

Briefing Notes

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A father from the East writes a note on his disappeared son on the temporary memorial wall at OMP office, Colombo on the International Day for the Disappeared.

SRI LANKA: APPROACHING ELECTIONS AND IMPLICATIONS ON TRANSITIONAL JUSTICE



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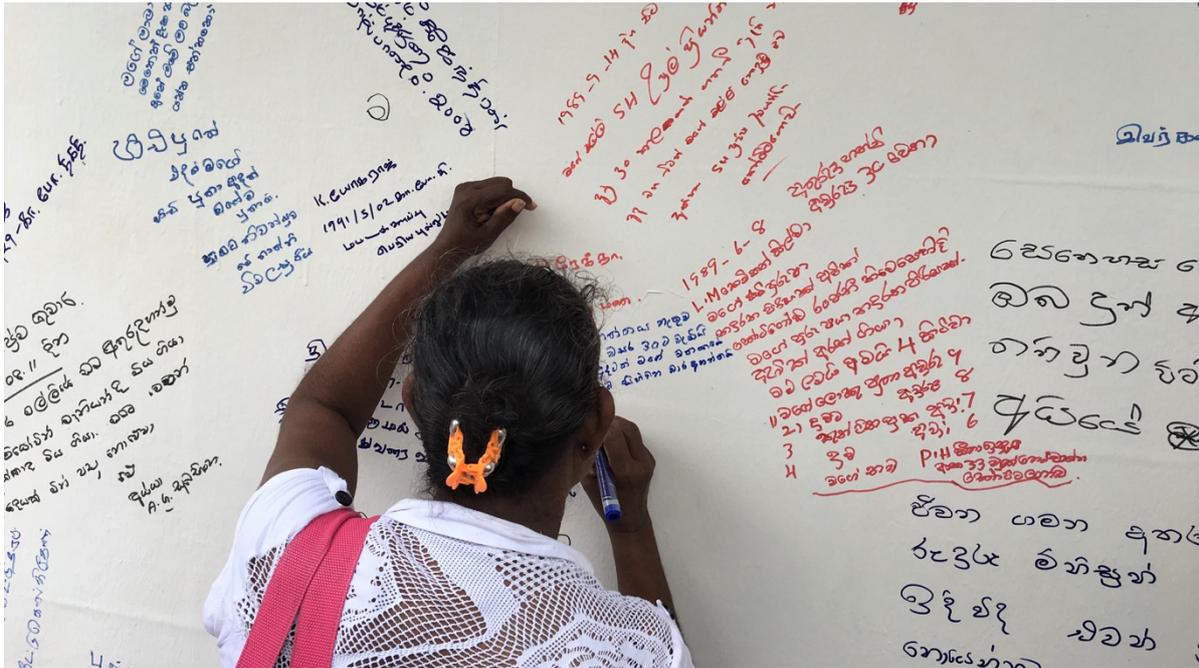
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ABBREVIATIONS

ACJU	All Ceylon Jamiyyathul Ulama
BBS	Bodu Bala Sena
CID	Criminal Investigation Department
CoA	Certificate of Absence
CTA	Counter Terrorism Act
FCID	Financial Crimes Investigation Division
FR	Fundamental Rights
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
JVP	Janatha Vimukthi Peramuna
LTTE	Liberation Tigers of the Tamil Eelam
MMDA	Muslim Marriages and Divorce Act
NPM	National People's Movement
OMP	Office of Missing Persons
PTA	Prevention of Terrorism Act
SLFP	Sri Lanka Freedom Party
SLPP	Sri Lanka Podujana Peramuna
UNP	United National Party



A wife from the South writes a note on her disappeared husband on the temporary memorial wall at OMP office, Colombo on the International Day for the Disappeared.

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EXECUTIVE SUMMARY

Sri Lanka is going into another presidential election in a few weeks with unresolved human rights issues and undelivered promises in hand. The Executive Presidency continues unabated despite repeated promises of the presidential candidates who came to power in the last 25 years. Though the 19th Amendment to the Constitution trimmed the powers of the Executive President, the presidency will be strengthened if the authoritarian regime of the Rajapaksas return.

The constitutional reform process has come to a halt. The governing coalition has split up. The conversation on devolution of power to the regions where Tamil people live, no longer finds a place in the mainstream political discourse. The transitional justice process which is progressing at an unimpressive pace, faces the risk of discontinuation.

Rajapaksa family has nominated the former Defense Secretary Gotabaya Rajapaksa as the presidential candidate of the Sri Lanka Podujana Peramuna. United National Party remains divided upon the question of leadership and presidential candidacy. Deputy leader of the party, Sajith Premadasa has stated unofficially that he will be running for presidency. Both presidential aspirants, Gotabaya Rajapaksa and Sajith Premadasa, espouse a strong Sinhalese Buddhist ideology.

While economy, democratic reforms, and human rights were at the center of political debate during the previous presidential election, economic and national security concerns dominate the current discourse. Easter Sunday attacks by Islamist extremists have brought the issue of national security to the forefront.

The emergence of militant Sinhala Buddhist groups is a new phenomenon. Violence and hate speech directed at Muslims have reached unprecedented heights. Fake news and propaganda on social media have left the relationships among ethnic groups volatile.

The 2015 coalition which brought President Sirisena to power with the promise of upholding human rights and democracy has disintegrated. Former Defense Secretary Gotabaya Rajapaksa emerges as the most likely candidate to win the presidential election in 2019. This development threatens the protection of democracy and human rights in Sri Lanka, particularly, the rights of minorities.

BACKGROUND

In November 2019, Sri Lanka will hold its 9th presidential election. In January 2015, a common presidential candidate who espoused a far-reaching democratic agenda, defeated the semi- autocratic Rajapaksa regime.

