity card mentioned a different address than their current residence.<sup>19</sup> The arrest and detention of a large number of men, who were most often the primary and even sole income earners of their families, caused untold hardship and emotional trauma for the families, who also had little or no knowledge of how or where to seek legal assistance. In most instances, they could not afford to retain legal counsel.

Even those who could afford to retain lawyers faced numerous obstacles as lawyers refused to appear for detainees for fear of being seen as representing terrorists and the possible resultant public backlash. In certain Bars, lawyers not only refused to represent the detainees but also attempted to intimidate other lawyers appearing for detainees in an attempt to prevent them from representing detainees, such as at the Marawila Bar.<sup>20</sup> Although the Human Rights Commission of Sri Lanka wrote to the Bar Association of Sri Lanka (BASL) based on credible and verified reports it had received from the families of detainees and lawyers who appeared for the detainees, the BASL responded that there have been ‘no formal resolutions by any identified regional branch resolving to refrain from representing suspects arrested in relation to the terror attacks on 21st April’<sup>21</sup> and did not initiate a formal inquiry into

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18 D.B.S. Jeyaraj, 2019, ‘Anti—Terrorist Action Must Not Become a Witch Hunt Against Sri Lankan Muslims’, *Daily Mirror*, May 4, 2019.

19 Author’s notes based on complaints received and dealt with during her tenure as Commissioner of the Human Rights Commission of Sri Lanka; Lisa Fuller and Rukshana Rizwie, ‘Muslims “targeted with arbitrary arrests” after Easter massacre’, *Al Jazeera*, June 16 2019, <https://www.aljazeera.com/indepth/features/muslims-targeted-arbitrary-arrests-easter-massacre-190613123018003.html>.

20 ‘Letter from the Chairperson of the Human Rights Commission of Sri Lanka, Dr. Deepika Udagama, to the President of the Bar Association of Sri Lanka Mr. Kalinga Indatissa (PC).’ *Human Rights Commission of Sri Lanka*, July 25, 2019, <http://www.hrcsl.lk/wp-content/uploads/2020/02/HRCSL-Response-to-Bar-Association-of-Sri-Lanka.pdf>.

21 *Ibid.*

the matter. The BASL's response illustrates a lack of understanding of anti-Muslim sentiments prevailing at the time, as well as of the manner in which informal social practices impact legal rights and the ability of detainees to enjoy their due process rights, especially to a fair trial.

Incidents of harassment, intimidation, discrimination, and violence against Muslims unfolded within a climate in which hate speech in both mainstream media as well as social media was rampant. For example, on 15 May 2019, a few days after the anti-Muslim riots, Gnanarathana Thero, one of Sri Lanka's most senior Buddhist monks, 'called for stoning to death of Muslims, and propagated an unfounded allegation that Muslim-owned restaurants put "sterilization medicine" in their food to suppress the majority Sinhalese Buddhist birth rate'.<sup>22</sup> The use of different forms of birth control and sterilisation methods by the Muslim community to reduce the birth rate of the Sinhalese is propaganda that has been used to spread hate and incite violence against Muslims since 2013. In 2018, rumours of a restaurant in Ampara in the Eastern Province mixing sterilisation pills in the food sparked violence which spread to Kandy in the Central Province. Hence, rumours in both mainstream and social media coincided with incidents of violence and even caused or worsened them. It should be noted that at no point did the state use the ICCPR Act to take action against Gnanarathana Thero despite past incidents of rumours and hate speech sparking violence.

These rumours were repeated by certain religious leaders and political actors to portray Muslims as the 'other', a community that does not align itself with the rest of the Sri Lankan population but rather pledges allegiance to the global Muslim community. The notion that the Muslim community behaves and dresses differently and follows a different set of rules and legal regulations under the Sharia Law instead of conforming to the beliefs and behavioural practices that are deemed to be 'Sri Lankan' by the Sinhalese community has been used to question their patriotism

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<sup>22</sup> 'Sri Lanka: Muslims Face Threats, Attacks', *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

and connection to the country. This ultimately has the effect of demonising the Muslim community by insinuating they have ulterior motives and an agenda to 'take over' a pre-dominantly Sinhalese nation by mainstreaming Islamic beliefs and practices under the Sharia Law.

State inaction in the face of anti-Muslim violence and the selective and arbitrary use of the law against Muslims legitimised anti-Muslim rhetoric, propaganda, and conspiracy theories that deepened the divides between ethnic groups by validating the fears of the majority ethnic community. An example of the arbitrary use of the law is an arrest under the ICCPR Act of a Muslim woman in the town of Mahinyangana who wore a dress in public that was claimed to have a print resembling the Dharmachakra, an important Buddhist symbol, which was seen as an attempt to incite racial tensions. Like the seventeen-year-old pregnant Muslim woman, she too was remanded in custody for several weeks before being released on bail.

As anti-Muslim sentiment, fanned by mainstream and social media, increased within the society, Muslim women became the targets of harassment and discrimination in public and semi-private spaces. For instance, women who wore the hijab, i.e., only covering their heads, were refused entry or asked to remove their hijab and even show the security at the entrance that there was nothing hidden under their hijab at public as well as private establishments. Women reported that they were subjected to discriminatory treatment even by colleagues, neighbours, and acquaintances who insisted they remove the hijab and abaya, a robe that covers the woman's entire body. For instance, women who worked at the Divisional Secretariat of Karuwalugasbewa in the North Western Province reported such pressure and harassment, including taunts by their colleagues.<sup>23</sup>

Emergency Regulation 32A banned 'any garment, clothing or such other material concealing the full face which will in any manner cause any hindrance to the identification of a person' from being worn in a public place. The Regulation meant that Muslim

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<sup>23</sup> 'Harassed Muslim women complain to HRC.' *Daily Mirror*, May 14, 2019.

women could not wear the niqab,<sup>24</sup> a garb worn to cover the whole face, with or without the eyes concealed, in public spaces. This Regulation was seen as curbing the right of Muslim women since they are the sole demographic group to practice face-covering in public at all times as a matter of choice. Various factions of the majority ethnic community argued that such a ban was necessary in light of the state of emergency, despite the argument that none of the people who were involved in the Easter attack had been wearing a niqab or even the hijab. The Regulation also exacerbated the harassment faced by Muslim women wearing the hijab with often no distinction being made between the niqab and the hijab by citizens or even state officials. The harassment and fear of being arrested for wearing a hijab resulted in Muslim women refraining from leaving their homes, which violated their freedom of movement, made them prisoners in their homes, and made them dependent on their male relatives for all their needs.<sup>25</sup> Although the ban was in place for four months following the attacks until the state of emergency was lifted, scrutiny and harassment of Muslim women who resumed wearing the niqab continued, indicating deeply ingrained societal prejudices that were openly expressed when people felt the law validated their prejudicial actions.<sup>26</sup>

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24 Hillary Margolis, 'Sri Lanka's Face-Covering Ban a Wrongheaded Response to Easter Bombings.' *Human Rights Watch*, May 2, 2019, <https://www.hrw.org/news/2019/05/02/sri-lankas-face-covering-ban-wrongheaded-response-easter-bombings>.

