

SRI LANKA COUNTRY INFORMATION

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The Combined Refugee Action Group is a network group that brings together people from a variety of backgrounds across the Geelong region in Victoria, (Refugee Support Groups, Church and Community Groups, Unions, Political Groups, Social Justice and Social Action Groups, students, and individuals). We are united by the shared aim of advocating for just, humane, and welcoming policies towards refugees and people seeking asylum.

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Purpose

This Country Information Report outlines the recent changes in political and social context that make it unsafe for Tamil people seeking asylum in Australia to be returned to Sri Lanka.

This report fills a critical gap for decision-makers and public officials because the information outlined in the DFAT Country Information resource is significantly – and dangerously – out of date, having most recently been updated on November 4th, 2019, prior to the November 2019 Presidential Election in Sri Lanka.

This report considers the latest available information from a range of Sri Lankan news publications, international media coverage, reports published by human rights groups, and on-ground citizen journalists. It provides detail behind the information provided in the CRAG briefing note on Sri Lanka.

Taken together, these various information sources demonstrate the significant risk to personal safety faced by Tamils if returned to Sri Lanka, and that by doing so the Australian government would be breaching the rules of non-refoulement.

Introduction

In November 2019, the people of Sri Lanka elected Gotabaya Rajapaksa to the office of President. Rajapaksa, referred to within his family as ‘The Terminator’ was a key player in the 25-year civil war with Tamil separatists and is credited with ending the war through an operation that led to the death of approximately 40,000 people¹. Gotabaya Rajapaksa served as Defence Secretary in his brother’s government from 2005 to 2015 from when he is ‘accused of numerous crimes, including attacks on journalists and activists, and implicated in alleged war crimes and crimes against humanity.’² Gotabaya Rajapaksa has denied allegations of authorising the disappearances of Tamils, the use of government endorsed death squads, torture, rape, and extrajudicial killings. No accountability has ever been taken for these actions.³

In August 2020, President Rajapaksa appointed his brother, Mahinda Rajapaksa as Prime Minister. This is the same man who was President at the time of the

¹ **The Terminator': how Gotabaya Rajapaksa's ruthless streak led him to power.** *The Guardian* (online, 17 November 2019).

<https://www.theguardian.com/world/2019/nov/17/the-terminator-how-gotabaya-rajapaksas-ruthless-streak-led-him-to-power-sri-lanka>

² **Sri Lanka – Events of 2019.** Human Rights Watch.

<https://www.hrw.org/world-report/2020/country-chapters/sri-lanka>

³ **The Terminator': how Gotabaya Rajapaksa's ruthless streak led him to power.** *The Guardian* (online, 17 November 2019).

<https://www.theguardian.com/world/2019/nov/17/the-terminator-how-gotabaya-rajapaksas-ruthless-streak-led-him-to-power-sri-lanka>

alleged crimes against the Tamil people of Sri Lanka. Four other seats in Parliament have been given to another of his brothers and three nephews.⁴

The Rajapaksa brothers have been accused of war crimes following the deaths of tens of thousands during the final stages of the civil war when Tamil civilians were shelled in a safe zone on a beach where they were awaiting aid from ICRC ships.⁵ Tamil rebels are accused of using civilians as human shields and preventing civilians from fleeing the so-called 'safe zone'. Tamil rebels dispute this. The Rajapaksa brothers also deny committing any war crimes⁶ and President Rajapaksa has now withdrawn from a UN resolution to investigate war crimes committed during his tenure as Defence Secretary.

While Basil Rajapaksa, the Chief Election Strategist and one of Rajapaksa's brothers, assured Sri Lanka that the government of Gotabaya Rajapaksa would "respect media freedom and civic organisations"⁷, this has not been the case. Since his election there have been a number of legislative changes granting greater control to the President, increased restrictions on journalists, increased violence against Tamil people, and attacks on human rights organisations. Further to this, actions taken by the previous government to search for the disappeared from the war and make reparations, as well as participate in the UN investigation into war crimes during this time, have been reversed. These will each be covered below following an overview of the Rajapaksa family itself.

Legislative changes for greater control

In 2015 the Sri Lankan constitution was amended to reduce the powers of the Executive President. This 19th amendment made the President more accountable to Parliament and the courts and gave more independence to a number of commissions.

However, in October 2020 the government elect pushed through a 20th amendment to the constitution, giving the President full powers to appoint members to what were previously independent commissions, including commissions that 'oversee elections, police, human rights and anti-corruption efforts.'⁸

⁴ **Sri Lanka president tightens grip with constitutional changes.** *The Guardian* (online, 23 October 2020) <https://www.theguardian.com/world/2020/oct/23/sri-lanka-president-gotabaya-rajapaska-parliament-reforms>

⁵ **Sri Lanka 'war crimes': Main allegations.** *BBC News* (online, 17 June 2011) <https://www.bbc.com/news/world-south-asia-13158916>

⁶ Ibid

⁷ **Gotabaya Rajapaksa elected president of Sri Lanka.** *The Guardian* (online, 17 November 2019) <https://www.theguardian.com/world/2019/nov/17/sri-lanka-presidential-candidate-rajapaksa-premadas-count-continues>

⁸ **Sri Lanka president tightens grip with constitutional changes.** *The Guardian* (online, 23 October 2020) <https://www.theguardian.com/world/2020/oct/23/sri-lanka-president-gotabaya-rajapaska-parliament-reforms>

The International Commission of Jurists has criticised the 20th amendment, saying that it introduces judicial appointment procedures which are incompatible with principles of the justice and “gives the President sole and unfettered discretion to appoint all judges of the superior courts. Under international standards, appointments to the judiciary should not be vested solely with the executive.”⁹

According to Inform, a Sri Lankan human rights group, on 25 September 2020, President Rajapaksa ordered ‘state officials to treat all his verbal orders as circulars to be implemented’ and that ‘those who neglect this will face stern action.’¹⁰ This verbal order can be ‘unrecorded, and sometimes could contravene with the existing laws, policies and other measures.’¹¹

In March 2021, the Sri Lankan Government passed regulations allowing detention without trial for two years for those suspected to have caused “religious, racial or communal disharmony”. This is a significant expansion of the already notorious Prevention of Terrorism Act (PTA), which has historically been used to target Tamils and Muslims. The expansion provides security forces with sweeping powers under the pretext of deradicalization.¹²

Rajapaksa family

The August 2020 Parliamentary Elections saw Gotabaya Rajapaksa and his family strengthen its control over the Sri Lankan administration. The Sri Lanka Podujana Peramuna (SLPP) won a two-thirds majority, including the securing of the Parliamentary seat for Mantara District by Gotabaya’s nephew, Nipuna Ranawaka. Gotabaya’s brother Mahinda was installed as Prime Minister, after having held the position as caretaker since November 2019, and other members of the Rajapaksa family have been appointed to positions in the government.

Chamal Rajapaksa, the eldest brother was given the irrigation portfolio while Mahinda’s nephew, Shasheendra Rajapaksa was made Agriculture Minister.¹³ Mahinda’s son, Namal Rajapaksa was initially given the Youth and Sports ministry and later also made the Minister of Digital Technology and Enterprise Development. In August 2021, Namal Rajapaksa was further awarded a new

⁹ **Sri Lanka: newly adopted 20th Amendment to the Constitution is blow to the rule of law.** *International Commission of Jurists* (online, 27 October 2020)

<https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/>

¹⁰ **Repression of Dissent, September 2020.** *Inform* <https://www.inform.lk/repression-of-dissent-september-2020/>

¹¹ Ibid

¹² Mario Arulthas. **Sri Lanka: Discrimination against Muslims and Tamils is getting worse.** *Middle East Eye* (online, 30 March 2021). <https://www.middleeasteye.net/opinion/how-sri-lankas-future-could-replicate-its-past>

¹³ **Rajapaksas’ rule has diminished hope for justice for Lankan Tamils.** *The NEWS Minute* (online, 24 September 2020) <https://www.thenewsminute.com/article/rajapaksas-rule-has-diminished-hope-justice-lankan-tamils-133843>

Cabinet portfolio, Development Planning and Monitoring. The appointment of Namal Rajapaksa to this position has raised concerns of nepotism and the increasing concentration of state power within the hands of the Rajapaksa family.¹⁴

Since Gotabaya Rajapaksa assumed office in November 2019, political analysts have noted a rising centralisation of power, with the appointment of many serving and former military officials to key bureaucratic posts and creating presidential task forces to take on governance issues, in some cases bypassing ministries.

Gotabaya's rule has been marked, rights groups say, with a widespread crackdown on political and other dissent, with lawyers, activists and journalists harassed, intimidated and arrested when they have questioned the government's policies.¹⁵

Militarisation has gathered pace in Sri Lanka. Gotabaya Rajapaksa controls defence, and the Defence Ministry now has numerous institutions under its direct purview, including the Department of Archaeology. The subject of Home Affairs too has been attached to the Defence Ministry, bringing under its control district and divisional secretariats (as well as the police). The new foreign secretary is a retired military man.¹⁶

"The absolute majority to the Rajapaksa family means that they can do as they please, without caring about the people. Because of this, the Tamils will have a further erosion of their rights in the country. Their coming to power will take us down a destructive path and pave the way for family rule over the country."

(Sivagnanam Shritharan, member of Parliament from Tamil National Alliance)¹⁷

Economy is effectively under the control of Basil Rajapaksa, a dual citizen, in an arrangement that Gotabaya Rajapaksa is seeking to formalise through changes to the Constitution. In July 2021, further tightening the Rajapaksa family's control over Sri Lanka, Basil Rajapaksa was sworn into the Sri Lankan cabinet as finance minister. With the inclusion of Basil, there are seven Rajapaksas currently in power - President Gotabaya, PM Mahinda, ministers Chamal, Namal, Basil and MPs Sashindra (Chamal's son), Nipuna Ranawaka (nephew). Additionally, Chamal's son Shameendra is a Private Secretary to multiple ministries, Mahinda's son Yoshitha is PM's chief of staff and Chaminda Rajapaksa is a Presidential Adviser.¹⁸

¹⁴ **Amidst crisis, Sri Lanka reshuffles cabinet.** *Tamil Guardian* (online, 16 August 2021) <https://www.tamilguardian.com/content/amidst-crisis-sri-lanka-reshuffles-cabinet-0>

¹⁵ **Sri Lankan parliamentary elections: Five key takeaways.** *Aljazeera* (online, 7 August 2020) <https://www.aljazeera.com/news/2020/08/sri-lankan-parliamentary-elections-key-takeaways-200807081456427.html>

¹⁶ Tisarane Gunasekara. **The Rajapaksa Tidal-wave and the Anti-Rajapaksa Tsunami-wall.** *Groundviews Journalism for Citizens* (online, 23 August 2020) <https://groundviews.org/2020/08/23/the-rajapaksa-tidal-wave-and-the-anti-rajapaksa-tsunami-wall/>

¹⁷ **Rajapaksas' rule has diminished hope for justice for Lankan Tamils.** *The NEWS Minute* (online, 24 September 2020) <https://www.thenewsminute.com/article/rajapaksas-rule-has-diminished-hope-justice-lankan-tamils-133843>

¹⁸ **Rajapaksas Tighten Stronghold In Sri Lanka As Fourth Brother Basil Joins Cabinet As FM.** *Republicworld.com* (online, 10 July 2021) <https://www.republicworld.com/world-news/rest-of-the-world-news/rajapaksas-tighten-stronghold-in-sri-lanka-as-fourth-brother-basil-joins-cabinet-as-fm.html>

Attacks on journalists and human rights organisations

In January 2021, the United Nations Commissioner for Human Rights, Michelle Bachelet, in her Report to the UN Human Rights Council, urged the Sri Lankan Government to order Sri Lankan authorities