Despite the many political and economic failures of the current government, the significant shift over the last five years has been the opening of democratic space. The climate of fear and militarization have reduced significantly. In the war affected areas where people lived in constant fear under the Rajapaksa rule, people now take to the streets demanding the release of military-occupied lands and justice for families of the disappeared. Politically motivated extrajudicial killings have not been reported.

19th Amendment to the Constitution limited the powers of the Executive President and recognized right to information as a fundamental right. The transitional justice process which was an outcome of the Human Rights Council resolution 30/1 of October 2015 has seen some progress: the Office on Missing Persons has been operational for two years and the Office for Reparations has been set up. Large extents of military occupied land have been returned to the private owners.

Despite the limited democratic gains, however, the Government has failed to make any head way in ending impunity for serious violations of human rights, particularly those committed during the last phase of the war. The constitutional reform process has come to a complete stand-still. The anti-corruption campaign has not produced any tangible results. In September 2019, the Working Group on Enforced or Involuntary Disappearances, in their follow-up to the Report of the 2015 visit to Sri Lanka, pointed at the continued enforced disappearances and urged action to ensure that all cases of enforced disappearance are promptly investigated and brought to trial¹.

The failure to prevent the Easter Sunday bombings have given rise to fresh national security concerns. The attacks have aggravated the situation for Muslims who have been continually victimized by the growing Sinhalese-Buddhist extremism during the last five years. The coalition that defeated the Rajapaksa regime in 2015 has fallen apart and the Rajapaksas loom in the corner threatening to return.

“Our disappointment and anger at the failures of the current government must not result in a rejection of the small gains on democratic governance that have been made. Most importantly, we must not permit our anguish at the government’s failures on national security to reject democracy itself as a form of governance. We must not elect through a democratic exercise of our vote, a political leadership that will sacrifice democratic norms in the name of promoting national security. The history of the world and our own recent experience shows that repression and abuse of authority under the guise of strong leadership only brings more violence and conflict to nations, destabilizing the economy, and obstructing peace and progress”.

Friday Forum

POLITICAL CLIMATE AND THE APPROACHING ELECTIONS

At the time of this publication, two mainstream political parties of the country have nominated presidential candidates. Janatha Vimukthi Peramuna (JVP), together with 17 civil society organizations formed a collaborative political group under the banner the National People's Movement (NPM) and announced the leader of the JVP, Anura Kumara Dissanayake as its presidential candidate.

Sri Lanka Podujana Peramuna (SLPP) has formally nominated Gotabaya Rajapaksa as the presidential candidate. The three Rajapaksa bothers Mahinda, Basil, and Gotabaya are respectively, the leader, organizer, and the presidential candidate of the party. Namal Rajapaksa is its youth leader. Sinhala Buddhist nationalist rhetoric is at the center of SLPP politics.

Though the 18th Amendment to the Constitution relaxed the limitation on the number of consecutive terms a person can be elected President, the 19th Amendment that soon followed the regime change in 2015, reversed the relaxation. Former President Mahinda Rajapaksa has been extremely critical of this Amendment which is the only barrier to him running again for the presidency².

The leftist alternative NPM has pledged to devolve power to the regions. But justice for the victims and survivors of war and do not form part of the political agendas of either of the candidates from NPM and SLPP.



Issues of Tamil political prisoners and justice for the disappeared are completely absent in the mainstream presidential election campaign.

United National Party (UNP) headed by Prime Minister Ranil Wickremesinghe is divided. The UNP has not yet officially announced their presidential candidate. But the UNP Deputy Leader Sajith Premadasa has unequivocally stated that he will run for the presidency. Premadasa has remained popular in rural Sinhalese villages due to his housing projects and upliftment of Buddhist temples. His presidential pledges include the maximum devolution of power to the regions. Sajith Premadasa is the son of the late President Ranasinghe Premadasa. Recent reports however, have indicated that PM Wickremesinghe himself intends to contest for the elections.



Sri Lanka Freedom Party (SLFP) headed by President Maithripala Sirisena is having negotiations with the Rajapaksa led SLPP in order to make an electoral alliance.

A number of courts have also been filed in the US where Gotabaya Rajapaksa is also a citizen. In June 2019 Ahimsa Wickrematunge filed a civil case against him claiming damages for ‘instigating and authorizing’ the extrajudicial killing of her father, editor Lasantha Wickrematunge. On the same day, a Canadian citizen named Roy Samathanam who claimed to have been subjected to torture made a complaint against Rajapaksa in the U.S. District Court for the Central District of California³. Since then a further ten cases have been filed against Rajapaksa alleging torture⁴.

In domestic courts, Gotabaya Rajapaksa faces charges over his alleged role in various incidents under investigation by the Criminal Investigation Department (CID) and the Financial Crimes Investigation Division (FCID). This is the first time in Sri Lanka’s history where a person facing criminal charges has been nominated as a presidential candidate.

When Gotabaya Rajapaksa filed a motion in the California Central District Court seeking to dismiss the case filed against him by Ahimsa Wickrematunge in June, he was represented by former Chief Justice of the Supreme Court of Sri Lanka Asoka De Silva. Article 110(3) of the Sri Lankan Constitution states that ‘No person who has held office as a permanent judge of the Supreme Court or of the Court of Appeal may appear, plead, act or practice in any court, tribunal or institution as an attorney-at-law at any time without the written consent of the President’.