25 'On May 15, 17-year-old Zavahir Rimasha went to have her photograph taken for her national identity card. She was wearing a hijab, which covered her hair. Zavahir Rimasha was 8-months pregnant with her first child, and while she was at the studio she was reportedly overcome by a moment of nausea. When she covered her face with her handkerchief, another customer complained that she had covered her face, and then called the police. She was arrested under the Emergency Regulations and held in custody for over three weeks until June 7, when she was granted bail.' 'Sri Lanka: Muslims Face Threats, Attacks.' *Human Rights Watch*, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks>.

26 'Locals confront a Muslim woman wearing a Burqa (video)', *NewsHub*, September 21, 2019, <https://newshub.lk/en/2019/09/21/locals-confront-a-muslim-couple-wearing-a-burqa-video/>; "Why Are You Covering Your Face?" | Muslim Woman In Niqab Confronted By Extremist In Sri Lanka', *DOA Muslims*, Uploaded on February 6, 2020, YouTube video, 3:15 min, <https://www.youtube.com/watch?v=MJJtegEwfzg>.

The Yahapalanaya government did nothing to counter the hate speech or to ensure that the communities under attack were protected and those inciting and perpetrating violence against Muslims were held to account. An example of state inaction in countering the rhetoric of hate is their silence when a fast-unto-death campaign was undertaken by a Buddhist monk, Athuraliye Rathana, on May 31, 2019 in front of the Temple of the Tooth in Kandy, Central Province, one of the most sacred sites to Buddhists. He demanded that three senior Muslim ministers be removed from their position because of their alleged links to the Easter Attacks. This act created tension in Kandy as well as in other areas where Sinhala mobs forced shops to remain closed. In response to his fast, nine Muslim ministers and two Muslim provincial governors resigned from their ministerial portfolios collectively on 3 June but were sworn in again as ministers on 29 July 2019.<sup>27</sup> At the time of their resignation, the ministers expressed disappointment in the way the government had handled communal tensions and stated they were ‘sacrificing’ their portfolios to make way for ‘a proper investigation’.<sup>28</sup>

### ***Tamil Community***

The grievances of the Tamil community, which led to the thirty-year internal armed conflict that came to an end in 2009 with the military defeat of the Liberation Tigers of Tamil Eelam (LTTE), remained largely unaddressed during the Yahapalanaya regime.

### ***A Political Solution and Dealing with the Past***

A key example of the Yahapalanaya government ignoring calls for accountability for human rights violations committed against the Tamils is the appointment of Major General Shavendra Silva in August 2019 as Commander of the Army by the president despite serious allegations of violations of human rights and humanitarian law against him.<sup>29</sup> This was also contrary to the process at the UN

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<sup>27</sup> Dissanayake, Chathuri, ‘Muslim leaders resign en masse.’ *Daily Financial Times*, June 4, 2019, <http://www.ft.lk/top-story/Muslim-leaders-resign-en-masse/26-679382>.

<sup>28</sup> Ibid.

<sup>29</sup> Johnson, Daniel, ‘Appointment of alleged war criminal to head of Sri Lanka

Human Rights Council to which the Yahapalanaya government had agreed via HRC Resolution 30/1 and 34/1.

In relation to the political solution to the ethnic conflict, the government initiated a process of constitutional reform, by creating a Constitutional Assembly and a Steering Committee chaired by the prime minister with the membership of all political party leaders. The thematic sub-committees of the Constitutional Assembly produced reports consisting of rather progressive recommendations, that were submitted to the Steering Committee which in turn issued an Interim Report. The reform process, however, stalled due to the deteriorating relationship between the president and the prime minister, and the constitutional coup of October 2018. To date, a political solution that addresses the root causes of the ethnic conflict remains elusive.

Where the justice and truth demands of the Tamil community are concerned,<sup>30</sup> although the government enacted the Office on Missing Persons (Establishment, Administration And Discharge Of Functions) Act in 2016 and established the Office on Missing Persons (OMP) with the appointment of members in February 2018, the mandate of the institution is limited to searching and tracing missing persons. If the OMP finds that an offence warranting investigation has been committed, it can report it to law enforcement or the prosecuting authority. The OMP has to date functioned independently and has spent the two years since its establishment hiring staff, formulating procedures, opening three regional offices, and initiating a few investigations.<sup>31</sup> The government established the Office of Reparations in 2018, which as of yet has not announced any comprehensive reparation programme for conflict-affected communities that addresses the

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army “deeply troubling”, says UN human rights chief.’ *UN News*, August 19, 2019, <https://news.un.org/en/story/2019/08/1044501>.

<sup>30</sup> For Sri Lanka, a Long History of Violence.’ *The New York Times*, April 21, 2019, <https://www.nytimes.com/2019/04/21/world/asia/sri-lanka-history-civil-war.html>.

<sup>31</sup> ‘OMP made progress amidst lack of cooperation from state actors & continuous efforts to deny the rights of families of the disappeared—Saliya Pieris’ *Sri Lanka Brief*, October 28, 2019, <https://srilankabrief.org/2019/10/omp-made-progress-amidst-lack-of-cooperation-from-state-actors-continuous-efforts-to-deny-the-rights-of-families-of-the-disappeared-saliya-pieris/>.

multiple and varying losses over decades. The justice- and truth-seeking mechanisms have not been established.<sup>32</sup>

Although the government established the aforementioned two mechanisms, the public rhetoric of key figures in government, such as President Sirisena, refused to acknowledge the need for accountability, and at times even showed a lack of respect for the victims and their demands for justice, truth, and reparations. For instance, in 2017, President Sirisena announced that war heroes would not be prosecuted, thereby clearly indicating that the likelihood of a justice mechanism being established was slim.<sup>33</sup> Furthermore, in January 2016, Prime Minister Wickremesinghe stated that those who disappeared were probably dead, illustrating callous disregard for the pain and trauma of the families of the disappeared.<sup>34</sup>

### *Land Rights*

Land is a contentious issue, since land acquisition/occupation by the state and statesponsored settlement of Sinhalese in Tamil-majority areas is one of the root causes of the ethnic conflict.

In the Tamil majority areas in the North and East, land that was occupied by the military during the war has still not been completely released to their rightful owners, for instance in Keppapilavu in Mullaitivu and Mullikulam, Mannar in the Northern Province. In the Eastern Province, those whose lands are in Sampur in the Trincomalee District also claim their lands are yet to be returned. Additionally, there are those in Sampur who state that they were forced to sell their lands to the military or did so due to misrepresentations made to them.<sup>35</sup> In areas such as Mullaitivu,

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32 'Sri Lanka: Failed Pledges Mar 10 Years Since War's End', *Human Rights Watch*, May 17, 2019, <https://www.hrw.org/news/2019/05/17/sri-lanka-failed-pledges-mar-10-years-wars-end>.