*“to immediately end all forms of surveillance, including intimidating visits by State agents and harassment against human rights defenders, lawyers, journalists, social actors and victims of human rights violations and their families, and to refrain from imposing further restrictive legal measures on legitimate civil society activity,”*¹⁹

The Report states:

*“Significant challenges and negative trends have emerged over the past year which have profoundly changed the environment for reconciliation, accountability and human rights.”*²⁰

The Report highlights:

*“i) militarization of civilian government functions; ii) reversal of Constitutional safeguards; iii) political obstruction of accountability for crimes and human rights violations; iv) majoritarian and exclusionary rhetoric; v) surveillance and obstruction of civil society and shrinking democratic space; and vi) new and exacerbated human rights concerns. The High Commissioner is concerned these represent important early warning indicators that require the Human Rights Council’s urgent attention.”*²¹

An Amnesty International Report published in May 2021, stated that “human rights defenders, journalists, lawyers and criminal investigators, came under increased intimidation and harassment during 2020. Law enforcement officials paid unannounced visits to human rights organizations and enquired about their work and funders. At least 18 such visits were recorded in the north, east and west of Sri Lanka during the year and 13 incidents of intimidation of journalists. Dharisha Bastians, former editor of a state-owned newspaper and New York Times correspondent, was under investigation for reporting on various cases and human rights issues.”²²

¹⁹ **Sri Lanka on alarming path towards recurrence of grave human rights violations – UN report.** Office of the High Commissioner for Human Rights (online 27 January 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E>

²⁰ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 6, point 18). https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

²¹ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 6, point 19). https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

²² **Sri Lanka 2020.** Amnesty International. May 2021. <https://www.amnesty.org/en/countries/asia-and-the-pacific/sri-lanka/report-sri-lanka/>

In August 2020, Human Rights Watch (HRW) expressed deep concern regarding a 'campaign of fear and intimidation against human rights activists, journalists, lawyers, and others challenging government policy' being waged by the Rajapaksa government.

At the time of the HRW report over 66,000 individuals had been arrested for allegedly breaching curfew. Contact tracing is run by the military and there is no confidentiality in the process. On 1 April 2020 it was announced by the police that any criticism of this response would result in arrest.²³

In February 2020, the UN High Commissioner noted that Sri Lankans who had travelled to attend sessions of the Human Rights Council had been questioned about their trips. In March 2020, several participants at the Council's session reported having been questioned before and after travel and surveilled during Council sessions and NGO side events. In December 2019, the Assistant Secretary-General addressed patterns of intimidation and reprisals in writing to the Government.²⁴

In August 2020, the NGO Secretariat, which oversees the non-government organisations working in Sri Lanka, was placed under the purview of the Defence Ministry. Thirty other state organisations were also placed under Defence Ministry control.²⁵

In September 2020, the Director of the NGO Secretariat, Raja Gunaratne, told local Newspaper the *Sunday Observer* that 'some NGOs pose a serious threat to national security, spreading extremist ideologies. And discussions are underway to draft a new Act to overcome these drawbacks.'²⁶ Human Rights Watch links this move to the work of human rights organisations in holding the Rajapaksa government accountable for the war crimes committed between 2005 and 2015.²⁷

Further highlighting the censorship imposed by the new administration, Inform, a Sri Lankan human rights group, reports that, from January 1, 2021, to March 31, 2021, alone, there were 78 reported incidents of repression of dissent, with individual incidents often including multiple people. The majority of these were against journalists, protestors in the Northern and Eastern Provinces, and activists and civil society organisations. The highest number of incidents indicated 'systematic discrimination and targeting of the country's ethnic minorities, especially of Tamil individuals'. The perpetrators were predominantly linked to

²³**Sri Lanka: Increasing Suppression of Dissent.** *Human Rights Watch* (online, 8 August 2020) <https://www.hrw.org/news/2020/08/08/sri-lanka-increasing-suppression-dissent>

²⁴ **Human Rights Council, Forty-fifth session 14 September–2 October 2020.** Agenda items 2 & 5. https://www.ohchr.org/Documents/Issues/Reprisals/A_HRC_45_36.docx

²⁵ **Sri Lanka: Increasing Suppression of Dissent.** *Human Rights Watch* (online, 8 August 2020) <https://www.hrw.org/news/2020/08/08/sri-lanka-increasing-suppression-dissent>

²⁶ Tharaka Wickremasekera. **New laws for NGOs on the cards.** *Sunday Observer* (online, 27 September 2020) <http://www.sundayobserver.lk/2020/09/27/news/new-laws-ngos-cards>

²⁷ **Sri Lanka: Increasing Suppression of Dissent.** *Human Rights Watch* (online, 8 August 2020) <https://www.hrw.org/news/2020/08/08/sri-lanka-increasing-suppression-dissent>

the state, including military, police, state institutions and officials, courts, and politicians.²⁸

In November 2020, the new Minister of Public Security, Sarath Weerasekara, was sworn in. Retired Rear Admiral Weerasekara is known as an ultra-nationalist who has previously called for civil society groups and NGOs to be charged with treason and sentenced to death if they ‘slander the government.’²⁹

According to the Jaffna Press Club, ‘The Tamil media field was and continues to be the most frequent target of threats and killings in Sri Lanka.’³⁰ The 2021 World Press Freedom Index, compiled by Reporters Without Borders, ranks Sri Lanka 127th out of a total of 180 countries, reporting a surge in cases of police harassment of journalists, including raids, interrogations, and acts of intimidation, since Gotabaya Rajapaksa was installed as President.³¹

In January 2020, unidentified people circulated leaflets in Batticaloa, Eastern Province, stating that freelance journalist Nilanthan, secretary of the Batticaloa District Tamil Journalists Association, and six other journalists would be “given death punishment” for writing critically about the Sri Lankan government. In November 2020, police in Batticaloa district questioned Nilanthan at his home after he reported on the concerns of Tamil dairy farmers following the growth of military-backed Sinhalese settlements in the district. In July 2021, officers with the Batticaloa district’s Terrorism Investigation Division, interrogated Nilanthan, and in August 2021 officers from the Batticaloa Special Crime Branch interrogated journalist Sasikaran, treasurer of the Batticaloa District Tamil Journalists Association.

Steven Butler, Committee to Protect Journalists’ Asia program coordinator said,

“Police should not be using intimidation tactics to prevent journalists from covering protests by Sri Lanka’s Tamil community, or any others.”^{32 33}

In August 2021, Tamil Guardian reported that over 70 individuals and organisations, including prominent religious leaders and human rights advocates in Sri Lanka, have demanded the immediate release of lawyer Hejaaz Hizbullah who has been detained under the country’s draconian Prevention of Terrorism

²⁸ **Repression of Dissent in Sri Lanka, 1 January 2021- 31 March 2021.** *Inform* <https://www.inform.lk/repression-of-dissent-in-sri-lanka-january-march-2021/>

²⁹ **Retired Sri Lankan Admiral Weerasekara calls for the abolition of 19th amendment.**

Tamil Guardian (online, 8 August 2020) <https://www.tamilguardian.com/content/retired-sri-lankan-admiral-weerasekara-calls-abolition-19th-amendment>

³⁰ **No justice for crimes against journalists in Sri Lanka - Jaffna Press Club.** *Tamil Guardian* (online, 8 November 2020) <https://www.tamilguardian.com/content/no-justice-crimes-against-journalists-sri-lanka-jaffna-press-club>

³¹ **2021 World Press Freedom Index.** *Reporters Without Borders.* <https://rsf.org/en/sri-lanka>

³² **Sri Lankan anti-terror authorities interrogate journalist Selvakumar Nilanthan.** *Committee to Protect Journalists* (online, 14 July 2021) <https://cpj.org/2021/07/sri-lankan-anti-terror-authorities-interrogate-journalist-selvakumar-nilanthan/>

³³ **Sri Lanka police repeatedly interrogate journalist Punniyamoorthy Sasikaran.** *Committee to Protect Journalists* (online, 25 August 2021) <https://cpj.org/2021/08/sri-lanka-police-repeatedly-interrogate-journalist-punniyamoorthy-sasikaran/>

Act for over 500 days. Hizbullah was recognised as a Prisoner of Conscience by Amnesty International on 14th July 2021. The statement highlights the detention of Hizbullah as an emblematic case, reflecting “egregious human rights abuses that take place under the PTA”. Included in this is “the fact that Tamil persons have endured prolonged detention both at the pre-trial and trial stages under the PTA”. They further note that “detainees have been acquitted after detention periods of up to fifteen years”.³⁴

Forced disappearances

The Office on Missing Persons is the Sri Lankan organisation responsible for “protecting the rights of the missing and disappeared and their families.”³⁵ According to the organisation’s website there have so far been 21,000 complaints of missing persons; the ICRC has documented 16,000 as of 2016.

Since the August 2020 General Election, the Office on Missing Persons has been relegated to smaller premises and brought under the Justice Ministry, headed by Gotabaya Rajapaksa’s personal lawyer, Minister Ali Sabry.³⁶

Families of the disappeared, and lawyers acting on their behalf, continue to face threats and harassment from the authorities and from non-state actors in their search for justice, truth, and reparation.³⁷ Tamil activists have been “abducted, tortured and raped because of their involvement in the search for the truth about the disappeared in Sri Lanka” stated the International Truth and Justice Project in August 2020.³⁸ According to Sri Lankan human rights group Inform, on 30 September 2020, Mariasuresh Easwary, the head of the Mullaitivu Missing Persons’ Association, was threatened by two military officials regarding a protest she had planned for Children’s Day.³⁹

The Presidential Secretariat stated in January 2020 that after necessary investigations, steps would be taken to issue a death certificate and the necessary

³⁴ **Over 70 individuals and organisations demand the release of Hizbullah.** *Tamil Guardian* (online, 29 August 2020). <https://www.tamilguardian.com/content/over-70-individuals-and-organisations-demand-release-hizbullah>

³⁵ **Office on Missing Persons.** <http://www.ompsrilanka.org/home>

³⁶ Minoli de Soysa. **Search for the Missing: A Testament to the Enduring Power of Grief.** 20 August 2020. Groundviews – Journalism for Citizens <https://groundviews.org/2020/08/20/search-for-the-missing-a-testament-to-the-enduring-power-of-grief/>

³⁷ **Sri Lanka: Deliver justice, truth and reparation to families of the disappeared.** *Amnesty International* (online, 20 November 2020). <https://www.amnesty.org/en/latest/news/2020/11/sri-lanka-deliver-justice-truth-and-reparation-to-families-of-the-disappeared/>

³⁸ **Press Release: Raped and Tortured for Collecting the Names of the Disappeared.** *ITJP* (online, 30 August 2020). <https://itjpsl.com/assets/press/ENGLISH-ITJP-Press-release-Disappearance.pdf>

³⁹ **Repression of Dissent: September 2020.** <https://www.inform.lk/repression-of-dissent-september-2020/>

support for families of the disappeared to rebuild their lives.⁴⁰ In May 2020, the UN Working Group on Enforced or Involuntary Disappearances recommended that Sri Lanka take appropriate steps regarding the legal situation of disappeared persons whose fate has not been clarified, including legal frameworks for their relatives in fields such as social welfare, financial matters, family law and property rights.⁴¹ Without a death certificate, some families of the disappeared have struggled to access support.