The rise of Gotabaya Rajapaksa, after the regime change in 2015 is due to the failures of the ruling coalition. The current Government failed to deliver progress in investigations over allegations of extra judicial killings, corruption, and human rights abuses levelled against the Rajapaksa regime. The Government also failed to take concrete steps to address economic concerns and end corruption. Infighting and self-serving schemes within the Government have brought its stated plans, from economic reforms to a constitutional political settlement, to a complete standstill.

Should Gotabaya Rajapaksa win the election, one of the main challenges before the returning Rajapaksas will be the existing context where people have become accustomed to democratic freedoms, breaking away from decades of war and the authoritarian rule. The use of national security concerns as a weapon for suppression is difficult to be justified in non-war times. The resistance which they are bound to face in this setting will be countered using more severe measures than in the past.

The rise of Sinhalese Buddhist nationalism will further polarize ethnic groups in the country. The extremist Sinhalese-Nationalist groups who incite and perpetrate racial hatred and communal violence will gain traction under the protection of the State. The violence and the hate-speech unleashed upon Muslims will be endorsed, if not justified.

Human Rights concerns will be rejected as ‘international agenda’. It is possible that the restrictions imposed by the 19th Amendment on the powers of Executive Presidency will be reversed, and the independent institutions empowered by the Amendment, will be undone.

IMPLICATIONS ON MINORITIES

Since the Easter Sunday attacks, authorities have arrested and detained hundreds of people under counterterrorism and emergency laws. The majority of arrests were under the long-abused Prevention of Terrorism Act (PTA), which the Government pledged to repeal. PTA allows long-term detention without charge or trial. Some of those accused were arrested with no credible evidence of terrorist involvement, for reasons including the possession of a Quran or other Arabic literature. It was reported that the justifications given by the authorities for arrests included ‘keeping money at home’, ‘talking in the playground (breaking emergency law)’, ‘a post [he] had shared on social media 5 years back’, ‘having English lecturer docs’, ‘Arabic song in laptop’, ‘traveling to Jaffna for job’ and ‘no reason’⁵. Members of certain regional Bar Associations refused to appear on behalf of Muslim individuals who were arrested after Easter Sunday attacks undermining their fundamental right to equality before the law and due process⁶.

In May, violent attacks against Muslim communities spread in Chilaw, Minuwangoda, and in several areas surrounding Kurunegala. The mobs went from village to village, destroying houses, vehicles, mosques, and businesses owned by Muslims. They looted, injured several people, and brutally killed at least one person⁷. Despite the organized nature of the mob violence, perpetrators have not been brought to justice. On the contrary, in a series of hearings, those arrested over the attacks were granted bail⁸.

The Human Rights Commission of Sri Lanka (HRCSL) provided evidence of police complicity in anti-Muslim violence. In certain areas, community leaders reached out to the Police requesting protection, and were promised protection by the Police, only to be attacked a few hours later⁹.

“It is true that the leader of the Easter Sunday attacks came from our area. However, we did not have any contacts with him for a long time. Our people exposed his extreme ideology, years before these attacks.

But now we are being victimized for the Easter Sunday attacks. Journalists in the area are under the surveillance of military intelligence. They live in fear. They have to think twice before reporting a story. Our income from businesses has come down to 40%. 720 travelling businesspersons have been stranded in Kattankudy since the Easter Sunday attacks.

We fear that the election time may see increased verbal attacks on the Muslim community. This country needs to treat all communities equally. Today ethnic tensions run high. If we do not address these issues, even God will not be able to save this country”.

Trader, Kattankudy, Eastern Province

Amidst growing hatred directed at Muslims, there is an unmistakable economic call that is used alongside the nationalist rhetoric. There is a widespread and organized propaganda to ‘boycott Muslim businesses’ which is being spread by Sinhalese-Buddhist extremist groups. This has caused severe

consequences on Sri Lanka's Muslim communities who are traditionally traders. While leading Buddhist monks have openly advocated for boycotting Muslim businesses¹⁰, Buddhist temples and Buddhist traders' unions play a central role in the attempt to economically marginalize Muslims. Even Tamil groups have called for boycotting Muslim businesses, illustrating the complexity of ethnic division in the country at present¹¹.

A week following the violent attacks against Muslims, the President granted special pardon for Galagodaththe Gnanasara Thero, who played a documented role as the General Secretary of Bodu Bala Sena (BBS) employing hate speech against Muslims and instigating violence. BBS hit the headlines after attacks against Muslims in Aluthgama in 2014, in which four people were killed. Similar riots swayed Ampara and Kandy. Gnanasara was serving a six year term for contempt of court charges for his acts which included the intimidation of Sandya Eknaligoda, the wife of the disappeared journalist Eknaligoda.

Gnanasara Thero was granted the special pardon despite there being no legitimate questions of any miscarriage of justice. The monk also had not exhausted legal remedies by appealing to domestic courts¹². While the question whether the President exercised his right of pardon



Gnanasara Thero. Photo from social media.

appropriately in this situation is a legal question, the pardon gives rise to serious practical implications.

Firstly, it legitimizes the view that it is possible to act with contempt for the judiciary, be punished through a legitimate judicial process, and then enjoy impunity through a pardon granted on political considerations. The pardon specifically signals that some categories of citizens, such as the Buddhist clergy, can expect to enjoy preferential treatment, thus undermining rule of law. Secondly, the pardon comes amidst the ongoing communal tensions, implying an endorsement of the violence and hatred directed at Muslims.

In late April, a Gazette notification banned all 'full face' coverings in public spaces including the Niqab and Burka. To arrive at this decision, the authorities only consulted the All Ceylon Jamiyyathul Ulama (ACJU), an *all-male* religious body of Islamic theologians. The ACJU had previously declared that covering face is mandatory for Muslim women¹³.