33 'Sri Lanka leader to shield general from war crimes case.' *Al Jazeera*, September 4, 2017, <https://www.aljazeera.com/news/2017/09/sri-lanka-leader-shield-general-war-crimes-case-170903193335527.html>.

34 'Missing and disappeared persons most likely dead says Sri Lanka prime minister', *Tamil Guardian*, January 25, 2016, <https://www.tamilguardian.com/content/missing-and-disappeared-persons-most-likely-dead-says-sri-lanka-prime-minister>.

35 People's Alliance for Right to Land, 'Our Land, Our Life—People's Land

there have been reports of land that has been historically used by persons who either have lost land documentation or do not possess official land documents being arbitrarily acquired as forestland.<sup>36</sup> This has taken place in Kokuthoduwai in Mullaitivu where the land of displaced persons who returned in 2015 was acquired by the Forest Department, which then transferred land ownership to a Sinhalese.<sup>37</sup>

In many instances, land disputes are in relation to places of worship, where there have been attempts to destroy Hindu temples that have existed for decades, if not for hundreds of years, and build Buddhist temples, or to declare the land on which the Hindu temple is built as an archaeological site, thereby preventing the temple from being used for worship. This points to state-sponsored attempts underpinned by Sinhala Buddhist nationalist ideology to colonise land, a strategy that has little room or tolerance for pluralism and diversity of Sri Lankan society. The added layer of militarisation exacerbates the problem as there is heavy military presence in these areas and they are often enlisted to support such processes. Such land disputes in the North and East include the Neeraviyadi Pillayar temple and the Kanniya temple.<sup>38</sup>

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Commission Report 2019-2020', *South Asia Citizens Web*, March 31, 2020, <http://www.sacw.net/article14282.html>.

36 Ibid.

37 Ibid.

38 'Mullaitivu court rules in favour of Neeraviyadi Pillaiyar temple', *Tamil Guardian*, May 14, 2019, <https://www.tamilguardian.com/content/mullaitivu-court-rules-favour-neeraviyadi-pillaiyar-temple>; 'Neeraviyadi: Sri Lankan army sets up 'sham' archaeological museum next to Hindu temple', *Tamil Guardian*, October 29, 2019, <https://www.tamilguardian.com/content/neeraviyadi-sri-lankan-army-sets-sham-archaeological-museum-next-hindu-temple>; 'Sri Lanka: Buddhist mob violate court order with police backing', *Journalists for Democracy in Sri Lanka*, September 24, 2019, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/912-sri-lanka-buddhist-mob-violate-court-order-with-police-backing>; Meera Srinivasan, 2019. 'When the saffron robe has the final say', *The Hindu*, September 28, 2019, <https://www.thehindu.com/news/international/when-the-saffron-robe-has-the-final-ay/article29543715.ece>; 'Tamils protest Kanniya Hindu temple destruction despite Sinhalese assaults and security force obstructions', *Tamil Guardian*, July 17, 2019, <https://www.tamilguardian.com/content/tamils-protest-kanniya-hindu-temple-destruction-despite-sinhalese-assaults-and-security>.

### ***Christian Community***

The rights of Christians, especially the evangelical community, were frequently violated during the Mahinda Rajapaksa regime, and these violations continued during the Yahapalanaya regime. Online hate campaigns against evangelical communities increased in 2017 and 2018, leading to sporadic incidents of off-line violence. Facebook posts in January 2019 calling for violence against a Christian community in Batticaloa on the basis of false rumours about their activities is one such example.<sup>39</sup>

In 2019, 94 incidents of violations against Christian minorities by both state and non-state actors were recorded compared to eighty-eight in 2018. Fifty-six of the eighty-eight incidents recorded included incidents of threats, intimidation, or coercion, and nineteen incidents of violence.<sup>40</sup>

Where these incidents are concerned, the perpetrators are often members of the local community, of either ethnicity, i.e., Sinhala or even members of the Tamil who themselves have been subjected to historical discrimination and violence, who accuse the Christians of proselytisation and use violence with a sense of impunity. Buddhist monks from temples close to evangelical churches leading campaigns of harassment and violence against the churches are also common. Four Buddhist monks led approximately 200 persons and forcibly entered the Christian Family Church premises in Galgamuwa in the North Western Province on 24 February 2019. They demanded the worship service be stopped, abused congregants in obscene language, and vandalised the premises. Thereafter, they dragged a female congregant onto the street, pushed her to the ground at the feet of the monks, and beat her. The pastor filed a police complaint and the Buddhist monks filed a counter-complaint stating that the pastor had breached the peace

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<sup>39</sup> 'Report of the Special Rapporteur on freedom of religion or belief—Visit to Sri Lanka'. OHCHR, February 28, 2020, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A\\_HRC\\_43\\_48\\_Add.2\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_48_Add.2_AdvanceUneditedVersion.docx).

<sup>40</sup> Office of International Religious Freedom, 'International Religious Freedom Report Sri Lanka 2019—May 2020', *US State Department*, May 2020 <https://www.state.gov/wp-content/uploads/2020/05/SRI-LANKA-2019-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

in the area. The breach of peace case was dismissed while the assault case was fixed for trial in December 2019.<sup>41</sup> This illustrates active community participation, as well as the involvement of local Buddhist priests. Another egregious violation that took place in 2018 is the abduction of a Christian pastor in Colombo by unidentified persons; the pastor was tortured and released 24 hours later.<sup>42</sup> To date, no arrests have been made.

These offences were committed with a sense of impunity that stems from the knowledge that prejudice against evangelicals is prevalent amongst the general population, and hence the police will not take action against them. This is echoed by the National Christian Evangelical Alliance of Sri Lanka (NCEASL), which has alleged that state entities that are mandated to provide protection from such acts and are tasked with taking action against those engaging in propagating hate and perpetrating violence are complicit in these acts mostly through inaction.<sup>43</sup> An example is the allegation by the pastor who was threatened with violence on 12 January 2019 in Batticaloa district; he claimed that despite registering an official complaint he was compelled by the police to state in writing that he did not wish to pursue the matter further.

Reportedly, at a meeting with then Prime Minister Wickremesinghe on 18 April 2019, Bishop Asiri Perera, the president of the country's Methodist Church had stated, 'I wonder if the police act only for a segment of society, and don't believe it must protect everyone equally. Each time a church comes under attack, we hear about how the church was barely able to make a complaint to the police. Victims go seeking protection and return feeling utterly insecure'.<sup>44</sup>

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41 Office of International Religious Freedom, 'International Religious Freedom Report Sri Lanka 2019–May 2020', *US State Department*, May 2020, <https://www.state.gov/wp-content/uploads/2020/05/SRI-LANKA-2019-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>; 'Religious Freedom Violations in Sri Lanka: The use of Rights to Information law to assess the responses of Law Enforcement Authorities and the Judiciary.' National Christian Evangelical Alliance of Sri Lanka (NCEASL), July, 2020.