The Government has ceased issuing interim relief payments to families of the disappeared, causing them further financial distress. The Government has stated that it will review the Act establishing the Office on Missing Persons, fearing that that the work of the Office on Missing Persons will enable war crime charges to be brought against the Sri Lankan military.⁴²

Sri Lanka remains the second highest in the world according to a September 2020 annual report by the UN Working Group on Enforced or Involuntary Disappearances.⁴³

The UN Working group made the following observations in relation to situations of particular concern in Sri Lanka:

“The Working Group is concerned by the deteriorating civil society space in Sri Lanka and emphasizes that relatives of forcibly disappeared individuals as well as others such as witnesses and defence counsels should be protected against any form of intimidation, harassment or ill-treatment, and that the Government has the duty to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons and to assist victims of enforced disappearances.”⁴⁴

The UN Working Group on Enforced or Involuntary Disappearances expressed alarm that Former Army sergeant Sunil Ratnayake was granted a Presidential Pardon in March 2020 after being convicted of the murder of eight civilians including children. The Working Group stated that Sri Lanka has an obligation to hold criminally responsible perpetrators of enforced disappearances and other serious violations under international humanitarian law, as well as certain

⁴⁰ **Death Certificates for Missing after Investigations.** Presidential Secretariat Press Release. January 2020. <https://www.presidentsoffice.gov.lk/index.php/2020/01/24/death-certificates-for-missing-after-investigations/>

⁴¹ **Mandates of the Working Group on Enforced or Involuntary Disappearances.** 11 May 2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25117>

⁴² **Sri Lanka: Commit funds to support transitional justice process for victims of conflict.** *Amnesty International* (online, 6 November 2020). <https://www.amnesty.org/en/latest/news/2020/11/sri-lanka-commit-funds-to-support-transitional-justice-process-for-victims-of-conflict/>

⁴³ **Sri Lanka remains 2nd highest in the world for enforced disappearances – UN 10 September 2020.** *Tamil Guardian* <https://www.tamilguardian.com/content/sri-lanka-remains-2nd-highest-world-enforced-disappearances-un>

⁴⁴ **Enforced or involuntary disappearances -Report of the Working Group on Enforced or Involuntary Disappearances.** Human Rights Council, Forty-fifth session, 14 September–2 October 2020. page 22. <https://undocs.org/en/A/HRC/45/13>

superior officers and to impose sanctions that are appropriate and proportionate to the crime committed.⁴⁵

In February 2021, Journalists for Democracy in Sri Lanka reported that at least 16 young Tamil men from Northern Province remain missing eight months after they were taken into custody by the Terrorist Investigation Division (TID), accused of 'trying to resurrect the Tamil Tigers'. This is the single largest group of Tamils 'disappeared' while in the custody of the TID, since President Gotabaya Rajapaksa assumed office in November 2019.⁴⁶

In March 2021, the United Nations Human Rights Council passed a resolution on accountability and justice in Sri Lanka. The resolution will mandate the Office of the High Commissioner for Human Rights to "collect" as well as "consolidate, analyse and preserve" evidence that could be used in future war crimes trials.

The resolution also "expresses serious concern at the trends emerging over the past year, which represent a clear early warning sign of a deteriorating situation of human rights in Sri Lanka" and highlights "ongoing impunity and political obstruction of accountability for crimes and human rights violations".⁴⁷

In May 2021, the Parliament Council appointed former Inspector General of Police, Hapu Arachchige Jayantha Shantha Kumara Wickremaratne as a member of the Office of Missing Persons. The International Truth and Justice Project (ITJP) said the recent appointment of the war time police chief to the Office of Missing Persons "completes the militarisation of this transitional justice mechanism" and "obliterates any chance of truth and justice" for Tamil families of the disappeared.⁴⁸ In June 2021, the UN Commissioner for Human Rights Michelle Bachelet expressed concern regarding the recent appointments to Sri Lanka's Office of Missing Persons and Office for Reparations and that steps to discourage investigations into past crimes, are further undermining victims' trust.⁴⁹

⁴⁵ **Mandates of the Working Group on Enforced or Involuntary Disappearances.** 11 May 2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25117>

⁴⁶ **Relatives unable to find group of Tamils arrested by Sri Lanka anti-terror police.** *Journalists for Democracy in Sri Lanka* (online, 15th February 2021). <http://www.jdslanka.org/index.php/news-features/human-rights/998-relatives-unable-to-find-group-of-tamils-arrested-by-sri-lanka-anti-terror-police>

⁴⁷ **UN Human Rights Council passes resolution mandating war crimes evidence collection on Sri Lanka.** *Tamil Guardian* (online, 23 March 2021). <https://www.tamilguardian.com/content/un-human-rights-council-passes-resolution-mandating-war-crimes-evidence-collection-sri-lanka>

⁴⁸ **Appointment of former police chief to OMP 'obliterates any chance of truth and justice' says ITJP.** *Tamil Guardian* (online, 1 June 2021). <https://www.tamilguardian.com/content/appointment-former-police-chief-omp-obliterates-any-chance-truth-and-justice-says-itjp>

⁴⁹ **UN rights chief voices concern over Sri Lanka's counter-terrorism laws.** *Adaderana.lk* (online, 21 June 2021). <http://www.adaderana.lk/news/74822/un-rights-chief-voices-concern-over-sri-lankas-counter-terrorism-laws>

The situation for Tamils

“Sri Lanka’s current trajectory sets the scene for the recurrence of the policies and practices that gave rise to grave human rights violations”,

states Michelle Bachelet, United Nations Commissioner for Human Rights in her January 2021 Report to the UN Council for Human Rights.⁵⁰

While the tightening of civil liberties by the Rajapaksa government has negatively impacted a wide range of minority groups within Sri Lanka, the risk posed to the Tamil community is especially acute.

In December 2020, the new Minister of Public Security, Sarath Weerasekera increased surveillance in the Eastern Province, and reiterated his calls for the Tamil National Alliance to be banned:

*“We have deployed our intelligence people and informed the Security Forces in the area. We have increased our mobile patrols and planted certain informants there and they will give us all information required.”*⁵¹

In March 2021 Sri Lankan President Gotabaya Rajapaksa announced that security would be increased in the Eastern Province which has significant Tamil and Muslim populations, with the reopening of 50 military and STF camps, to stem separatist terrorism and Islamic extremism. This announcement followed the closing of 1,000 Islamic schools and the banning of the Burka on the grounds of ‘national security.’⁵²

In November 2020, the Rajapaksa government banned all public commemorations for Tamils killed during the civil war. During the time that Mahinda Rajapaksa was president, the recognition of Great Hero’s Day – or Maaveerar Naal – was banned, however the following government lifted this ban. Since the Rajapaksa family has again taken power, Great Hero’s Day celebrations have again been forbidden.⁵³ Private commemorations are still permitted, however according to media reports, security forces blocked access to the thuyilum illams – the resting places of those killed during the war – as well as raiding private homes and making arrests.⁵⁴ The thuyilum illams were destroyed

⁵⁰ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page14, point 52).

https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

⁵¹ **Sri Lanka’s security minister boasts intelligence is ‘back on track’.** *Tamil Guardian* (online, 6 December 2020) <https://www.tamilguardian.com/content/sri-lanka-s-security-minister-boasts-intelligence-back-track>

⁵² <https://www.tamilguardian.com/content/rajapaksa-reopen-military-and-stf-camps-eastern-province-militarisation-intensifies>

⁵³ **Sri Lanka bans remembrance of dead Tamil rebels.** *TRT World* (online, 27 November 2020) <https://www.trtworld.com/asia/sri-lanka-bans-remembrance-of-dead-tamil-rebels-41851>

⁵⁴ **Tamil nation marks Maaveerar Naal 2020.** *Tamil Guardian* (online, 27 November 2020) <https://www.tamilguardian.com/content/tamil-nation-marks-maaveerar-naal-2020>

by government forces following the war but many of these have been restored by Tamil communities.⁵⁵

One Tamil MP, in response to this ban, has maintained that the actions of the Tamils during the war were not terrorism, and that, 'You cannot conduct continuous pogroms against a community and expect them to accept all humiliation and violence and go about their day- to-day chores as if nothing has happened.' He further asserted that it was a response to 'state terrorism'.⁵⁶

On May 18th, 2021, on the 12th anniversary of the massacre at Mullivaikkal, which killed tens of thousands of Tamil civilians, Sri Lankan President Gotabaya Rajapaksa promoted 452 officers in the Sri Lankan army and 4289 officials of other ranks.⁵⁷ Heavily armed troops patrolled Tamil areas and intimidated Tamils from remembering their war dead. Sri Lankan security forces arrested ten Tamil men and women after the group held a memorial event at a beach in Batticaloa to mark Tamil Genocide Day. They were charged under the draconian anti-terror law, the Prevention of Terrorism Act (PTA). The PTA allows arbitrary and indefinite imprisonment of people.⁵⁸

In June 2021, Michelle Bachelet, United Nations Commissioner for Human Rights at the opening of the UN Human Rights Council's 47th session in Geneva, stated:

*"In Sri Lanka, I am concerned by further Government measures perceived as targeting Muslims, and by the harassment of Tamils, including in the context of commemoration events for those who died at the end of the war."*⁵⁹

She further said that regulations now permit the arbitrary administrative detention of people for up to two years, without trial for the purposes of de-radicalisation.

*"I also note a continuing series of deaths in police custody and in the context of police encounters with alleged criminal gangs."*⁶⁰

In August 2021, a team of UN Special Rapporteurs published a report expressing serious concern about the adoption and implementation of a recent Regulation by

⁵⁵ **Kilinochchi residents clear up destroyed Mulankavil LTTE cemetery.** *Tamil Guardian* (online, 25 October 2017) <https://www.tamilguardian.com/content/kilinochchi-residents-clear-destroyed-mulankavil-ltte-cemetery>

⁵⁶ **'Our youth took up arms for self defence' - Tamil parliamentarian C V Wigneswaran.** *Tamil Guardian* (online, 29 November 2020) <https://www.tamilguardian.com/content/our-youth-took-arms-self-defence-tamil-parliamentarian-c-v-wigneswaran>

⁵⁷ **Sri Lanka's military promotes 452 officers during Tamil Genocide Day.** *Tamil Guardian* (online, 21 May 2021). <https://www.tamilguardian.com/content/sri-lanka-s-military-promotes-452-officers-during-tamil-genocide-day>

⁵⁸ **Sri Lanka Charges Tamils who Remembered their War Dead under Draconian Anti-Terror Law.** *Tamil News Service* (online, 19 May 2021). https://www.einnews.com/pr_news/541565310/sri-lanka-charges-tamils-who-remembered-their-war-dead-under-draconian-anti-terror-law

⁵⁹ **UN rights chief voices concern over Sri Lanka's counter-terrorism laws.** *Adaderana.lk* (online, 21 June 2021) <http://www.adaderana.lk/news/74822/un-rights-chief-voices-concern-over-sri-lankas-counter-terrorism-laws>

⁶⁰ Ibid

the Sri Lankan Government, titled 'Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology). The provisions in the Regulation are contrary to Sri Lanka's international legal obligations. The current legislation *"risks jeopardizing the rights and liberties of persons who may be detained arbitrarily, especially religious and ethnic minorities, and may curtail political dissent"*. The UN experts highlight that a criminal act need not be committed by the individual as authorities are granted the power to detain and deprive them of their liberty simply *"on the basis of suspicion and without judicial process"*. The Report states *"the possibility of coercion, torture, or risk of enforced disappearance during the 24-hour unsupervised detention period, gives rise to considerable concerns"*. The UN Special Rapporteurs have called upon the Sri Lankan Government to rescind the Regulation. The new Regulation expands upon previous concerns raised by the UN that remain unaddressed and are an additional set of rights-denying measures further undermining the protection of human rights in Sri Lanka.^{61 62}

Since the election of President Rajapaksa there has been an increased use of the military and the militarisation of responses to issues such as the COVID 19 pandemic. *"Sri Lanka's involvement of the military at every level, with limited parliamentary and civilian oversight, raises serious human rights and rule of law concerns,"* stated Boram Jang, Legal Advisor at the International Commission of Jurists Asia & the Pacific Programme. *"Having the military to oversee the public health policy and to act as the State's first responders also normalises military occupation, exacerbates the existing ethnic divides, and further deteriorates human rights in Sri Lanka"* stated Jang.⁶³