For the women who had taken on the Niqab, particularly those from conservative backgrounds, the ban on face cover meant the restriction of their mobility. The Niqab ban prevented Muslim women who considered the Niqab to be an integral part of their identity, from expressing their cultural

identity. It also resulted in increased challenges for Muslim women in accessing public spaces, education, and employment¹⁴. The Human Rights Commission revealed that they received complaints from women who were refused access to private¹⁵ and public buildings¹⁶ even when they were not violating the Emergency Regulation that banned face-cover. The Commission advised that an environment which respects pluralism and equal citizenship must be created, particularly in educational institutes¹⁷.



“In Sri Lanka approximately 10 percent of Muslim women cover their face. In Kattankudy area, there are women who have been wearing Niqab or Burka for more than 60 years. Sri Lankan Constitution protects people’s right to express their religious identity. Although I do not cover my face, I defend their right to wear the Niqab and Burka. It is true that there are different opinions among the Islamic scholars on the Niqab and Burka, but it is a right of our community.”

We are law-abiding people. So women now do not cover their faces when they go out. Nevertheless, we are against this ban being made permanent.

Here in our area, many women covered their face when they went outside for their day-to-day needs. Some of their husbands are working abroad. Most of them have now stopped coming out of their houses. They say that they prefer to stay indoors. Those who have been covering their faces for their entire lifetime find it difficult to uncover the face. Now some of them are facing psychological problems. This is a human issue and not a national security issue”.

**Salma Hamsa, People’s Representative, Kathankudy Pradesheeya Sabha
(Local Government Body)**

The all-male ACJU has also sidelined women’s voices in the efforts to reform the Muslim Marriages and Divorce Act (MMDA). MMDA is an archaic law which relentlessly discriminates against women in marriage and family relations. The efforts to reform MMDA have been ongoing for thirty years. In July, 14 proposed reforms on which Muslim MPs had reached an agreement and planned to advance for Cabinet approval, were made public. Following this, the ACJU threatened all elected Muslim members of parliament against reforming the MMDA and sabotaged the proposed Cabinet paper¹⁸. The proposals included the raising of the age of marriage for Muslim girls to 18, the requirement of registration of marriages, the requirement of the woman’s signature on the marriage certificate, the requirement that all Quazis must be Attorneys-at-Law, and the recognition that women are eligible to become Quazis. Despite continued demands from Muslim women for reforms, the Government is yet to address the structural and legal discrimination of Muslim women.



A recent case in which false allegations were levied against a Muslim doctor shed light on the extent to which Muslims have come under harassment by various forces in recent times. Such forces include Sinhalese-Buddhist extremist groups, Buddhist monks, media, and the law enforcement.

On 23rd May, the Sri Lankan newspaper *Divaina*, known for its nationalist stance, published a front page article alleging a Muslim doctor linked to a terrorist organization, had secretly sterilized 4,000 Sinhala Buddhist women during caesarean deliveries. The newspaper article was amplified when a pharmacology professor attached to a state university, linked the allegations to one Dr. Shihabdeen Shafi on a Facebook post which was shared widely.

Two days later, Dr. Shafi was arrested under the suspicion of having connections with a terrorist organization and the charges of ‘amassing enormous wealth’. However, news media linked the sterilization allegations to the arrest, and the Police called on any potentially affected women to come forward. Despite several doctors explaining the unreasonableness of these allegations, based on science as well as administrative procedures in place in state hospitals, the sterilization scare swayed the country. Monks protested outside the hospital where Dr. Shafi was working, and over 600 women came forward with complaints.

On 25th July, having found no substantial evidence, Dr. Shafi was granted bail. The CID reported to the Court that the arrest of Dr. Shafi had been made without having any evidence against him. CID also stated that the police reports compiled by the Kurunegala Police had been deliberately tampered with, backdated, and forged¹⁹. The CID subsequently opened an investigation into the conduct of Deputy Inspector General of Police, Kurunegala, in relation to the arrest of Dr. Shafi²⁰.

Since 2014, the sentiment that Muslims are hell-bent on causing infertility in, or sterilizing, Sinhalese women in order to cause the extinction of Sinhalese race has been a principal thread running through anti-Muslim violence. A false allegation that a Muslim shop keeper had added ‘infertility causing pills’ to food sparked communal violence in Ampara last year.

In the complete absence of a mechanism to prevent ‘fake news’, extremist groups resort to devious strategies to further their motives. In early September, a few photos of statues of monks lying horizontally surfaced on social media. The accompanying description noted that the statues had been destroyed by extremist groups, and hence on the ground. The photos were shared widely, causing an uproar of Sinhalese Buddhist nationalism on social media²¹. It was later revealed that the picture depicted the statues being rolled on the ground to be moved during construction.

The continued tensions have caused the deterioration of ethnic relations at the macro as well as micro level.



“We have lived here for generations. We have had cordial relations with our Sinhalese neighbors. We call each other ‘brother’ and ‘sisters’. But after the Easter Sunday attacks our relationships have become sour. Our neighbors are not friendly any more though we haven’t done anything wrong. We are not related to suicide bombers who carried out the Easter Sunday attacks.

Our children couldn’t go to schools for nearly a month. They used to share lunch parcels with Sinhalese friends. That is not happening any more’.

‘We hope that the situation will return to normal. But we fear that there will be more verbal attacks on us during the upcoming elections. We are a peaceful community and we pray for peace and reconciliation’.

Muslim women from Hambantota, Southern Province

Ironically, while Muslim communities have come under threat, the Sri Lankan Tamil politicians who also represent an ethnic minority in the country, have remained silent. At a community meeting with Tamil youth, it emerged that anti-Muslim sentiment has spread even through the Tamil villages.