42 'Sri Lanka: The 2019 Religious Freedom Landscape' World Evangelical Alliance and the National Christian Evangelical Alliance of Sri Lanka, February 11, 2019, <http://www.worldevangelicals.org/un/pdf/HRC40%20Sri%20Lanka.pdf>.

43 Ibid.

44 Ibid.

## **Post-2019 Presidential Elections**

### **Political Context**

President Gotabaya Rajapaksa dissolved the parliament with effect from 2 March 2020, and the parliamentary election was scheduled for 25 April 2020. Since elections could not be held even three months after the dissolution due to the pandemic, opposition parties called upon the president to reconvene the parliament to ensure that there would not be a power vacuum for an extended period, particularly during a national crisis. It was to also ensure oversight over public finance and to prevent executive overreach.<sup>45</sup> The president refused to heed their calls, and even stated that he did not have to convene the parliament since his party did not have a majority, illustrating that party politics takes precedence over the public good. In response, several persons petitioned the Supreme Court of Sri Lanka challenging the dissolution of the parliament. The Court refused to grant leave to proceed with the application.<sup>46</sup>

The elections were held on 5 August 2020 in which the Sri Lanka Podujana Party (SLPP) won a two-thirds majority, hence empowering it to bring about any constitutional change it wishes. The lack of a functioning parliament and executive rule through ad-hoc mechanisms for nearly five months contributed to undermining of democracy and normalised executive overreach, which had begun soon after the presidential election. An example of such executive overreach that borders on interference with the judiciary is a speech by President Gotabaya in February 2020 at the National Law Conference where he stated that ‘it is important that

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<sup>45</sup> Meera Srinivasan, ‘We’ll cooperate, reconvene Parliament: Sri Lankan Opposition’, *The Hindu*, April 27, 2020. <https://www.thehindu.com/news/international/well-cooperate-reconvene-parliament-sri-lankan-opposition/article31445543.ece>; ‘Sri Lanka’s Other Covid-19 Crisis: Is Parliamentary Democracy at Risk?’, International Crisis Group, May 29, 2020, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lankas-other-Covid-19-crisis-parliamentary-democracy-risk>.

<sup>46</sup> ‘Supreme Court dismisses FR petitions’, *Daily News*, June 2, 2020, <https://www.dailynews.lk/2020/06/02/law-order/219880/supreme-court-dismisses-fr-petitions>; Asad Hashim, ‘Sri Lanka stares at constitutional crisis as polls delayed’, *Al Jazeera*, May 23, 2020, <https://www.aljazeera.com/news/2020/05/sri-lanka-stares-constitutional-crisis-polls-delayed-200522072254187.html>.

the judiciary does not interfere needlessly in the functioning of the executive and legislative branches of the government'.<sup>47</sup>

On 1 January 2020, President Rajapaksa appointed the Commander of the Army Shavendra Silva as Chief of Defence Staff, further consolidating Silva's position and symbolically repudiating allegations of human rights and humanitarian law violations against him. In February 2020, the United States imposed a travel ban on Silva and members of his family. In response to this Prime Minister Mahinda Rajapaksa blamed the opposition parties, the Tamil National Alliance (TNA) and the Janatha Vimukthi Peramuna (JVP), for the imposition of the ban. It should be noted that various members of the main opposition party, the United National Party, made statements in support of Silva and were critical of the travel ban.<sup>48</sup> Prime Minister Mahinda Rajapaksa further stated that Sri Lanka would withdraw from UN Human Rights Council Resolution 30/1 and 40/1, which was formally done on 27 February 2020.<sup>49</sup>

## **Civic Space and the Protection of Human Rights**

### ***Civic Space***

President Rajapaksa, like President Sirisena before him, began using Section 12 of the PSO to call out the armed forces to maintain law and order. As of August 2020, he continues to issue gazette notifications every month in this regard. Like before, this practice remains unchallenged and has become normalised.

Prime Minister Mahinda Rajapaksa's remarks made in February 2020 that the country is divided between patriots and those he referred to as 'born traitors'<sup>50</sup> can be seen to be part of the strategy

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47 'Unnecessary judicial interventions harmful to democracy- President', *The Island*, February 17, 2020.

48 'Politicians oppose travel ban on Army Commander', *News First*, February 15, 2020, <https://www.newsfirst.lk/2020/02/15/politicos-voice-objections-against-us-entry-ban-on-army-commander/>.

49 'Statement Made By Hon. Dinesh Gunawardena, Minister of Foreign Relations at the 43rd Session of the Human Rights Council', *Ministry of Foreign Affairs*, February 27, 2020, <http://www.mfa.gov.lk/statement-made-by-minister-of-foreign-relations-at-the-43rd-session-of-the-hrc-eng/>.

50 'UNHRC resolution: SL will withdraw; country divided between patriots and traitors—MR' *EconomyNext*, February 19, 2020, <https://economynext.com/>

to signal intolerance of dissent by the labelling of critics of the regime and dissenters as traitors and hence open to be subjected to de jure and de facto punitive measures. This form of labelling was used during the previous Rajapaksa regime as well and had a chilling effect on the freedom of expression.

The ability of human rights defenders and lawyers to engage without fear in their professions was called into question by the death threats made to Attorney-at-Law Achala Shanika Seneviratne. Seneviratne, who represents the families of the eleven young men who were abducted by Navy personnel and disappeared, lodged two complaints with the Criminal Investigation Department (CID) in May 2020 regarding the death threats that she was receiving on social media, in particular made by a group called 'Friends of the Police', in an attempt to stop her from 'legally representing many victims in cases of mass abduction, illegal detention, torture, and murder, where the accused are top security force members'. The CID has reportedly taken no action in response to her most recent complaint.<sup>51</sup>

### ***Militarisation***

Militarisation, which had been temporarily frozen during the Yahapalanaya regime, has been expanding in the Gotabaya Rajapaksa regime with the military playing an increased role in civilian affairs as well as law enforcement. For instance, the police was brought within the purview of the Ministry of Defence along with several other institutions, such as the NGO Secretariat, the National Media Centre, and the Government Information Department.<sup>52</sup> Military personnel, retired or in active service, were

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[unhrc-resolution-sl-will-withdraw-country-divided-between-patriots-and-traitors-mr-51893/](#).

<sup>51</sup> 'Sri Lanka: Female human rights lawyer facing continuous death threats', *Journalists for Democracy in Sri Lanka*, June 1, 2020, <http://www.jdslanka.org/index.php/news-features/human-rights/950-sri-lanka-female-human-rights-lawyer-facing-continuous-death-threats>.