The US State Department's Human Rights Practices 2020 Country Report for Sri Lanka cites allegations of ongoing torture. Interviews by human rights organizations found that torture and excessive use of force by police, particularly to extract confessions, remained endemic. The Human Rights Commission of Sri Lanka (HRCSL) documented 260 complaints of physical and mental torture from January to August 2020 in addition to 37 complaints from prisoners. In response to allegations of torture, the HRCSL carried out routine visits of detention centers.⁶⁴

In June 2021, Human Rights Watch reported that Sri Lanka's police are increasingly killing and abusing people under cover of the Covid-19 pandemic measures and an anti-drug campaign. Recent police abuses reported in the media

⁶¹ UN Special Rapporteurs Communication Report to Sri Lankan Government. 9th August 2021. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26575>

⁶² Sri Lanka's expanded PTA violates basic liberties warn UN experts. *Tamil Guardian* (online, 16 August 2021) <https://www.tamilguardian.com/content/sri-lankas-expanded-pta-violates-basic-liberties-warn-un-experts>

⁶³ Sri Lanka's militarised COVID-19 response 'exacerbates ethnic divides'. *Tamil Guardian* (online, 29 October 2020). <https://www.tamilguardian.com/content/sri-lanka-s-militarised-covid-19-response-exacerbates-ethnic-divides>

⁶⁴ 2020 Country Reports on Human Rights Practices: Sri Lanka. Section C. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. US Department of State. March 30, 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>

include alleged extrajudicial killings, torture, and arbitrary detention.⁶⁵ In June 2021, Journalists for Democracy in Sri Lanka reported that in Batticaloa district, Eastern Province, a young Tamil man died while in police custody after he was brutally assaulted in front of his family members, before being taken to the police station on drug-related offences.⁶⁶

In June 2021, the International Truth and Justice Project (ITJP) released a statement highlighting recent cases of “abduction and torture of Tamils perpetrated by the Sri Lankan security forces under the government of President Gotabaya Rajapaksa,” with the most recent documented case occurring in November 2020. ITJP’s Executive Director, Yasmin Sook said that numerous victims arriving in the UK had been tortured, and more than half of those interviewed appear to have been picked up because they were involved in campaigning against the election of President Gotabaya Rajapaksa and participating in protests by the families of the disappeared. One of the youngest witnesses was only 19 when he was detained, tortured and brutally raped. Three victims attempted to kill themselves after reaching safety in the UK. The perpetrators include the Sri Lankan Army and counter-terrorism police.⁶⁷

Tamil voices have been further marginalized by the Rajapaksa government in state institutions and committees; in November 2020 President Rajapaksa appointed only Sinhalese to the board of the Human Rights Commission of Sri Lanka, meaning the board will have no representation from the Tamil or Muslim communities.⁶⁸ This was not long after he gave a speech in which he declared that the Sinhalese ‘rallied because they had legitimate fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism.’⁶⁹ He also appointed only Sinhalese to an archaeology task force, overseen by the military, because he intended to “preserve our Buddhist and national heritage.”⁷⁰ In the Northern Province, during 2021, Sinhala government officers were appointed in Tamil areas, violating the tradition of appointing Tamil officers to Tamil -majority areas.⁷¹

⁶⁵ **Sri Lanka: Police Abuses Surge Amid Covid-19 Pandemic.** *Human Rights Watch* (online, 6 August 2021) <https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>

⁶⁶ **Death in Sri Lanka’s Police custody: Tamil Youth’s body to be exhumed.** *Journalists for Democracy in Sri Lanka* (online, 20 June 2021) <http://www.jdslanka.org/index.php/news-features/human-rights/1029-death-in-sri-lankas-police-custody-tamil-youths-body-to-be-exhumed>

⁶⁷ **International Truth & Justice Project. Press release: Not Cricket – Sri Lankan Torture. 26 June 2021.** <https://itjpsl.com/assets/press/Final-English-Press-release-ITJP-26-June-2021.pdf>

⁶⁸ **Sri Lankan Human Rights Commission staffed with all Sinhalese nominations by Gotabaya Rajapaksa.** *Tamil Guardian* (online, 26 November 2020) <https://www.tamilguardian.com/content/sri-lankan-human-rights-commission-staffed-all-sinhalese-nominations-gotabaya-rajapaksa>

⁶⁹ **Gotabaya speaks on ‘Sinhala race’ and strengthening security in televised address.** *Tamil Guardian* (online, 19 November 2020) <https://www.tamilguardian.com/content/gotabaya-speaks-sinhala-race-and-strengthening-security-televised-address>

⁷⁰ Ibid

⁷¹ **TNA Leader complains against appointing Sinhala officers to Tamil areas.** *The Island Online* (online, 30 July 2021). <https://island.lk/tna-leader-complains-against-appointing-sinhala-officers-to-tamil-areas/>

A pattern of intensified surveillance and harassment of Civil Society Organisations, human rights defenders and victims appears to have intensified since the Rajapaksa Government came to power.⁷²

As of December 2020, over 40 civil society organizations had approached the Office of the High Commissioner for Human Rights (OHCHR) with reports of harassment, surveillance and repeated scrutiny by a range of security services - including Criminal Investigation Department, Terrorist Investigation Division and State Intelligence officials - who questioned them about administrative details and activities of the organization, lists of staff, including their personal contact details, donors and funding sources. Some were questioned about the whereabouts of their relatives abroad. The Secretary-General and Special Procedures have received similar allegations of surveillance and reprisals.⁷³

"I urge the international community to listen to the determined, courageous, persistent calls of victims and their families for justice, and heed the early warning signs of more violations to come," the UN Human Rights Commissioner Michelle Bachelet said in January 2021.⁷⁴

In March 2021, the Sri Lankan government issued a gazette announcing the proscription of hundreds of Tamils and several diaspora organisations. The organisations include Tamil advocacy groups such as the British Tamil Forum; the Canadian Tamil Congress; the Australian Tamil Congress; the Global Tamil Forum; the National Council of Canadian Tamils; the Tamil Youth Organisation; and the World Tamil Coordinating Committee. The disclosure of names and addresses places those listed as living in Sri Lanka at grave and immediate risk.⁷⁵ The British Tamil Forum noted that this action was taken to "stop all forms of communication between Tamils in the North and East and civil societies political parties and Tamil diaspora".⁷⁶

In April 2021, the Mayor of Jaffna was arrested by Sri Lanka's Terrorism Investigation Division (TID) under accusations of attempting to resurrect the LTTE, despite the lack of any discernible evidence. The arrest was internationally condemned and slammed by Tamil Parliamentarians across the North-East.⁷⁷

⁷² **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page9, point 32).

https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

⁷³ Ibid

⁷⁴ **UN report warns of 'seeds of future violence' in Sri Lanka.** *Tamil Guardian* (online, 27 January 2021) <https://www.tamilguardian.com/content/un-report-warns-seeds-future-violence-sri-lanka>

⁷⁵ **Sri Lanka proscribes hundreds alongside Tamil diaspora organisations.** *Tamil Guardian* (online, 27 March 2021). <https://www.tamilguardian.com/content/sri-lanka-proscribes-hundreds-alongside-tamil-diaspora-organisations>

⁷⁶ **Tamil organisations speak out against Sri Lanka's ban.** *Tamil Guardian* (online, 4 April 2021). <https://www.tamilguardian.com/content/tamil-organisations-speak-out-against-sri-lankas-ban>

⁷⁷ **Groups spread lies about white vans, crocodiles and sharks - Gotabaya Rajapaksa.** *Tamil Guardian* (online, 12 April 2021). <https://www.tamilguardian.com/content/groups-spread-lies-about-white-vans-crocodiles-and-sharks-gotabaya-rajapaksa-0>

Muslim activists have received death threats when speaking out against Islamophobia. Many have been told that if they were to speak out and file a case in the international court of law they would have to face “dire consequences.” Those openly criticizing Islamophobic policies that the government had implemented, such as forced cremations, were being threatened with arrest and danger to their families.⁷⁸

There has been an increase in land-related concerns and militarisation since the Governance of Gotabaya Rajapaksa,⁷⁹ with growing fears from Tamils, politicians and elected council members over the seizing of lands in historical Tamil areas in the north and east and increasing Sinhala colonisation. Tamil names of places have been erased and changed to Sinhala names.⁸⁰ The Sri Lankan Archaeological Department has been accused of attempting to ‘Sinhalise’ Tamil historical and cultural areas by confiscating large areas, identifying them as ‘archaeological sites’ and occupying these sites.⁸¹ In many instances Tamil farmers have been evicted and displaced with the support of the Sri Lankan government’s armed forces and the Sri Lankan Archaeological Department.⁸² The escalating number of land grabs, enabled by the Sri Lankan military, are heavily impacting on the livelihoods of Tamils across the North-East.⁸³ A Sinhala Buddhist monk who is a member of the Presidential Task Force on archaeology in the Eastern Province stated that ‘tenant’ Tamils shouldn’t cause problems for the ‘landlord’ Sinhalese, claiming that there is “no proof that the North and East are historical Tamil provinces. Just like tenants don’t cause any hassle to the landlords, the minority communities shouldn’t cause any trouble to the majority in the country.”⁸⁴

Former LTTE combatants and Tamil disappearance activists continue to bear the brunt of the state’s security apparatus stated a Report by the Sri Lanka Campaign

⁷⁸ Tasnim Nazeer. **Sri Lankan Muslims Fear Speaking Out. A crackdown on dissenting voices — those denouncing Islamophobia and criticizing the government — has Sri Lanka’s Muslims afraid to speak out.** *The Diplomat* (online, 9 April 2021). <https://thediplomat.com/2021/04/sri-lankan-muslims-fear-speaking-out/>

⁷⁹ **Tamil politicians and locals in Jaffna protest against Sri Lankan navy land grab efforts.** *Tamil Guardian* (online, 10 November 2020) <https://www.tamilguardian.com/content/tamil-politicians-and-locals-jaffna-protest-against-sri-lankan-navy-land-grab-efforts>

⁸⁰ **Sri Lanka accelerates Sinhalisation across Vavuniya.** *Tamil Guardian* (online 12 November 2020). <https://www.tamilguardian.com/content/sri-lanka-accelerates-sinhalisation-across-vavuniya>

⁸¹ **High court imposes injunction against Sri Lanka Archaeology Department land occupation in Trincomalee.** *Tamil Guardian* (online, 10 November 2020). <https://www.tamilguardian.com/content/high-court-imposes-injunction-against-sri-lanka-archaeology-department-land-occupation>

⁸² **‘Army prevents us from entering our own farmland,’ Vavuniya farmers lament.** *Tamil Guardian* (online, 29 September 2020). <https://www.tamilguardian.com/content/%E2%80%99army-prevents-us-entering-our-own-farmland%E2%80%99-vavuniya-farmers-lament>

⁸³ **Sri Lankan army establishes ‘firing zone’ in Batticaloa grazing land.** *Tamil Guardian* (online, 12 July 2021) <https://www.tamilguardian.com/content/sri-lankan-army-establishes-firing-zone-batticaloa-grazing-land>

⁸⁴ **Sinhala Buddhist monk warns ‘minorities’ that ‘tenants should not trouble landlords’.** *Tamil Guardian* (online, 8 September 2020). <https://www.tamilguardian.com/content/sinhala-buddhist-monk-warns-minorities-tenants-should-not-trouble-landlords>

for Peace and Justice in February 2020.⁸⁵ In March 2020 security measures were tightened across the North East following the arrest of six former LTTE cadres and a German citizen alleged to be a former LTTE cadre plotting to revive the Liberation Tigers of Tamil Eelam.⁸⁶ In July 2020 Sri Lankan security forces carried out an increasing number of raids across the North-East arresting as many as 22 people, plus more than a dozen Tamil youths on charges of attempting to regroup the LTTE.⁸⁷ In November 2020 Sri Lankan police arrested 19 people under the Prevention of Terrorism Act for allegedly posting birthday wishes online in memory of LTTE leader Velupillai Prabhakaran, with a further 55 people under investigation.⁸⁸ In February 2021 Tamil Guardian reported that dozens of Tamils had been detained in recent months by Sri Lankan security forces, particularly in the Eastern Province, over alleged social media posts with LTTE content.⁸⁹