Sri Lanka has a history of radicalization of youth. While evidence suggest that the violent attacks against Muslims are being driven by youth²², the continued attacks against Muslims coupled with the complete lack of accountability, raises the threat of radicalization of Muslim youth. This reality demands the engagement of youth in reconciliation and the creation of spaces for youth political engagement which goes beyond party politics.

STATUS OF HUMAN RIGHTS

Continued Use of PTA

The continued use of PTA is also a concern. The demands to reform the draconian PTA have been growing stronger since the end of the conflict. PTA allows for extended periods of detention and provides for the admissibility of confessions made to a Police officer as evidence. Though the Cabinet approved the draft Counter Terrorism Act (CTA) last year, reforms are still pending. There are also concerns regarding the new Act– particularly with regard to its broad definition of acts which may come under the Act.

The use of PTA continues.

On 30 November 2018 two Police officers on guard duty at police check point in the Vavunathivu, a town in Batticaloa District were killed by unknown assailants. They had been stabbed and shot to death. The firearms and pistols of the officers had been taken away. Some media outlets immediately blamed the now defunct Liberation Tigers of the Tamil Eelam (LTTE). The Police subsequently arrested two ex-LTTE cadres.

Daily Mirror, an English daily, in an investigative report on the killings stated, ‘Although reports said that one of the suspects had admitted that he was responsible for the killing, the CID has no strong evidence against the two suspects’²³.

Divaina, a Sinhalese daily, wrote in its defense column that one of the men arrested was an associate of then Eastern LTTE leader Ramesh. The paper stated that the killing was done to avenge the denial of celebrating the *Mahaaveer Naal* (remembrance day of slain LTTE cadres), carried a vivid description of the events around the murders, and gave a sensationalized account of how the two ex-cadres were linked to the crime²⁴. The effect was the creation of a conspiracy theory about the re-emergence of the LTTE with the support of international community.

The suspects were arrested and detained under the PTA. But after the Easter Sunday bombings the Police found the two pistols which belonged to the two murdered police officers and it was revealed that the killings were an act of the same terrorist group responsible for the Easter Sunday attacks. The detained ex-cadres were released on bail.

This case illustrates how the Police continues to use the PTA for detaining persons without substantiated evidence. Another grave concern is the prevalence of unsubstantiated ‘news’ in mainstream news outlets.

Torture and Extrajudicial Killings

The UN subcommittee on prevention of torture visited Sri Lanka in April. Despite there being a well-established legal framework to combat torture in Sri Lanka, the poor implementation of such laws remain problematic.

Torture and unlawful killings

Philp Disanayake, Executive Director of the Right to Life Human Rights Center²⁵



“Despite there being laws to combat torture in Sri Lanka, such laws are poorly implemented. The main avenue for justice available for a person who had been subjected to torture is the filing of a Fundamental Rights (FR) case in the Supreme Court according to Article 126 of the Constitution. However, filing an FR case can be a costly and time-taking exercise.

The Torture Act²⁶ provides for another remedy. Under this Act, the Attorney General can file a case against an offender upon receiving the case file from the Police. However, our research has shown that since 1994, only 130 cases have been filed under the Act and only 30 of those have been concluded. An examination of 20 of the concluded cases revealed that in 16 cases, the suspects were released upon the finding that they were not guilty. The perpetrators were found guilty only in 2 cases. In one case the punishment for the offender was a suspended sentence.

This shows that even under the Torture Act there is no delivery of justice. Where both the redress mechanisms are weak, perpetrators of torture continue unabated. Although the Government has promised to implement a zero-tolerance policy, the situation has not improved. It is common knowledge that Sri Lanka’s law enforcement agencies use torture as a way of interrogation.

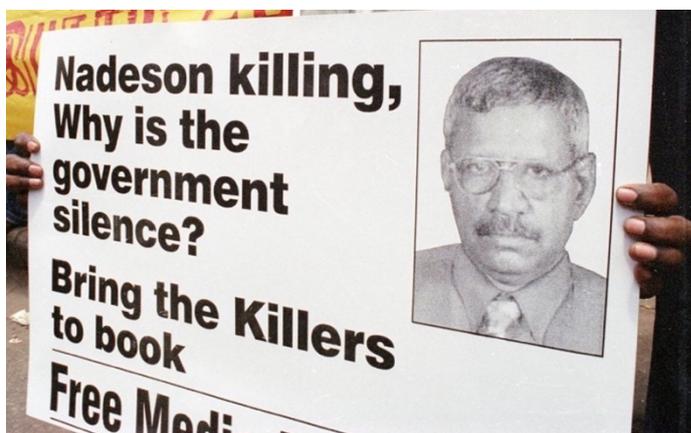
According to Human Rights Commission of Sri Lanka, no disappearances has been reported during the last 4 and half years²⁷. However, extrajudicial killings by law enforcement agencies, particularly the Police, remain worrying. Our research shows that there have been 12-15 extrajudicial killings in 2019. In most cases, individuals who were arrested by the Police have been killed under different pretexts”.

Questionable Use of the ICCPR Act

The problematic use of the International Covenant on Civil and Political Rights (ICCPR) Act emerges as a disturbing development. Sri Lanka enacted the domestic legislation ICCPR Act No. 56 of 2007 to comply with obligations under ICCPR. A Muslim woman was arrested in May under ICCPR Act for wearing a kaftan depicting a ship's helm which was mistaken by the Police as a Buddhist symbol. She was detained for two weeks before she was granted bail²⁸. Writer Shakthika Sathkumara was arrested in early April under the allegations of inciting racial hatred for sharing a short story on his Facebook page. The use of counterterror laws to restrict freedom of expression— a classic feature of authoritarian regimes, is a cause for concern. The Act requires stringent conditions for granting bail— which appears to be the reason why the Police resorted to the Act.