<sup>52</sup> 'Institutions of Disaster Management moved under the purview of Defence.' *News First*, December 11, 2019, <https://www.newsfirst.lk/2019/12/11/institutions-of-disaster-management-moved-under-the-purview-of-defence-ministry/>; Ministry of Defence, 'NGOs circumventing due procedures under scrutiny', June 2, 2020, [http://www.defence.lk/Article/view\\_article/1673](http://www.defence.lk/Article/view_article/1673).

appointed to head the Department of Customs, the Ministry of Health and the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development.<sup>53</sup> In the North, the military was once again seen engaging in activities that are within the purview of civilian authorities, such as interviewing candidates for a recruitment drive for employment in the state sector.<sup>54</sup>

With increased militarisation and ‘visits’ to several civil society organisations in the North by officers of the CID and intelligence services, there is growing fear that dissent and activities of civil society organisations will be curtailed, potentially through restrictive legislation. In August, the government announced that it is drafting a new law which, reportedly, will contain provisions that restrict foreign funding to civil society organisations and stricter monitoring mechanisms.<sup>55</sup>

## **The Impact of Covid-19 on Civic Space and Minority Rights**

### ***Civic Space***

The government used the cover of the pandemic to further restrict civic space and extend and normalise executive overreach. For example, the government issued a notice under the direction of the Inspector General of Police (IGP) that strict action would be taken against those that ‘criticise’ state officials, point out ‘minor shortcomings/failures’, or ‘scold/chastise’ state officials performing their duties, thus in effect, curtailing free expression.<sup>56</sup>

The state exploited the restrictions in place during the lockdown to arrest and detain human rights defenders and persons seen as

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<sup>53</sup> Chathuranga Hapuarachchi, ‘President appoints seven ministry secretaries.’ *News First*, May 11, 2020, <https://www.newsfirst.lk/2020/05/11/president-appoints-seven-ministry-secretaries/>.

<sup>54</sup> Thinakkural, 27 Feb 2020.

<sup>55</sup> Skandha Gunasekera, ‘NGO finances to be regulated’. *The Sunday Morning*, 1 March 2020; <https://www.hrw.org/news/2020/07/29/sri-lanka-human-rights-under-attack>.

<sup>56</sup> ‘Freedom of Expression in Sri Lanka: “Revoke Your Directive & Use Existing Legal Provisions”, Civil Society Tell IGP (Acting)’, *Sri Lanka Brief*, April 8, 2020; Human Rights Watch, ‘Sri Lanka: Human Rights Under Attack’, July 29, 2020, <https://srilankabrief.org/2020/04/freedom-of-expression-in-sri-lanka-revoke-your-directive-use-existing-legal-provisions-civil-society-tell-igp-acting/>.

criticising the steps taken by the government to prevent the spread of Covid-19. The restriction on movement that was imposed during the countrywide lockdown from March to May 2020 to prevent the spread of Covid-19 adversely impacted the detainees who were unable to access legal representation and communicate with their families. There was minimal scrutiny of state action during this time due to the cessation in professional and civic activities, and hence swift action by civil society was not possible.

#### *Imposition and Implementation of Curfew*

In response to Covid-19, the government imposed a curfew and implemented a country-wide lockdown, but the curfew was not declared in accordance with the law, i.e., by the issuance of a gazette under Part II of the PSO.<sup>57</sup> Despite the fact there was no legally declared curfew, up to 56,000 persons were arrested and 13,556 vehicles were seized (as of May 2020).<sup>58</sup> While members of the public who were arrested were released on police bail, it is unclear if cases will be pursued against these persons.<sup>59</sup>

#### *Executive Overreach and Governance via Task Forces*

De-facto methods to consolidate executive power, and curtail civic space increased during the pandemic. For instance, in the guise of responding to the Covid-19 pandemic, the president used the broad powers assigned to him under Article 33 of the Constitution, to establish task forces, which in local parlance, is being referred to as ‘governance by task forces/committees’; the provision does not empower him to establish such bodies.

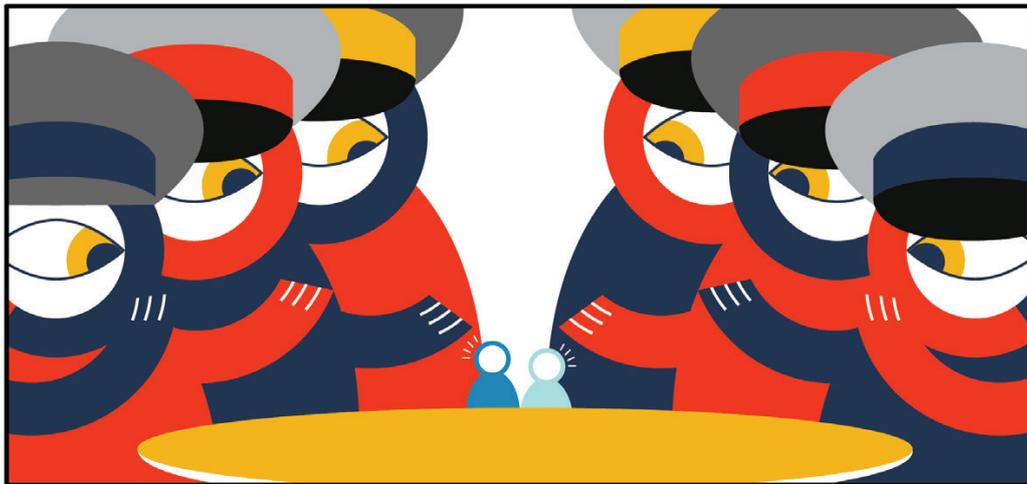
For instance, the task force on Economic Revival and Poverty Alleviation, established on 22 April 2020, is mandated to undertake

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<sup>57</sup> ‘TNA MP Sumanthiran writes to HRC seeking intervention to regularise “curfew”’, *Daily Financial Times*, May 4, 2020, <http://www.ft.lk/news/TNA-MP-Sumanthiran-writes-to-HRC-seeking-intervention-to-regularise-curfew/56-699679>.

<sup>58</sup> ‘More than 13,000 curfew violators arrested as Sri Lanka enters nationwide curfew’, *News First*, May 17, 2020. <https://www.newsfirst.lk/2020/05/17/more-than-13000-curfew-violators-arrested-as-sri-lanka-enters-nationwide-curfew/>.