In October 2020, a land-mark judgement from Britain's Proscribed Organisations Appeal Commission found that the decision to keep the LTTE as a proscribed terrorist organisation was 'flawed' and unlawful. Sri Lanka's Prime Minister Mahinda Rajapaksa called on the British authorities to ensure a ban was kept on the organisation, claiming the LTTE was "very active".⁹⁰ The Sri Lankan Government issued a statement that "The Government of Sri Lanka has sufficient evidence to prove remnants of the LTTE and groups aligned with its terrorist ideology are active in foreign countries, working to incite violence and destabilize the country."⁹¹

In January 2021, 47 Member States of the UN Human Rights Council, elected representatives of the Tamil people in Sri Lanka, leaders of Tamil national political parties, members of the Tamil victim communities and Tamil civil society organizations sent a joint letter urging the UN Human Rights Council to refer Sri Lanka to the International Criminal Court and any other appropriate and effective

⁸⁵ **Sri Lanka Campaign for Peace and Justice, Abandoned Promises? Preserving Human Rights and Pursuing Accountability in Gota's Sri Lanka, February 2020.** <https://www.srilankacampaign.org/wp-content/uploads/2020/02/Abandoned-Promises-Sri-Lanka-Campaign-I-February-2020-compressed.pdf>

⁸⁶ **Toughened security across North East following conspiracy by 'prominent ex-LTTE cadres' to 'assassinate politician'.** *Tamil Guardian* (online, 7 March 2020). <https://www.tamilguardian.com/content/toughened-security-across-north-east-following-conspiracy-prominent-ex-ltte-cadres>

⁸⁷ **Sri Lankan police arrest Tamil youth for 'regrouping the LTTE'.** *Tamil Guardian* (online, 1 July 2020). <https://www.tamilguardian.com/content/sri-lankan-police-arrest-tamil-youth-%E2%80%98regrouping-ltte%E2%80%99>

⁸⁸ **Sri Lankan police arrest 19 and mark further 55 for posting Prabhakaran birthday messages.** *Tamil Guardian* (online, 27 November 2020). <https://www.tamilguardian.com/content/sri-lankan-police-arrest-19-and-mark-further-55-posting-prabhakaran-birthday-messages>

⁸⁹ **Sri Lanka arrests Tamil youth for Tik Tok posts after 'cyber patrol unit' monitoring.** *Tamil Guardian* (online, 26 February 2021). <https://www.tamilguardian.com/content/sri-lanka-arrests-tamil-youth-tik-tok-posts-after-cyber-patrol-unit-monitoring>

⁹⁰ **Sri Lankan High Commission scrambles to ensure ban on LTTE is kept.** *Tamil Guardian* (online, 26 October 2020). <https://www.tamilguardian.com/content/sri-lankan-high-commission-scrambles-ensure-ban-ltte-kept>

⁹¹ **Sri Lanka 'closely monitoring' British ruling on LTTE ban.** *Tamil Guardian* (online, 22 October 2020). <https://www.tamilguardian.com/content/sri-lanka-closely-monitoring-british-ruling-ltte-ban>

international accountability mechanisms to inquire into the crime of genocide, war crimes and crimes against humanity.

The letter stated:

"The continuing and intensifying oppression against the Tamils including militarisation, indefinite detention of political prisoners, land grab in the name of archaeological explorations, the denial of traditional, collective land rights like cattle grazing rights, intensifying surveillance of political and civil society activists, the denial of burial rights during COVID19 to our Muslim brethren and the denial of the right to memory, underscore the urgency of addressing the deteriorating situation."⁹²

In February 2021, tens of thousands of people led by North-East Civil Societies joined one of the largest rallies in the Tamil homeland since the end of the armed conflict in 2009, as they marched in a five-day long campaign across the Tamil homeland from Pothuvil in the east to Polihandy in the north. The march was endorsed by all Tamil political parties, as well as by Tamil and Muslim civil society organisations and Muslim leaders. *"Successive Sri Lankan Sinhala - Buddhist Governments have continually suppressed our right to self-determination and govern us employing brutal military force to annihilate, which amounts to Genocide"*⁹³

Sri Lanka's public security minister Sarath Weerasekara claimed that his regime is about to file cases against the Tamil protestors who marched through the North-East. *"We receive intelligence reports,"* said Weerasekara. *"We have their photos, and we have their vehicle numbers, we know who these individuals are."*⁹⁴

Election violence

November 2019 Presidential Election

In the lead-up to the November 2019 Presidential Election, Tamil Makkal Viduthalai Pulikal - Tamil Peoples Liberation Tigers (TMVP), declared its support for Sri Lanka Podujana Perumna (SLPP) candidate Gotabaya Rajapaksa.⁹⁵ TMVP is a paramilitary political party led by Pillayan (alias Sivanesathurai Chandrakanthan), who at the time of the election was in remand over the 2005

⁹² **Tamils Unitedly Urge UN Human Rights Council to Refer Sri Lanka to International Criminal Court (ICC).** *Tamil News, Einpresswire* (online, 17 January 2021) https://www.einnews.com/pr_news/534655598/tamils-unitedly-urge-un-human-rights-council-to-refer-sri-lanka-to-international-criminal-court-icc

⁹³ **Sri Lanka: Tens of Thousands of Tamils Rally to Call For Freedom and Rejecting Unitary State.** North East Civil Societies. *Einpresswire* (online, 8th February 2021). https://www.einnews.com/pr_news/535338187/sri-lanka-tens-of-thousands-of-tamils-rally-to-call-for-freedom-and-rejecting-unitary-state

⁹⁴ 'Tear gassed and arrested, that's what Sumanthiran and Ponnambalan need' - Sri Lankan minister. *Tamil Guardian* (online, 9th February 2021). <https://www.tamilguardian.com/content/tear-gassed-and-arrested-thats-what-sumanthiran-and-ponnambalan-need-sri-lankan-minister>

⁹⁵ **'TMVP to back Gotabaya'.** *Sunday Observer* (online, 13 October 2019) <http://www.sundayobserver.lk/2019/10/13/news/tmvp-back-gotabaya>

murder of Tamil National Alliance parliamentarian Joseph Pararajasingham. The paramilitary leader broke away from the LTTE with Karuna in 2004, and since then has been accused of committing executions and other rights abuses with the support of the Sri Lankan state.⁹⁶ The TMVP was originally the political wing of the armed faction earlier known as the Karuna group. It enjoyed the strong backing of the government of President Mahinda Rajapaksa. The TMVP is still actively involved in serious human rights abuses.^{97 98}

The European Union Election Observation Mission received complaints from the Sri Lanka Muslim Congress (SLMC), that intimidation of voters and inciting of violence was planned in the Batticaloa District in Eastern Province using members of organisations under the leadership of Karuna Amman and Pillayan. Similar incidents were reported in Batticaloa and Ampara districts during the previous elections.⁹⁹

On 10th of November 2019 the Batticaloa home of a supporter of candidate Sajith Premadasa was attacked with a petrol bomb. Members of the Pillayan paramilitary group are alleged to have carried out the attack.¹⁰⁰

An attack on a convoy of internally displaced Muslims heading to Northern Province to cast their ballots in Mannar District where the Elections Commission had encouraged them to register as voters, raised concerns of a coordinated effort to disenfranchise the minority group.¹⁰¹

On 3 November 2019 in Mullaitivu, Northern Province, a prominent member of the youth wing of Ilankai Tamil Arasu Katchi (ITAK), the largest party of the Tamil National Alliance, was summoned for questioning in Colombo by the Terrorism Investigation Division. He was the fourth Mullaitivu -based individual to be summoned in recent weeks.¹⁰²

⁹⁶ **'Pro-Rajapaksa paramilitary leader 'assured Sri Lankan minister post'**. *Tamil Guardian* (online, 1 August 2020) <https://www.tamilguardian.com/content/pro-rajapaksa-paramilitary-leader-%E2%80%98assured-sri-lankan-minister-post%E2%80%99>

⁹⁷ **Sri Lanka: Human Rights Situation Deteriorating in the East -Armed Faction Is Killing, Kidnapping Civilians**. *Human Rights Watch* (online, 24 November 2008) <https://www.hrw.org/news/2008/11/24/sri-lanka-human-rights-situation-deteriorating-east>

⁹⁸ **TMVP General Secretary arrested for threatening witnesses in double murder case**. *ColomboPage* (online, 12 November 2020) http://www.colombopage.com/archive_20B/Nov12_1605205026CH.php

⁹⁹ **'Karuna and Pillayan planning election violence in the East, SLMC leader informs EU Election Monitoring Team'**. *ColomboPage* (online, 31 October 2019) http://www.colombopage.com/archive_19B/Oct31_1572505075CH.php

¹⁰⁰ **'Petrol bombs flung at home of Sajith supporter in Batticaloa'**. *Tamil Guardian* (online, 14 November 2019) <https://www.tamilguardian.com/content/petrol-bombs-flung-home-sajith-supporter-batticaloa>

¹⁰¹ **Associated Press, 'Attack probed as Sri Lankans choose next leader'**. *North West Arkansas Democrat Gazette* (online, 17 November 2019) <https://www.nwaonline.com/news/2019/nov/17/attack-probed-as-sri-lankans-choose-nex/>

¹⁰² **'ITAK activist latest in spate of summons by terrorism division as Maaveerar Naal approaches'**. *Tamil Guardian* (online, 3 November 2019) <https://www.tamilguardian.com/content/itak-activist-latest-spate-summons-terrorism-division-maaveerar-naal-approaches>

Gotabaya Rajapaksa won the election. While sweeping Sinhala votes in the South, Rajapaksa averaged less than 18% of the vote in the Tamil homeland of the North-East.¹⁰³

On 30th November 2019, Vavuniya Citizens Committee leader and Coordinator of the Vavuniya families of the disappeared K. Rajkumar, was brutally attacked several times by paramilitary Eelam People's Democratic Party (EPDP) supporters after a protest held to show their concerns regarding its leader Douglas Devananda.¹⁰⁴ Douglas Devananda, a current Sri Lankan cabinet minister, is notorious in the Northern Province for his role in abductions and disappearances during and after the armed conflict.¹⁰⁵ The EPDP, a government backed paramilitary organisation, has been accused of a litany of crimes including assassinations, abductions, running prostitution rings and extortion.¹⁰⁶

August 2020 General Parliamentary Election

In June 2020, Sri Lanka's opposition party, the Samagi Jana Balavegaya, accused the government's intelligence agencies of collecting data on civilians as part of a larger surveillance project, that would see military intelligence officers in every polling station across the island at the upcoming parliamentary elections.¹⁰⁷

Eleven international human rights organisations cautioned the Sri Lankan government in a statement demanding that they end targeted detention and the intimidations of lawyers, activists, human rights defenders, and journalists in Sri Lanka.