Surveillance of Journalists

Surveillance of journalists continue in the North and the East. In the changing political climate, journalists expect and fear persecution in the coming years.



Aiyathurai Nadesan, a veteran Tamil journalist with the national Tamil-language daily Virakesari, was shot by unidentified assailants on May 31, 2004 on his way to work in the eastern Sri Lankan town of Batticaloa. No investigation has been initiated by Government of Sri Lanka until today. Impunity for the perpetrators of violence against media and journalists hangs like the Sword of Damocles over independent journalism in Sri Lanka.

“Military intelligence keeps an eye on the journalists who work in this district. Their visits to public events are so frequent that their presence has become, to a certain extent, ‘normal’. They telephone journalists directly and ask for information on such programs. It is difficult to think that these practices will end anytime soon. There is an unexplainable fear among the media community in the district. May be it is because of the past and the continuing surveillance. This an unending pressure.

How much longer should be believe that the international community will make transitional justice a reality in Sri Lanka. So far nothing tangible has happened in relation to the TJ process here.

The Government promised to repeal the Prevention of Terrorism Act. But still people are being arrested under the PTA”.

Journalist, Batticaloa District

TRANSITIONAL JUSTICE

OMP and the Office for Reparations

The Office of Missing Persons (OMP) has been operational for two years with three regional offices in Matara, Mannar, and Jaffna²⁹. The Government has recently announced that a monthly allowance of USD 33 will be given to families of the missing who hold a certificate of absence (CoA) as interim relief until the Office for Reparations decides on compensation. Family members of a person who has been missing for more than one year, whose disappearance is attributable to the conflict in the North and East or its aftermath, political unrest, civil disturbances, enforced disappearances, or who is a member of the armed forces or Police and is identified as missing in action, are entitled to obtain a certificate of absence. However, there is reluctance to obtain the certificate of absence due to the fear that the Government will gradually issue death certificates, and forget truth and accountability. Since the introduction of CoA, only 723 families have obtained them, though the OMP has recorded over 14,000 cases of disappearances from all districts³⁰.



“My only son was arrested in mid 1989 and was released. He was arrested again in September the same year. I even brought him lunch. He was in the Police cell. But after 17th September he was not at the Police. I asked the Police of his whereabouts. Police told me he escaped. I never saw him again. Now I am 85 years old. I am still waiting for proper compensation for my son”.
(Kalutara, Western Province)

The Office for Reparations Act was passed in 2018 and the Commissioners were appointed in April 2019³¹. However, the Office is not yet fully operational.



Lives of Former LTTE Cadres

In the North, surveillance continues. A former LTTE cadre from Vavuniya explained the events following the Easter Sunday bombings as follows.

“After the Easter Sunday attacks, the Army visited my home where I’m living with my two children aged 7 and 5 years. My husband is working in the Middle East. I was a LTTE carder and was released after rehabilitation. It was some 8 years ago.

Military personal had a form to be filled with information about me. They asked me the number I was given when I was with the LTTE. When I asked why they needed the number after 8 years, they shouted at me. I felt subjugated. They asked for information on my husband as well. They gave me a number to hold and took photographs of me while my two sons watched. I have lived a normal life for 8 years. Why does the Government still harass us?

We took a loan of LKR 650,000 to build a house. We have to repay LKR 1,440,000 including the interest as 36 instalments of 40,000. The interest amount is more than the loan itself. I’m trying not to get any more loans to repay this amount. The situation keeps deteriorating for most former LTTE cadres. Most of them live in poverty and fear”.

Former LTTE cadre, Vavuniya District, Northern Province

Another group of former LTTE cadres expressed their aspiration to go in to democratic politics amidst worrying economic concerns.

“Even after 8 years of peaceful life, we are still harassed by security agencies. It is as if the intelligence apparatus has become a part of our lives. They have our mobile phone numbers and they call us regularly. After the Easter Sunday attacks Army personal visited us and filled up a form with our personal information. We are afraid to travel together. If six of us travel together, the Police question us and harass us. We receive threats from known and unknown sources. Is eight years not enough to trust us?

We gave up our youth for the movement. We only learned warfare. Although we all went through rehabilitation after the war, we could not learn any livelihood skills that actually help us make a living.

Today, most of us engage in daily wage laborer jobs or short-term jobs. Neither the Government, nor NGOs, has helped us set up livelihoods. Some of us are married to ex-combatants. We accept that there is now a space for us to voice our grievances.

We have formed a political party called Rehabilitated Tamil Liberation Tigers Party. As a party too, we face police harassment. We want to be allowed to enjoy democratic way of life. We want livelihood support. We need freedom”.

A group of ex-LTTE carders

The dire economic situation in which the former LTTE cadres live show the slow progress of transitional justice. Even a decade after the end of the conflict, fruits of economic development have not reached the war affected areas. The lives they live, in sheer poverty, are being forgotten.



The house of two disabled former LTTE cadres

“We were both members of the LTTE. After the war ended in May 2009 we surrendered to the Army and underwent rehabilitation. When we were released, we got married. Now we have a 6 year-old son.

We were both disabled due to war. But we do not receive any welfare assistance from the Government. When I had to replace my prosthetic leg, I had to travel to Kandy, more than a 100 miles away. I pay LKR 3,000 for the prosthetic leg while disabled Sinhalese soldiers get it free.

We look after a coconut cultivation and our only income of LKR 1,000 a month comes from that. We have one acre of land but without a fence around it, we cannot cultivate anything. We have heard of ‘transitional justice’ but we do not know if it relates to our lives. We are now constructing a house, with the support of the Indian Government. We don’t want our child to inherit the poverty we live in. That is our only concern”.