<sup>59</sup> Ibid.



tasks that have to be performed by ministries and state officials.<sup>60</sup> Basil Rajapaksa, the founder of the SLPP and brother of the president and the prime minister, who does not hold any public office, nor is a state official, heads this task force. It is unclear why the membership of the task force, which includes the private sector, also has the Commander of the Army, the Acting Inspector General of Police, and the Director-General of the Civil Security Department officials, all persons who have no role to play in decision-making regarding poverty alleviation and economic recovery.<sup>61</sup>

Another example is the task force to Build a Secure Country, Disciplined, Virtuous and Lawful Society<sup>62</sup> established on 2 June 2020. This task force consists of military and police personnel, including the Commander of the Army, the Secretary of the Ministry of Defence, Chief of National Intelligence Services, the Director of State Intelligence Services, Directors of the Intelligence Services of the three armed forces, and the Acting Inspector General of Police. The task force is mandated to curb illegal activities and take measures to prevent ‘the drug menace’.

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<sup>60</sup> ‘Mega Task Force to revive Covid-19-hit economy.’ *Daily Financial Times*, April 23, 2020, <http://www.ft.lk/top-story/MegaTask-Force-to-revive-Covid-19-hit-economy/26-699130>.

<sup>61</sup> ‘Prez appoints Task Force for economic revival and poverty alleviation.’ *The Morning*, April 22, 2020, <http://www.themorning.lk/prez-appoints-task-force-for-economic-revival-and-poverty-alleviation/>.

<sup>62</sup> ‘Sri Lanka President appoints a Presidential Task Force to build a secure country, virtuous society.’ *Colombo Page*, June 3, 2020.

The extensive powers and broad mandates of these task forces raise issues of accountability and transparency since these are ad-hoc bodies with far-reaching powers that seem to mandate them to take the lead in several matters that should be within the purview of state agencies, such as ministries. Further, they could impinge upon and even usurp the mandate, powers, and functions of other legally established institutions, such as the Attorney-General's Department and the Department of Prisons, creating confusion and conflict between the two bodies.<sup>63</sup>

### *Militarisation*

The other factor impinging upon democratic governance is increased and rapid militarisation of the response to Covid-19, with the Commander of the Army heading the National Operation Centre for the Prevention of the Covid-19 Outbreak, and the military running quarantine camps and undertaking contact tracing. Military presence can be seen to be seeping into other areas of civilian administration as well. While the military has a key role to play in responding to humanitarian crises, such as a pandemic, in a democracy, their role should be subordinate to civilian authorities and they should always take directives from civilian authorities.

The Disaster Management Centre (DMC), which has a Director-General who is a retired senior military official, is within the purview of the Ministry of Defence and, according to the Secretary of Defence, 'has its own mechanism to work in coordination with Government Agents, Assistant Government Agents, Divisional Secretaries and Grama Sevaka in all districts and divisions' to distribute relief.<sup>64</sup> This illustrates the militarisation of disaster management and the provision of relief. Civilian leadership of Covid-19 responses also requires that civilian authorities/public

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<sup>63</sup> 'The Appointment of the two Presidential Task Forces—Discussion Paper.' *Centre for Policy Alternatives*, June 2020, <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>.

<sup>64</sup> Ambika Satkunanathan, 2020, 'Inequality Redux: Reviewing Sri Lanka's Chronic Democracy Deficit in the Context of Covid-19', *Common Views*, April 28, 2020, <http://www.commonviews.org/inequality-redux-reviewing-sri-lankas-chronic-democracy-deficit-in-the-context-of-Covid-19/>.

health officials should be responsible for the dissemination of information to the public, such as conducting press conferences. In Sri Lanka, senior military officials give interviews and even provide information to the public, independent of public health officials or other civilian authorities.

In the ongoing militarisation and normalising military involvement in civilian affairs, the Sri Lanka Army has begun engaging in law enforcement activities in the North.<sup>65</sup> It has also opened a ‘harmony centre’ in Jaffna, purportedly for the ‘promotion of durable peace, reconciliation, cooperation and well-being of the community in the Jaffna peninsula’.<sup>66</sup>

### ***The Rights of Ethno-Religious Minorities***

Using the broad powers under Article 33 of the Constitution, the president also established a task force for Archaeological Heritage Management in the Eastern Province. Although the focus of the task force is the multi-ethnic Eastern Province, the membership of the task force is entirely mono-ethnic. Further, its members include the Secretary of the Ministry of Defence, the Deputy Inspector-General of the Western Province, a Buddhist monk who has been vocal about his anti-minority views, and the owner of a private media network and businessman who is a known close associate of the president and spearheaded his election campaign. It is a cause for concern that these persons who are not public officials would be in a position to not only make public policy on sensitive issues but also issue directives to public officials.<sup>67</sup> Further, the task force, like others, is accountable only to the president and is not required to function in a transparent manner. The president appointed four more Buddhist monks to the task force on 24 August 2020.<sup>68</sup>

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65 ‘Sri Lankan police arrest Tamil youth for “regrouping the LTTE,”’ *Tamil Guardian*, July 1, 2020, <https://www.tamilguardian.com/content/sri-lankan-police-arrest-tamil-youth-%E2%80%98regrouping-ltte%E2%80%99>.

66 “‘Harmony Centre’ for Utility Community-Oriented Projects Inaugurated in KKS, Jaffna’ *Sri Lanka Army*, May 12, 2020, <https://www.army.lk/news/harmony-centre-utility-community-oriented-projects-inaugurated-kks-jaffna>.

67 ‘The Appointment of the two Presidential Task Forces—Discussion Paper.’ *Centre for Policy Alternatives*, June 2020. <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>.

68 ‘Four more monks appointed to Task Force on Archaeological Management

The membership of Buddhist monks and military personnel in the task force highlights the manner in which the military and the Buddhist clergy are an integral part of the land-acquisition process by designating any property as archaeological land. In an interview in late June 2020, Ellawela Medhananda Thero, one of the Buddhist monks on the task force, said there is nothing wrong in including the military in civilian affairs; the Eastern Province is not a historical area of habitation of Tamils and that all archaeological sites in East are Sinhala-Buddhist.<sup>69</sup> This illustrates the deeply communal, militarised approach that will likely be taken by the task force.

While there has been little state action to stem or counter the incitement of hatred against Muslims or provide reassurance of security and equal enjoyment of rights to minority communities in Sri Lanka, the president's remarks during his meeting with the Maha Sangha on 24 April 2020, which were widely reported in the media, are troubling. He reportedly remarked that although it is not a secret that he won the presidential election due to the votes of the Sinhala majority, he had pledged to serve everyone regardless of this fact since he is duty-bound to do so. He, however, further stated that despite his pledge there are conspiracies to make him fail and create a constitutional crisis by dragging him to court. Discussing constitutional matters with the Sangha and seeking their advice on matters of governance, while blaming mainly minority politicians of precipitating a constitutional crisis through their calls for the reconvening of the parliament, illustrates a majoritarian, ethno-nationalist, and patronage-based view of governance. This type of blatant disregard for a secular system of governance that is based on the respect for the rule of law and diversity dissuades citizens to hold those that govern them to account without fear of reprisals.