According to the joint statement:

*"A campaign of fear has intensified since the 2019 presidential election and has cast a shadow over the 2020 parliamentary election campaign"*¹⁰⁸

UN Special Rapporteur Clément N. Voule expressed repeated concern at rapid changes that had taken place in Sri Lanka since the 2019 presidential elections,

¹⁰³ **'Hate speech flourishes online as Gotabaya victory declared'**. *Tamil Guardian* (online, 17 November 2019) <https://www.tamilguardian.com/content/hate-speech-flourishes-online-gotabaya-victory-declared>

¹⁰⁴ **'Paramilitary members attack families of disappeared representative'**. *Tamil Guardian* (online, 1 January 2020) <https://www.tamilguardian.com/content/paramilitary-members-attack-families-disappeared-representative>

¹⁰⁵ **'Families of disappeared protest demanding EPDP leader arrest'**. *Tamil Guardian* (online, 3 January 2020) <https://www.tamilguardian.com/content/families-disappeared-protest-demanding-epdp-leader-arrest>

¹⁰⁶ **'Vavuniya locals protest EPDP MP's 'demeaning' comment'**. *Tamil Guardian* (online, 17 September 2020) <https://www.tamilguardian.com/content/vavuniya-locals-protest-epdp-mp%E2%80%99s-%E2%80%98demeaning%E2%80%99-comment>

¹⁰⁷ **'Sri Lankan opposition warns of intelligence officers at polling stations as part of state surveillance'**. *Tamil Guardian* (online, 09 June 2020) <https://www.tamilguardian.com/content/sri-lankan-opposition-warns-intelligence-officers-polling-stations-part-state-surveillance>

¹⁰⁸ **'Human rights under attack' in Sri Lanka warn multiple NGOs'**. *Tamil Guardian* (online, 31 July 2020) <https://www.tamilguardian.com/content/human-rights-under-attack-sri-lanka-warn-multiple-ngos>

citing ethnic discrimination, militarisation, and intimidation of civil society in an address to the UN Human Rights Council.

*"I am concerned about the fate of hard-fought gains in relation to civic space and the rule of law, including in the run up to the 5 August parliamentary elections."*¹⁰⁹

A Northern Province TNA candidate expressed fear to the Election Commission that Sri Lanka's militarisation may hinder free voting in the elections.¹¹⁰

Sri Lankan Military intimidated former Northern Province Chief Minister Justice Wigneswaran ahead of the Parliamentary Elections.¹¹¹

Socialist Equality Party (SEP) candidates for the Jaffna district experienced military harassment on several occasions.¹¹² Leaders of independent groups contesting the general election also complained about military harassment.¹¹³

A Tamil journalist in Kilinochchi was threatened by a local politician with links to a former paramilitary MP. The council member was reported to be a member of a political party led by M Chandrakumar, a former parliamentarian who served under the paramilitary Eelam People's Democratic Party.¹¹⁴

Sri Lanka election monitoring organisation, People's Action for Free and Fair election (PAFFREL) received across the country 1,469 complaints of violations of election laws and other laws related to the general election by July 24th, according to the PAFFREL Executive Director Rohana Hettiarachchi. Out of the total, 58 incidents of serious violence had been reported and 876 complaints had been received regarding illegal propaganda activities. In addition, PAFFREL received 24 complaints of assaults during political activities. Among them were 9 serious assaults, six within the same party and nine disputes between the opposition parties.¹¹⁵

¹⁰⁹ **"Concern, concern, concern" - UN Special Rapporteur says Sri Lanka has 'rapidly changed'**. *Tamil Guardian* (online, 10 July 2020) <https://www.tamilguardian.com/content/%E2%80%98concern-concern-concern%E2%80%99-%E2%80%93-un-special-rapporteur-says-sri-lanka-has-%E2%80%98rapidly-changed%E2%80%99>

¹¹⁰ **'TNA candidate fears Sri Lanka's militarisation may hinder free voting in elections.'** *Tamil Guardian* (online, 26 June 2020) <https://www.tamilguardian.com/content/tna-candidate-fears-sri-lanka%E2%80%99s-militarisation-may-hinder-free-voting-elections>

¹¹¹ Justice C.V.Wigneswaran, Thamizh Makkal Thesiya Kootani, **'Sri Lankan Military Intimidates Former Northern Province Chief Minister Justice Wigneswaran Ahead of Polls'**. *Einpresswire* (online, 31 July 2020) <https://www.einpresswire.com/article/522977070/sri-lankan-military-intimidates-former-northern-province-chief-minister-justice-wigneswaran-ahead-of-polls>

¹¹² **'Growing demands that Sri Lankan defence secretary end the military harassment of SEP candidates'**. *World Socialist Web Site* (online, 28 July 2020) <https://www.wsws.org/en/articles/2020/07/28/sril-j28.html>

¹¹³ **'As support widens for SEP defence campaign, Sri Lanka army commander says allegations of military harassment of northern election candidates are "false"'**. *World Socialist Web Site* (online, 16 July 2020) <https://www.wsws.org/en/articles/2020/07/16/sldc-j16.html>

¹¹⁴ **'Tamil journalist threatened by paramilitary-linked local politician'**, *Tamil Guardian* (online, 25 July 2020) <https://www.tamilguardian.com/content/tamil-journalist-threatened-paramilitary-linked-local-politician>

¹¹⁵ **'Election monitor receives 1469 complaints regarding election law violations'** *ColomboPage* (online, July 26) http://www.colombopage.com/archive_20B/jul26_1595737864CH.php

In the lead up to the August 2020 General Parliamentary Election, Sri Lanka election monitor, Campaign for Free and Fair Elections (CaFFE) warned that certain parts of Digamadulla district in the Eastern Province could be a hotspot for election violence. Three hotspots were identified in the district - Pottuvil, Sainthamaruthu and Akkaraipattu.¹¹⁶

Paramilitary organisations and Sri Lankan military intelligence had pursued a campaign of intimidation and harassment against party members of Tamil National People's Front (TNPf) contesting in the Eastern province, said party leader Gajendrakumar Ponnambalam.

*"In Amparai, 3 of our candidates are on the verge of withdrawing due to ferocious threats and harassment from the Karuna group," he said. "In Batticaloa, one of our candidates is under threat from Pillayan group for the last 3 years."*¹¹⁷

A week after the General Parliamentary Election the TNPf Amparai District candidate was attacked with swords by men from the paramilitary Karuna group and admitted to hospital with serious injuries.¹¹⁸

Karuna Amman (alias Vinayagamoorthy Muralitharan), is a close ally of the ruling Rajapaksa regime, and is accused of a litany of crimes including kidnappings, extortion, and executions, many of which took place with the complicity of Rajapaksa's government, after Karuna had defected from the LTTE.^{119 120}

Karuna contested the Parliamentary Election as a candidate for the Tamil United Freedom Front (TUFF) in Kalmunai. Although unsuccessful, he split the Tamil vote in Digamudulla electoral district, with the TNA losing its Tamil representation in this area. Karuna has since been appointed the District Coordinator of Prime Minister Mahinda Rajapaksa for Ampara and Batticaloa.¹²¹

Ilankai Tamil Arasu Kachchi (ITAK) is the main party in the Tamil National Alliance. Thavarasa Kalaiarasan, a candidate for ITAK in Kalmunai, was

¹¹⁶ **Digamadulla already a hotspot for election violence - CaFFE**, *ColomboPage* (online, 7 July 2020) http://www.colombopage.com/archive_20B/Jul07_1594144783CH.php

¹¹⁷ **"Candidates on the verge of withdrawing due to ferocious threats" - TNPf**, *Tamil Guardian* (online, 30 July 2020) <https://www.tamilguardian.com/content/%E2%80%98candidates-verge-withdrawing-due-ferocious-threats%E2%80%99-%E2%80%93-tnpf>

¹¹⁸ **'Former TNPf candidate seriously injured by paramilitary sword attack'**, *Tamil Guardian* (online, 11 August 2020) <https://www.tamilguardian.com/content/former-tnpf-candidate-seriously-injured-paramilitary-sword-attack>

¹¹⁹ Mahinda Rajapaksa warns against 'minor distractions' of Karuna and urges focus on 'foreign conspirators'. *Tamil Guardian* (online, 30 June 2020) <https://www.tamilguardian.com/content/mahinda-rajapaksa-warns-against-minor-distractions-karuna-and-urges-focus-foreign>

¹²⁰ **"Accountability should apply to everyone" says UN in call to investigate Karuna**, *Tamil Guardian* (online, 26 June 2020) <https://www.tamilguardian.com/content/accountability-should-apply-everyone-says-un-call-investigate-karuna>

¹²¹ **Karuna Amman appointed district coordinator of Prime Minister**. *The Island Online* (online, 15 October 2020) <https://island.lk/karuna-amman-appointed-district-coordinator-of-prime-minister/>

unsuccessful at the Parliamentary General Election, but has since been nominated to parliament as a TNA National List MP.¹²²

Leader of the Tamil Makkal Viduthalai Pullikal (TMVP), Sivanesanthurai Chandrakanthan (Santhirakanthan) alias Pillayan, despite being held in remand for the murder of a TNA politician in 2005, was elected to Parliament. Pillayan is a paramilitary leader accused of committing executions and other human rights abuses with the support of the Sri Lankan state. A firm supporter of the Rajapaksa regime, he contested in the parliamentary elections as part of the Tamil Makkal Viduthalai Pulikal Party (TMVP) and attained the most votes in Batticaloa with over 54,000 votes. Tamil observers have commented that his party exploited tensions between Tamils and Muslims in the East as part of election campaigning. Pillayan has been in remand custody for the assassination of Pararajasingham since October 2015.¹²³

In September 2020, President Rajapaksa appointed Pillayan as Co-Chairperson of the Batticaloa District Coordinating Committee (DDC) charged with coordinating, implementing, and monitoring all development activities of state institutions and NGOs in the district.¹²⁴

In January 2021, the charges against Pillayan, now a sitting MP and close political ally of the Rajapaksa's SLPP, were dropped by the Attorney General.¹²⁵

Returned Asylum Seekers

Returning people to a country in which they face harm is a breach of international law.

The UN Convention Against Torture to which Australia is a signatory, clearly states in Article 3 that:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.¹²⁶

¹²² 'Tamil parties appoint National List MP's', *Tamil Guardian* (online, 10 August 2020) <https://www.tamilguardian.com/content/tamil-parties-appoint-national-list-mps>

¹²³ 'Murder-accused paramilitary leader permitted to attend parliament sessions', *Tamil Guardian* (online, 19 August 2020) <https://www.tamilguardian.com/content/murder-accused-paramilitary-leader-permitted-attend-parliament-sessions>

¹²⁴ **2020 Country Reports on Human Rights Practices: Sri Lanka. Section C. Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment.** US Department of State. March 30, 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>

¹²⁵ **Sri Lankan government to drop murder case of senior Tamil politician.** *Outlook India. The News Scroll* (online, 11 January 2021). <https://www.outlookindia.com/newscroll/sri-lankan-government-to-drop-murder-case-of-senior-tamil-politician/2008622>

¹²⁶ **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.** UN General Assembly. 10 December 1984. <https://www.refworld.org/docid/3ae6b3a94.html>

In January 2021, the United Nations Commissioner for Human Rights, Michelle Bachelet, in her Report to the UN Human Rights Council, recommended:

“the Human Rights Council and Member States:
Review asylum measures with respect to Sri Lankan nationals to protect those facing reprisals and avoid any refoulement in cases that present real risk of torture or other serious human rights violations.”¹²⁷

Numerous Human Rights reports have cited widespread and systemic brutal abuse, torture, and ill-treatment of Sri Lankan Tamil people arbitrarily detained, or arrested under the notorious Prevention of Terrorism Act (PTA).^{128 129 130 131}

The PTA is one of the main tools used to perpetrate human rights violations in Sri Lanka. Suspects can be placed in prolonged detention – without charge and without being produced before a judge.¹³²

The United Nations Commissioner for Human Rights, Michelle Bachelet expressed concern in her January 2021 Report to the UN Human Rights Council, that the Sri Lankan Government has continued to use the Prevention of Terrorism Act (PTA), despite repeated calls over many years by United Nations human rights mechanisms to repeal it.¹³³

“These incidents reflect the persistence of longstanding and endemic patterns of custodial deaths, use of torture and other ill-treatment, and extrajudicial killings by law enforcement officials with impunity.