Disabled former LTTE cadre, Mannar District, Northern Province

Continued Impunity

2019 marked another year during which impunity for perpetrators of human rights abuses continued. No significant progress was reported in any cases of murder, enforced disappearance, or assault of journalists, human rights defenders or civilians.

In the high profile case of the murder of 5 students in Trincomalee, the preliminary inquiry was concluded in July 2019. The suspects were discharged due to insufficient evidence.



Mauri Inoka , who has been fighting for accountability & justice for her abducted and disappeared husband, Madushka Haris de Silva held a protest at Galle Face, Colombo, on the sixth anniversary of the abduction (02 September 2019). At the time of abduction, Mauri was pregnant with twins. Mauri who lived in Anuradhapura with her husband has now moved to Colombo.

It’s been over a decade since the murder of journalist Lasantha Wickrematunge. The investigation led by the CID is yet to identify direct suspects. In August 2019, the Attorney General instructed the acting Inspector General of Police to expedite the investigations of the case³².

“I am hopeful that one day justice will be done for my husband Prageeth Eknaligoda. Now the Attorney-General’s Department has decided to try the case of his abduction and enforced disappearance at a Special High Court. There will be a three judge bench and the case will be heard continuously. To ensure that justice will happen it is pivotal that we continue local and international advocacy for justice and accountability.”

Sandaya Eknaligoda, wife of the disappeared journalist and cartoonist Prageeth Eknaligoda

On the 18th August President Maithripala Sirisena appointed Lieutenant-General Shavendra Silva to the post of Commander of the Sri Lankan Army, undermining Sri Lanka’s efforts towards ensuring accountability as part of transitional justice. Army Chief was named in a United Nations investigation for his part in commanding the 58 Division, which was responsible for repeated and deliberate attacks on hospitals, food distribution queues, and displacement camps in 2009 resulting in tens of thousands of civilian deaths in a matter of months. Units under Silva’s direct command also face allegations of summary executions including of women and children, hundreds of cases of enforced disappearances, as well as allegations of torture, and sexual violence³³. The appointment as Army Chief a person who faces such serious allegations of human rights abuses demonstrate the loss of commitment on the part of the Government to ensure transitional justice.

‘Even the limited progress and prospects of the transitional justice will diminish in the coming years’

Ruki Fernando, Human Rights Defender



“Certain positive institutional and legal changes have been brought about under this Government: the OMP and the Office for Reparations were set up, the State ratified the International Convention against Enforced Disappearances and implemented domestic legislation criminalizing enforced disappearances, and right to information was recognized as a fundamental right.

In relation to aspirations of the victims and survivors, however, the steps taken remain minimal. The most significant step is the release of private lands which were occupied by the military.

Some progress has been made on few cases of disappearances and extra judicial killings. But most survivors and victims remain disappointed as their expectations have not been met. The fact that Sri Lanka has ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the subsequent criminalization of enforced disappearances in domestic law has not meant much for the families of the disappeared persons. Neither has the fact that OMP has been operational for 18 months, made any change for the families of the disappeared.

While on one hand, institutional mechanisms have been set up, on the other hand, it has not met the expectations of the victims and survivors. There is a disconnect between the two. People continue to protest demanding justice for victims of enforced disappearances and to regain the rights to their lands. There is frustration and anger.

There is lack of clarity with regard to reparations. It is uncertain on which basis the reparations will be awarded. For example, there is a difference between the reparations provided after the Easter Sunday bombings and the compensation provided to religious institutions which were affected during the war. If these things were done in a transparent manner, frustrations among the victims would have been less.

The OMP has opened three regional offices. It is a positive step as it shows that the OPM is coming to the people, instead of calling people to the OMP. However, the setting up of offices need to be translated into more tangible results for the families of the disappeared. At least it must mean that truth, reparations, and accountability are ensured.

In the context of the upcoming presidential elections, even the limited progress and prospects will diminish. It is very unlikely that any major candidate will prioritize transitional justice or the aspirations of the survivors of war and the victims of the human rights violations. Another reason for diminishing

prospects for transitional justice is Easter Sunday bombings. National security concerns have replaced the demand for long-term solutions for human rights abuses.

Ideally, transitional justice should address injustices and abuses faced by all communities, including the violent attacks directed towards Muslim communities after Easter Sunday bombings. However, the fact that transitional justice framework is not a comprehensive framework for human rights, democracy, and social justice remains a major limitation.

If you look from a point of view that centers transitional justice, many issues- political, social, and economic, will be left out. The transitional justice process is limited to addressing issues caused by the ethnic conflict and the war”.

Should the Rajapaksa regime return, the implications on transitional justice will be severe. Mahinda Rajapaksa who has hinted that he will be the Prime Minister during his brother’s presidency³⁴ has made his stand against transitional justice measures clear. In 2016 Mahinda Rajapaksa commenting on the draft legislation to establish the OMP, stated that the Office will be a betrayal of the country and the armed forces. If the Rajapaksas return, the ‘war-hero’ rhetoric will return with them resulting in continued impunity and complete lack of accountability for human rights violations that took place during the armed conflict. The fact that Rajapaksas have publicly condemned the Geneva Resolutions as an infringement of Sri Lanka’s sovereignty suggests that they may neglect the implementation of the Resolution 30/1 and the transitional justice process altogether.