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in East | Colombo Gazette', *Colombo Gazette*, August 25, 2020, <https://colombogazette.com/2020/08/25/four-more-monks-appointed-to-task-force-on-archaeological-management-in-east/>.

<sup>69</sup> 'Understanding Press Coverage on Religious Freedom, June 2020', Minormatters.org, <https://www.minormatters.org/storage/app/uploads/public/5f2/3d4/a12/5f23d4a12f332037841699.pdf>.



### ***Muslim Community***

The stigmatisation and scapegoating of Muslims have taken many forms, including senior state officials blaming the community for the spread of Covid-19 and the community being denied the right to bury those who die of Covid-19 as per their religious practice.

The denial to bury the dead is being done in contravention of WHO Interim Guidance dated 24 March 2020 on Infection Prevention and Control for the Safe Management of a Dead Body in the Context of Covid-19, which states that ‘cadavers do not transmit disease’ and that ‘people who have died from Covid-19 can be buried or cremated’. To date, at least four Muslims who died of Covid-19 have been cremated against their families’ religious views and choices. In one instance, the person was cremated without verifying whether she was infected with Covid-19.<sup>70</sup> Five fundamental rights applications have been filed in the Supreme Court to recognise the right of Muslims to bury those who die of Covid-19.

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<sup>70</sup> Shereena Qazi and Ashkar Thasleem, ‘Anguish as Sri Lanka forces Muslims to cremate Covid-19 victims’, *Al Jazeera*, April 3, 2020, <https://www.aljazeera.com/news/2020/04/anguish-sri-lanka-forces-muslims-cremate-Covid-19-victims-200403053706048.html>.

The incitement of hatred by and outpouring of vitriol on media outlets continued unabated despite Defence Secretary Kamal Gunaratne stating that '[w]e have instructed the Police and other agencies handling fake news to take stern legal action against rumour mongers and some have already been taken into custody'.<sup>71</sup> For example, Muslim Covid-19 patients were identified by their faith, unlike other patients, and blamed by the media for spreading the coronavirus. While no action has been taken against popular TV stations that promote hate speech and peddle misinformation, there have been reports of arrests of citizens who criticise the action or inaction of state officials, as illustrated in previous sections. It should be noted that Secretary Gunaratne's statement was made only after media reports of a Covid-19 cluster being found in the Navy led to the stigmatisation and harassment of families of Navy personnel.

Two particular arrests during the pandemic are a cause for deep concern as these persons appear to have been targeted due to their religion, and their professional duties and civic activism.

The CID arrested Hejaaz Hizbullah, a lawyer, on 14 April 2020. Initially Hizbullah had limited access to his lawyers in restricted circumstances for about fifteen minutes in the presence of a CID officer. Hizbullah was not informed of the reason for the interrogation or the arrest, thereby violating his due process rights. Before Hizbullah was informed of the reason for his arrest, the police convened a press conference on 15 April 2020 at which they stated he was arrested in relation to the Easter attacks of April 2019. As of 1 July 2020, Hejaaz Hizbullah remains in administrative detention without being charged. While the CID is said to be 'looking for sufficient information against' him, there have been reports of CID officers engaging in malpractice and coercing minors to make false statements against Hizbullah.<sup>72</sup>

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<sup>71</sup> 'Prompt intervention of military and police reduced impact of Covid-19 -Defence Sec. Maj. Gen. (Retd) Kamal Gunaratne.' *The Sunday Observer*, April 19, 2020.

<sup>72</sup> 'CID attempted to show photograph of Hejaaz to children before ID parade: Fort Magistrate.' *Daily Financial Times*, June 26, 2020, <http://www.ft.lk/news/CID-attempted-to-show-photograph-of-Hejaaz-to-children-before-ID-parade-Fort-Magistrate/56-702226>; 'Sri Lanka: ICJ raises concerns about the arbitrary arrest and detention of lawyer Hejaaz Hizbullah; calls for repeal and replacement of the Prevention of Terrorism Act', *International Commission of Jurists*, April 21, 2020,

Ramzy Razeek is a former public servant and a regular commentator on issues of human rights, justice, and racism to which the Muslim community was being subjected. On 3 April 2020, through a social media post, he urged the Muslim community to engage in 'ideological jihad' using the pen and keyboard to shed light on the truth regarding anti-Muslim propaganda. Due to the misunderstanding that surrounds the concept of jihad, the social media post was met with an outpouring of hate and threats directed at him and his family. On 9 April 2020, Razeek lodged a police complaint regarding the threats made against him and his family. Later that day, he was arrested by CID officers instead for the offence of inciting racial hatred under the ICCPR Act, which does not allow suspects to be released on bail. As of 31 August 2020, Razeek remains in custody and has allegedly been denied access to medical care and a legal representative.<sup>73</sup>

### ***Tamil Community***

During the curfew period, there were increased checkpoints in the Northern Province, unlike in other parts of the country, and it was reported that persons travelling out of the North were required to obtain military clearance in addition to Covid-19-related medical clearance.<sup>74</sup>

### ***Dealing with the Past***

Accountability for war-related human rights violations was dealt a blow with the presidential pardon of Sergeant Sunil Rathnayake who was convicted in 2015 of the murder of eight Tamil civilians

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<https://www.icj.org/sri-lanka-icj-raises-concerns-about-the-arbitrary-arrest-and-detention-of-lawyer-hejaaz-hizbullah-calls-for-repeal-and-replacement-of-the-prevention-of-terrorism-act/>.

<sup>73</sup> Z. L. Mohamed, 2020, 'Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a Police arrest', *Daily Financial Times*, May 9, 2020, <http://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917>; 'Sri Lanka: Due Process Concerns in Arrests of Muslims', *Human Rights Watch*, April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>.

<sup>74</sup> 'Tamils in North East struggle with curfew hardships due to state negligence', *Tamil Guardian*, April 2, 2020, <https://www.tamilguardian.com/content/tamils-north-east-struggle-curfew-hardships-due-state-negligence>.

who were internally displaced, including three children of ages five, thirteen, and fifteen years, in Mirusuvil, Jaffna, on 19 December 2000 while on active duty.<sup>75</sup>

Where the plight of thousands of disappeared persons is concerned, President Rajapaksa in a meeting in January 2020 with the UN Resident Coordinator stated that the thousands of missing persons are dead. He further said, ‘Most of them had been taken by the LTTE or forcibly conscripted. The families of the missing attest to it. However, they do not know what has become of them and so claim them to be missing’. The president stated that after the ‘necessary investigations’ death certificates would be issued and the families of the missing would be provided support.<sup>76</sup>

Tamils in the North were prevented from memorialising those who were killed during the last stages of the armed conflict in May 2009, with the police and military disrupting many events.<sup>77</sup> In one instance, the police cited quarantine requirements<sup>78</sup> and obtained a court order to prevent members of the Tamil National People’s Front (TNPf) from holding a commemoration event in Jaffna. However, on the same day, the government held an event with the participation of certain members of the government, the armed forces, and some families of soldiers to commemorate the War Heroes Day in Colombo.<sup>79</sup> During this period, it was also reported that the police allegedly threatened a TNPf member who claimed the army threatened to shoot her if she lit lamps to commemorate those killed in May 2009.<sup>80</sup>

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75 Ambika Satkunanathan, 2020. ‘Justice in the time of a pandemic.’ *Groundviews*, March 29, 2020, <https://groundviews.org/2020/03/29/justice-in-the-time-of-a-pandemic/>; Al Jazeera, ‘Sri Lanka pardons soldier who killed Tamil civilians.’ *Al Jazeera*, March 27, 2020, <https://www.aljazeera.com/news/2020/03/sri-lanka-pardons-soldier-killed-tamil-civilians-200327033617104.html>.