OHCHR has also continued to receive credible allegations through well-known human rights organizations of abductions, torture and sexual violence by Sri Lankan

¹²⁷ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 16, point 61g).

https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

¹²⁸ **Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Addendum -Mission to Sri Lanka. July 2018. (page 8)**

https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF

¹²⁹ **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka. March 2017. (pages 6-7).** <https://www.mfa.gov.lk/wp-content/uploads/2018/03/34-5.pdf>

¹³⁰ **Unstopped: State Torture & Sexual Violence in 2016/17. International Truth & Justice, July 2017.** www.itjpsl.com

¹³¹ **2020 Country Reports on Human Rights Practices: Sri Lanka. Section C. Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment.** US Department of State. March 30, 2021. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>

¹³² Thyagi Ruwanpathirana. **On Hejaaz Hizbullah: The latest victim of Sri Lanka’s draconian Prevention of Terrorism Act.** *Amnesty International*, 15 July 2020. <https://www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/>

¹³³ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 10). https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

security forces since the adoption of resolution 30/1, including in the past year, which need to be credibly investigated.”¹³⁴

UN Special Rapporteur on human rights and counter-terrorism Mr. Emmerson said:

*“The Tamil community has borne the brunt of the State’s well-oiled torture apparatus, as the law is used disproportionately against them. The use of torture is deeply ingrained in the security sector. I heard deeply disturbing, first-hand accounts of brutal torture. These included beatings with sticks, stress positions, asphyxiation using plastic bags drenched in kerosene, pulling out of fingernails, insertion of needles beneath the fingernails, various forms of water torture, suspension for several hours by the thumbs, and mutilation of the genitals.”*¹³⁵

The National Human Rights Commission in Sri Lanka emphasised that torture in custody was widespread, systemic, institutionalised and formed a major priority in its work.¹³⁶

The United Nations Commissioner for Human Rights, Michelle Bachelet, stated in her January 2021 Report to the UN Human Rights Council,

*“the failure to implement any vetting or comprehensive reforms in the security sector means that the State apparatus and some of its members credibly implicated in the alleged grave crimes and human rights violations remain in place.”*¹³⁷

Sri Lanka’s Immigration and Emigration Department is now under the direct control of the Defence State Minister Chamal Rajapaksa (President Gotabaya Rajapaksa’s brother). Defence Secretary is Kamal Gunaratne, a former military commander accused of overseeing mass atrocities.¹³⁸ Prasanna de Alwis, an alleged torturer, heads the Criminal Investigation Department (CID).¹³⁹

This latest tightening of control by the Rajapaksa Government places returned Tamil asylum seekers at particular risk of torture and human rights abuses at the

¹³⁴ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 11). https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

¹³⁵ **Sri Lanka routinely tortures security suspects amid stalled reform process, UN expert finds. OHCHR.** 18 July 2017. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E>

¹³⁶ **Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Addendum -Mission to Sri Lanka. July 2018. (page 8)** https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF

¹³⁷ **Promotion reconciliation, accountability and human rights in Sri Lanka. Report of the Office of the High Commissioner for Human Rights. Advance unedited version. Distr.: General. 27 January 2021** (page 14, point 52). https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx

¹³⁸ **Sri Lanka -A Parallel State.** International Truth and Justice Project Press Release (online, 7th July 2020) <https://itjpsl.com/assets/press/7-july-2020-OTJP-press-release-merged-2.pdf>

¹³⁹ **Alleged Torturer Heads Sri Lankan CID:** ITJP. *Colombo Telegraph* (online 26 May 2020) <https://www.colombotelegraph.com/index.php/alleged-torturer-heads-sri-lankan-cid-itjp/>

hands of Sri Lanka's security forces. Many Tamils are still attempting to flee the island, but face deportation from other states around the world.¹⁴⁰

It is into this culture of Sri Lankan Government State-sanctioned abuse that the Australian Government returns Tamil asylum seekers.

In January 2021, Tamil Guardian reported that Australia had signed a Memorandum of Understanding with Sri Lanka on the Return and Readmission of Persons which includes provisions for the return of asylum seekers who continue to face threats of torture and abuse in Sri Lanka.¹⁴¹

Return pending visas have been issued by the Australian Government to at least nine Sri Lankan Tamil asylum seekers in the Geelong Region during 2020, said a refugee advocate. They must show their intent to depart to Sri Lanka in early 2021.¹⁴²

In April 2021, Tamil Makkal Thesiya Kootani leader, C.V. Wigneswaran said that Tamil asylum seekers, recently deported to Sri Lanka, were at risk of "surveillance, torture and arbitrary detention." He highlighted that Sri Lanka's notorious Prevention of Terrorism Act "continues to be used to justify the mistreatment of Tamils for no reason other than their ethnicity."¹⁴³ The returned asylum seekers were handed to the Sri Lankan army by the Immigration and Emigration department at Bandaranaike International Airport. After quarantine they were to be handed to the CID and the National Intelligence Unit for legal action.¹⁴⁴

In June 2021, the DFAT Sri Lanka Country Information Report (Nov 2019), used extensively by Home Affairs and tribunals to judge Sri Lankan asylum seekers' claims, was criticised by an influential UK refugee tribunal, leading to calls for its retraction.¹⁴⁵ In a landmark immigration case¹⁴⁶ in the United Kingdom, "three

¹⁴⁰ **Sri Lanka's defence ministry assigned control of immigration.** *Tamil Guardian* (online, 27th January 2020).

<https://www.tamilguardian.com/content/sri-lanka%E2%80%99s-defence-ministry-assigned-control-immigration>

¹⁴¹ **Australia moves to return Tamil asylum seekers to Sri Lanka despite threats of torture.** *Tamil Guardian* (online, 21 January 2021). <https://www.tamilguardian.com/content/australia-moves-return-tamil-asylum-seekers-sri-lanka-despite-threats-torture>

¹⁴² **Anecdotal evidence from a refugee advocate in Geelong.**

¹⁴³ **Tamil asylum seekers deported to Sri Lanka at risk of 'surveillance, arbitrary detention and torture' says Wigneswaran.** *Tamil Guardian* (online, 1 April 2021). <https://www.tamilguardian.com/content/tamil-asylum-seekers-deported-sri-lanka-risk-surveillance-arbitrary-detention-and-torture>

¹⁴⁴ **Tamil deportees to be handed to CID after 'quarantine process'.** *Tamil Guardian* (online, 01 April 2021). <https://www.tamilguardian.com/content/tamil-deportees-be-handed-cid-after-quarantine-process>

¹⁴⁵ **A DFAT report used to judge Sri Lankan asylum seekers' claims has been criticised by an influential UK refugee tribunal, leading to calls for its retraction.** Source: AAP. *SBS News* (online, 3/6/21). <https://www.sbs.com.au/news/dfat-urged-to-retract-inaccurate-report-saying-sri-lankans-face-low-torture-risk-following-uk-court-finding>

¹⁴⁶ **Upper Tribunal (Immigration and Asylum Chamber) Appeal Numbers: PA/09978/2016 PA/13288/2018 issued on 27 May 2021. UK.** <https://www.doughtystreet.co.uk/sites/default/files/media/document/KK%20%26%20RS%20%28Sri%20Lanka%29.pdf>

Upper Tribunal judges were scathing in their rejection of Australian and UK country reports used as a basis to determine asylum applications for Sri Lankan Tamils. The consequences for many Sri Lankan applicants, particularly Tamil people seeking asylum in Australia has been the refusal of protection, based on what the UK court has said is unreliable information. The court also confirmed that if returned to Sri Lanka, they risk being subjected to torture, which the Tribunal says is endemic in the country.”¹⁴⁷

The Upper Tribunal judges’ decision referenced the inaccurate DFAT Sri Lanka Country Information 2019 Report on Sri Lanka and found serious methodological shortcomings noting that: *“none of the sources are identified, there is no explanation as to how the information from these sources was obtained, and there is no annex containing, for example, records of any interviews... Indeed, it is unclear whether any formal interviews took place. The report does not provide direct quotes from any source. In light of these matters, it is difficult to gauge the reliability of the sources which have informed the “judgement and assessment” applied to them by the authors of the report.”*¹⁴⁸

The Upper Tribunal recognised that the ‘authoritarian and paranoid’ Government of Sri Lanka monitors proactively the activities of Tamils in the diaspora and as such if persons are returned to Sri Lanka, they are at serious risk of detention and torture on return, not just at the airport, but following return to their home areas.¹⁴⁹

The Upper Tribunal found that Tamils who engage in a range of political activities in the United Kingdom may continue to face “a real risk of ill-treatment or harm” if deported to Sri Lanka, in a significant ruling that clarifies and expands those who may face persecution on the island. The Upper Tribunal stated that Sri Lanka may target more than those who hold formal positions in diaspora organisations and listed a range of activities, carried out both through organisations, or as individuals, that may place a person at risk.¹⁵⁰

The Upper Tribunal noted:
“[Sri Lanka] draws no material distinction between the violent means of the LTTE and non-violent political advocacy,”

¹⁴⁷ **Joint Media Release: Human rights groups demand suspension of reports on Sri Lanka to assess refugee applications following rejection by a UK court. Jun 3, 2021.** Australian Centre for International Justice. <https://acij.org.au/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>

¹⁴⁸ **Upper Tribunal (Immigration and Asylum Chamber) Appeal Numbers: PA/09978/2016 PA/13288/2018 issued on 27 May 2021. UK.** (page 66, paragraph 302) <https://www.doughtystreet.co.uk/sites/default/files/media/document/KK%20%26%20RS%20%28Sri%20Lanka%29.pdf>

¹⁴⁹ **Joint Media Release: Human rights groups demand suspension of reports on Sri Lanka to assess refugee applications following rejection by a UK court. Jun 3, 2021.** Australian Centre for International Justice. <https://acij.org.au/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>

¹⁵⁰ **How a landmark British ruling may save Tamil activists from deportation to Sri Lanka.** *Tamil Guardian* (online, 5 June 2021). <https://www.tamilguardian.com/content/how-landmark-british-ruling-may-save-tamil-activists-deportation-sri-lanka>

“To this extent, Government of Sri Lanka's interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well... there is no tolerance of the expression of any avowedly separatist or perceived separatist beliefs.”

“It is abundantly clear that there is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecution.”^{151 152}

The Upper Tribunal stated that there was also the need to apply wider principles of refugee law when examining cases of Tamil asylum seekers, highlighting the HJ (Iran) principle – a 2010 ruling that was affirmed in 2012. It added that “if it is found that the individual would not seek to express their separatist beliefs on return... to avoid the risk of persecution and serious harm, they are entitled to international protection.”¹⁵³

A Tamil asylum seeker family in Australia is currently fighting deportation to Sri Lanka. The Federal Court ruled in April 2020 that an injunction applies to the family's two-year-old daughter Tharunicaa. The judge ruled that Tharunicaa was “not afforded procedural fairness” in her asylum bid.¹⁵⁴

Representatives from the Sri Lankan Department of Immigration and Emigration in October 2019 provided the following information about returned refused asylum seekers:

If a person is identified as a failed asylum seeker they will be questioned, then passed to CID. They may be released but monitored. The local police would be informed, and the person would be monitored although the length of time may vary.¹⁵⁵

A representative of the Tamil National Alliance (TNA) interviewed in October 2019 by a UK Fact Finding Mission replied, when asked if someone who has claimed asylum in the UK would have a reasonable fear when they return:

“It has to be viewed in context of what is happening- the rule of law is not enforced or observed, there have been thousands of cases where they have been no investigations. People have natural fear in country where they do not feel safe. If they left because they fear persecution and been involved in some activity that puts them at risk then it needs to be understood in that context, that background [...] Tamils who left the country as a result of

¹⁵¹ Ibid.