CONCLUSION

2019 is going to be a crucial year for Sri Lanka. The decision of the people at the coming presidential election will have far-reaching consequences on human rights, transitional justice, and democracy. This is a decisive time for freedom of expression and rights of minorities in Sri Lanka. This context requires a mechanism to ensure the safety of human rights defenders. It is time for Sri Lanka’s media to end relying on majoritarian approaches and minority phobia, and focus on protecting democratic rights. Human rights organizations and civil society groups have a special role in challenging authoritarian rule. Regional and international solidarity is crucial. The continued engagement of Sri Lanka’s government in the transitional justice process by international actors, including the UN, remains paramount.

NOTES

¹ <https://reliefweb.int/report/sri-lanka/follow-visits-working-group-enforced-or-involuntary-disappearances-peru-and-sri>

² <https://www.newsfirst.lk/2019/09/02/19th-amendment-to-the-constitution-has-created-a-struggle-between-three-power-centers-opposition-leader-mahinda-rajapaksa/>

³ <http://www.sundaytimes.lk/190825/columns/will-gotas-grand-anointment-ceremony-turn-out-to-be-a-farce-365041.html>

⁴ Roy Samathanam who claimed to have been subjected to torture made a complaint against Rajapaksa in the U.S. District Court for the Central District of California. Since then a further ten cases have been filed alleging torture against Gotabaya.

⁵ <https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks>

⁶ <http://hrctl.lk/english/wp-content/uploads/2019/07/HRCSL-Response-to-Bar-Association-of-Sri-Lanka.pdf>

⁷ <https://www.aljazeera.com/news/2019/05/sri-lanka-muslims-sinhala-neighbours-turned-190521064727363.html>

⁸ <https://www.newsfirst.lk/2019/05/29/minuwangoda-unrest-15-suspects-granted-bail/>

<https://www.newsfirst.lk/2019/05/22/minuwangoda-unrest-32-granted-bail/>

<http://www.themorning.lk/suspects-arrested-over-mob-violence-granted-bail/>

<https://colombogazette.com/2019/05/29/more-suspects-arrested-over-mob-violence-granted-bail/>

⁹ <https://www.aljazeera.com/news/2019/05/sri-lanka-muslims-sinhala-neighbours-turned-190521064727363.html>

¹⁰ <https://www.colombotelegraph.com/index.php/boycotting-muslim-businesses-stoning-offenders-democracy-fails-when-citizens-fail-to-speak-up/>

¹¹ <http://www.ft.lk/news/Muslims-afraid--resentful-as-ethnic-divide-deepens-in-Sri-Lanka/56-677984>

¹² <https://colombogazette.com/2019/05/24/shock-and-concern-over-gnanasara-theros-release/>

¹³ <https://groundviews.org/2019/05/22/in-the-name-of-security-how-the-burqa-niqab-ban-is-impacting-muslim-women/>

¹⁴ <https://groundviews.org/2019/05/22/in-the-name-of-security-how-the-burqa-niqab-ban-is-impacting-muslim-women/>

¹⁵ <http://hrctl.lk/english/wp-content/uploads/2019/05/HRCSL-writes-to-Chambers-of-Commerce.pdf>

¹⁶ <http://hrctl.lk/english/wp-content/uploads/2019/05/HRCSL-letter-to-UGC.pdf>

¹⁷ <http://hrctl.lk/english/wp-content/uploads/2019/05/HRCSL-letter-to-UGC.pdf>

¹⁸ <https://groundviews.org/2019/08/01/acju-hijacks-mmda-reform/>

¹⁹ <http://www.dailymirror.lk/print/news-features/Mass-sterilization-narrative-taking-ironic>

<https://www.reuters.com/article/us-sri-lanka-doctor-insight/unsustained-claims-muslim-doctor-sterilized-women-raise-tensions-in-sri-lanka-idUSKCN1T71HS>

²⁰ <https://colombogazette.com/2019/08/13/kurunegala-dig-kithsiri-jayalath-transferred/>

²¹ <http://www.sundayobserver.lk/2019/09/08/news-features/muhudu-maha-viharaya-social-media-once-again-stoops-false-reporting>

²² <http://www.sundayobserver.lk/2019/05/19/news-features/anti-muslim-attacks-mobs-rampage-three-districts>

²³ <http://www.dailymirror.lk/news-features/Who-killed-two-policemen-on-duty-in-Vavunativu-/131-159641>

²⁴ <http://divaina.com/sunday/index.php/arakshawa/7255-24-2>

²⁵ Right to Life Human Rights Center is a civil society organization which provides legal and financial assistance to seek justice with regard to violations of fundamental rights.



²⁶ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994

²⁷ See note 01.

²⁸ <http://www.sundayobserver.lk/2019/06/19/news-features/abuse-iccpr-act-has-chilling-effect-fundamental-freedoms>

²⁹ <http://www.sundayobserver.lk/2019/03/03/news/omp-regional-office-matara-opened>

³⁰ <http://www.sundaytimes.lk/190908/news/missing-persons-relatives-wary-about-obtaining-coas-367627.html>

³¹ <https://www.scrm.gov.lk/office-for-reparations>

³² <https://www.veriteresearch.org/insight/progress-of-several-high-profile-criminal-cases-in-sri-lanka/>

³³ <http://asiantribune.com/node/92510>

³⁴ <http://www.sundayobserver.lk/2019/08/11/news/pm-i-will-be-charge-hints-mahinda>



'In the current context we are concerned about the two leading candidates for the next presidential election from the two main parties, given their silence and past response to the Geneva resolutions. We feel that whoever wins, he will not be very supportive of these proposals'.

'We as 'Family members of the Disappeared' do not want to lose our hard-won victories after 30 years, even they are not up to our expectations. We will never let any Government to go back on these pledges', Families of the Disappeared wrote in a petition addressed to the Resident Coordinator, United Nations Office, Colombo, on 29th August 2019.