76 Meera Srinivasan, ‘Sri Lanka civil war: Missing persons are dead, says Gotabaya’ *The Hindu*, January 20, 2020, <https://www.thehindu.com/news/international/missing-persons-are-dead-says-gotabaya/article30609730.ece>.

77 ‘Sri Lankan soldiers stamp out Mullivaikkal remembrance flame in Jaffna’, *Tamil Guardian*, May 18, 2020, <https://www.tamilguardian.com/content/sri-lankan-soldiers-stamp-out-mullivaikkal-remembrance-flame-jaffna>.

78 Ibid.

79 ‘Sri Lanka prepares to mark victory with military ‘promotion bonanza.’ *Tamil Guardian*, May 18, 2020, <https://www.tamilguardian.com/content/sri-lanka-prepares-mark-victory-military-%E2%80%98promotion-bonanza%E2%80%99>.

80 “If you light lamps, the army will shoot you” – Sri Lankan police warn TNPf member’ *Tamil Guardian*, May 17, 2020, <https://www.tamilguardian>.

On 30 August 2020, the police in Batticaloa in the Eastern Province obtained a court order to prevent families of the disappeared from commemorating the International Day of the Victims of Enforced Disappearances.<sup>81</sup> One of the reasons the police provided when seeking the order is that the gathering would contribute to the revival of the Liberation Tigers of Tamil Eelam (LTTE). This illustrates that the revival of the LTTE continues to be used by the state to curtail civic activism more than a decade after the end of hostilities and government-celebrated military defeat of the armed group.

## **Conclusion**

Ethno-religious minorities have faced discrimination, marginalisation, and violence in Sri Lanka, with different groups becoming 'the other' at different periods of the country's history. Although during the Yahapalanaya regime, there was freedom of speech and civil society organisations and human rights defenders were able to function freely and challenge the state without fear of reprisals, the government failed to address many structural and systemic issues, including the root causes of ethnic conflict. That failure in the face of propagation of hate and incitement of violence against minorities created a space for Sinhala-Buddhist nationalist groups to engage in communal politics, including violence, with impunity. Lack of accountability for those who engaged in violence led to the entrenchment of impunity and diminished the chances of past violations being addressed in a meaningful way. Other factors that enabled the quick reversion to a militarised and authoritarian form of government include the failure to demilitarise and undertake institutional reforms and strengthen checks and balances.

After the presidential election of November 2019, the Rajapaksa government, which openly subscribes to a Sinhala-Buddhist nationalist ideology, re-initiated a process of rapid militarisation and began using extra-legal structures to govern, relying on the

[com/content/%E2%80%98if-you-light-lamps-army-will-shoot-you%E2%80%99-%E2%80%93-sri-lankan-police-warn-tnpf-member](https://www.tamilnet.com/art.html?catid=13&artid=39936).

<sup>81</sup> 'Families of war-disappeared send strong message braving SL restrictions on International Day', *Tamil Net*, August 31, 2020, <https://www.tamilnet.com/art.html?catid=13&artid=39936>.

lack of a strong opposition, as the largest political party maintained silence on critical governance and rights issues. The arbitrary use of the law to justify violations of minority rights escalated post-November 2019.

While the crackdown on dissent and restrictions on civil liberties and civic space, and curb on the rights of ethno-religious minorities was a predicted outcome of the Rajapaksa presidency, the pandemic enabled accelerated militarisation and the introduction of authoritarian policies and processes. Lack of a functioning parliament and executive rule through ad-hoc mechanisms for nearly five months during the pandemic contributed to undermining democracy and normalised executive overreach, which had begun soon after the presidential election. During this period the arrests of civic activists and assaults on the rights of minorities, both through hate speech as well as through state action and inaction, increased the insecurity of both ethno-religious minorities as well as civil society groups, with self-censorship due to fear of state reprisals becoming increasingly common. In this context, civil society engaged in countering restrictions on civil liberties and civic space and advocating for the protection of the rights of ethno-religious minorities are likely to face greater obstacles and challenges in the future.

## **Recommendations**

### *To the government of Sri Lanka*

- i. Ensure that freedom of expression and association are respected and individuals and institutions are able to dissent freely without fear of state reprisals.
- ii. Do not use the law as a tool to suppress dissent or curb civic activities that are critical of the government. The law should not be arbitrarily applied in a manner that discriminates against and violates the rights of ethno-religious minorities.
- iii. Create an environment in which ethno-religious minorities are able to fully exercise and enjoy their rights without insecurity or fear of violence. In particular, the government should refrain from acts that are and appear

to be majoritarian and biased against ethno-religious minorities.

- iv. Ensure that the state institutions and officials adhere to the constitutional provisions on equality; action should be taken against those that discriminate on the basis of ethnicity or religion.
- v. Hold those that engage in propagating or advocating racial hatred that constitutes incitement to discrimination or violation accountable to the fullest extent of the law.
- vi. Refrain from using extra-legal mechanisms and processes, such as the presidential task forces, to undermine civic space and the rights of ethno-religious minorities.
- vii. View civil society as an integral part of a functional and robust democracy and not as a foe/antagonist.

*To civil society*

- i. Recognise the intersectionality of issues and build broad alliances founded on the basis of common interest.
- ii. Ensure that community-based organisations, especially those outside Colombo and in the non-urban areas, are included in dialogues and common interventions, and be proactive in seeking their participation and contribution.
- iii. Build alliances with regional civil society organisations and networks and learn from the successful strategies they used.

*To the international community*

- i. Re-iterate to the government, the importance of a robust civic space and the need to ensure that the rights of ethno-religious minorities are protected. All international community- and UN-supported initiatives, whether with government or civil society, should be based on these principles.
- ii. Expand and strengthen the relationship with civil society, in particular, engage with smaller organisations working outside Colombo at the community level.
- iii. Pay attention to the protection needs of civil society organisations and provide required support in a flexible manner in line with the changing context.