¹⁵² **New country guidance issued by the Upper Tribunal in Sri Lankan asylum claims.** Doughty Street Chambers. UK. 28 May 2021. <https://www.doughtystreet.co.uk/news/new-country-guidance-issued-upper-tribunal-sri-lankan-asylum-claims>

¹⁵³ **New country guidance issued by the Upper Tribunal in Sri Lankan asylum claims.** Doughty Street Chambers. UK. 28 May 2021. <https://www.doughtystreet.co.uk/news/new-country-guidance-issued-upper-tribunal-sri-lankan-asylum-claims>

¹⁵⁴ **Tamil girl 'not afforded procedural fairness' in Biloela family's asylum bid, Federal Court rules.** ABC News (online, 17 April 2020). <https://www.abc.net.au/news/2020-04-17/biloela-tamil-family-decision-in-federal-court/12156380>

¹⁵⁵ **Sri Lanka: Country Report. July 2020** (COI between 1 January 2020 and 19 May 2020).

Asylum Research Centre (ARC), June 2020. (pages 312-313) https://www.ecoi.net/en/file/local/2033016/FINAL_ARC_COI_report_on_Sri_Lanka_July_2020PDF.pdf

*LTTE or as a result of fear of persecution are being identified somehow when they come back- they could fear that they might not be safe”*¹⁵⁶

A Tamil refugee who escaped Sri Lanka some years ago reported:

*“When a refugee is returned by Home Affairs to Sri Lanka, a representative of the International Organisation for Migration (IOM) meets the returned person at Colombo airport. Sri Lanka’s Criminal Investigation Department (CID) then takes the person into custody and asks questions because the original departure from Sri Lanka was illegal. Out of fear the person will not want to tell the CID the real reason for leaving as this will impact on the person and his/her family. A bribe might help. The person may be bailed and then face ongoing court visits to report. However, you may not be bailed, but punished brutally, especially if your name is within their system – for being a freedom fighter in the past or working as a social activist for the Tamil people. Your file might still be there.”*¹⁵⁷

In May 2019, UN News reported that:

The UN Committee Against Torture has expressed concern over the United Kingdom’s policy of forcibly returning asylum-seekers to places where they face a risk of abuse – highlighting 43 enforced returns to Sri Lanka last year.¹⁵⁸

In December 2019, a spokesperson for Australia’s Department of Home Affairs said:

*“We cooperate closely with the Sri Lankan government to return people who have been intercepted trying to reach Australia illegally and have returned 38 Sri Lankan nationals across three vessels since May 2019.”*¹⁵⁹

Returned asylum seeker Sebamalai Jesupalam from Mullaitivu said the asylum seeker boat he was on in 2012 was stopped by the Sri Lankan navy. Eight years on he still attends mandatory court hearings in the city of Negombo - a six-hour journey from his home.¹⁶⁰

Based on interviews with 26 Tamil asylum seekers in Britain, the International Truth and Justice Project reported in October 2019 that all the interviewees said their families

“had been repeatedly visited by security services after they had fled the country – including some as recently as September 2019”.

¹⁵⁶ Ibid **Sri Lanka: Country Report. July 2020** (COI between 1 January 2020 and 19 May 2020).

Asylum Research Centre (ARC), June 2020. (pages 312-313)

https://www.ecoi.net/en/file/local/2033016/FINAL_ARC_COI_report_on_Sri_Lanka_July_2020PDF.pdf

¹⁵⁷ **Anecdotal evidence from a Tamil refugee in Australia.** September 2020.

¹⁵⁸ **Sri Lanka: Country Report. July 2020** (COI between 1 January 2020 and 19 May 2020).

Asylum Research Centre (ARC), June 2020. (pages 312-313)

https://www.ecoi.net/en/file/local/2033016/FINAL_ARC_COI_report_on_Sri_Lanka_July_2020PDF.pdf

¹⁵⁹ A. Fernandes. **This is what happened to the Tamil asylum seekers Australia sent back to Sri Lanka.** *SBS News. Asia-Pacific* (online, 2 December 2019). <https://www.sbs.com.au/news/this-is-what-happened-to-the-tamil-asylum-seekers-australia-sent-back-to-sri-lanka>

¹⁶⁰ A. Fernandes. **This is what happened to the Tamil asylum seekers Australia sent back to Sri Lanka.** *SBS News. Asia-Pacific* (online, 2 December 2019). <https://www.sbs.com.au/news/this-is-what-happened-to-the-tamil-asylum-seekers-australia-sent-back-to-sri-lanka>

*“This shows that surveillance in the UK of Tamils, who have been forced to go into exile, is being used to silence victims and witnesses,” said the Executive Director of the International Truth and Justice Project, Yasmin Sooka, “state agencies wouldn’t need to silence victims’ families if they hadn’t driven them out in the first place.”*¹⁶¹

In September 2018, the United Nations Working Group on Arbitrary Detention stated that the use of torture by Sri Lankan security forces on Tamil detainees continues. The Working Group highlighted several areas of concern, including the use of torture of those held in detention, highlighting the case of Tamils who return to the island.

*“The Working Group also received accounts of Tamils who were arrested and detained in 2015, 2016 and 2017 when returning to Sri Lanka after seeking asylum in another country or working abroad,” said the report. “The Working Group received testimony that, in some cases, the returnees were beaten and kept under surveillance once released and charged with offences relating to illegal departure from Sri Lanka.”*¹⁶²

In August 2021, a Tamil asylum seeker in Australia died after self-immolating.

“We have lost many refugees to Australia’s refugee policy, and we dread that there will be more. Asylum seekers have been telling us for a long time that they would prefer to die here than be sent back to Sri Lanka. Here we have yet another case illustrating just how desperate and hopeless the situation has become for Tamil refugees in Australia,” said a spokesperson for the Tamil Refugee Council in Australia.¹⁶³

In August 2018, a Tamil asylum seeker died after a suicide attempt in Australia, following the rejection of his asylum application by the Australian government.¹⁶⁴

In July 2018, Tamil asylum seeker Thileepan Gnaneswaran was deported from Australia and detained by Sri Lankan police on arrival in Colombo. He was charged by Sri Lankan authorities for illegally leaving the country. The offence is understood to carry a maximum sentence of a fine of 200,000 rupees and prison term of five years. The deportation was widely criticised, including by the UN Refugee Agency who condemned Australia's actions to separate a family indefinitely, as his Tamil wife and child remain as refugees in Australia.¹⁶⁵

In February 2018, Tamil asylum seeker Mr Santharupan was deported from Australia despite direct criticism from the UN refugee agency. He was arrested and charged by Sri Lankan authorities. In his deportation notice, ABF officers said his

¹⁶¹ **Families of Tamil asylum seekers assaulted by Sri Lankan security forces.** *Tamil Guardian*. (online, 30 October 2019).

<https://www.tamilguardian.com/content/families-tamil-asylum-seekers-assaulted-sri-lankan-security-forces>

¹⁶² **UN Working Group finds continued use of torture in Sri Lanka.** *Tamil Guardian* (online, 15 December 2017). <http://www.tamilguardian.com/content/un-working-group-finds-continued-use-torture-sri-lanka>

¹⁶³ Tamil refugee dies after self-immolation in Australia. *Tamil Guardian* (online, 22 August 2021) <https://www.tamilguardian.com/content/tamil-refugee-dies-after-self-immolation-australia>

¹⁶⁴ **Tamil asylum seeker commits suicide in Australia after application rejection.** *Tamil Guardian* (online, 28 August 2018). <https://www.tamilguardian.com/content/tamil-asylum-seeker-commits-suicide-australia-after-application-rejection>

¹⁶⁵ **Deported Tamil refugee charged.** *Tamil Guardian* (online, 20 July 2018). <https://www.tamilguardian.com/content/deported-tamil-refugee-charged>

personal information may be disclosed to foreign governments or agencies as part of his removal.¹⁶⁶

Santharupan has experienced ongoing harassment. Security forces have made multiple visits to his home and recorded the details of his wife and children, including the school his children attend.

Tamil Refugee Council spokesperson Aran Mylvaganam said:

*"The security forces are trying to intimidate not only Santharuban but his family as well. Such visits strike deep fears in Tamils, who continue to face assault, torture and disappearance at the hands of the Criminal Investigation Department (known as CID), the Special Task Force and other sections of the police and military."*¹⁶⁷

On 11 December 2017, the UN Committee Against Torture (CAT) advised the Australian Government that a Tamil man held in immigration detention in Australia and in danger of imminent deportation, should not be returned to Sri Lanka. Director Principal of Human Rights for All, Alison Battisson, said of the interim order:

*"The Committee Against Torture's interim measure once again highlights the serious issues faced by Tamil asylum seekers in Australia. By issuing this measure, the UN recognises that Sri Lanka is not safe for Tamils, despite Australia denying refugee status to many Tamils. These interim measures are quite rare - this illustrates the very real concern the UN has over Australia's practices of refouling Tamils to Sri Lanka. Sri Lanka is not safe for many Tamils to return to."*¹⁶⁸

In November 2017, the Associated Press (AP) detailed ongoing allegations of rape and torture of 50 Tamil men by Sri Lankan security forces that are said to have taken place between 2016 and July 2017.

AP noted:

*"Raped, branded or beaten repeatedly, more than 50 men from the Tamil ethnic minority seeking political asylum in Europe say they were abducted and tortured under Sri Lanka's current government."*¹⁶⁹

A damning report from the International Truth and Justice Project *"Unstopped: State Torture & Sexual Violence in 2016/17"*, took detailed testimony from 57 Tamil victims of illegal detention and torture under the Sirisena government, with 24 cases occurring in 2016 or 2017. Findings of the report highlighted that Tamils were abducted and tortured for a range of reasons including political campaigning, returning from the diaspora, and having family members that used to belong to the Liberation Tamil Tigers of Tamil Eelam (LTTE). The interrogators

¹⁶⁶ **Tamil Tiger due to be deported says he will face torture in Sri Lanka.** *ABC News* (online, 21 February 2018). <http://www.abc.net.au/news/2018-02-21/tamil-tiger-due-to-be-deported-says-he-will-face-torture/9468088>

¹⁶⁷ A. Mylvaganam. **Deported Tamil Man harassed by security forces in Sri Lanka.** *Tamil Refugee Council* (online, 28 February 2018). <http://tamilrefugeecouncil.org.au/portfolio-items/tamil-man-harassed/>

¹⁶⁸ **UN Advice to Australia Not to Deport Tamil Asylum Seeker.** *Scoop Independent News* (online, 14 December 2017). <https://www.scoop.co.nz/stories/WO1712/S00174/un-advice-to-australia-not-to-deport-tamil-asylum-seeker.htm>

¹⁶⁹ **Dozens of men say Sri Lankan forces raped and tortured them.** *AP News* (online, 9 November 2017) <https://apnews.com/article/ced017bd441f46ba838aaedf6ff5d8e2>

asked about participation in protests abroad, indicating that these events are still watched closely. Victims in detention have also been told there were photographs of them attending protest events abroad, indicating that this kind of activity abroad still poses a significant risk for anyone likely to visit or be returned to Sri Lanka.¹⁷⁰

In June 2016, a British Tamil man who had lived in the UK for 16 years, was detained and tortured upon returning to Sri Lanka to be married. Ambi Seevaratnam, international coordinator of the International Centre for the Prevention and Prosecution of Genocide, said:

“He has torture marks all over his body. We need to get him out of Sri Lanka and back to the UK as soon as possible. Any Tamil who is a British citizen who travels to Sri Lanka from London seems to be suspected of being a traitor.”¹⁷¹

¹⁷⁰ **Unstopped: State Torture & Sexual Violence in 2016/17.** International Truth & Justice, July 2017. www.itjpsl.com

¹⁷¹ **British Tamil 'tortured and detained' during Sri Lanka wedding trip.** *The Guardian* (online, 11 June 2016). <https://www.theguardian.com/law/2016/jun/11/sri-lanka-british-tamil-velauthapillai-renukaruban-tortured-wedding>