

Briefing Notes

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GOTABAYA RAJAPAKSA: ACCOUNTABILITY FOR ECONOMIC CRIMES AGAINST THE SRI LANKAN PEOPLE

Human Rights Violations Caused by The Gotabaya Rajapaksa Administration in Sri Lanka because of Economic Mismanagement, 2019-2022

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ABBREVIATIONS

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| BASL | Bar Association of Sri Lanka |
| ICCPR | International Covenant on Civil and Political Rights |
| IMF | International Monetary Fund |
| LKA | Sri Lanka |
| LKR | Sri Lanka Rupee |
| OPL | Official Poverty Line |
| SLPP | Sri Lanka Podujana Peramuna |
| VAT | Value-Added Tax |
| USD | United States Dollars |
| WB | World Bank |

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All photos in this Briefing Note are from social media and Gotabaya Rajapaksa Facebook page by unknown authors if not otherwise mentioned.

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In the face of peaceful protests calling for them to go home ('Gota Go Home'), the Rajapaksa triumvirate, namely President Gotabaya Rajapaksa, Prime Minister Mahinda Rajapaksa and Finance Minister Basil Rajapaksa all had to resign. Gotabaya Rajapaksa is still on the run looking for a safe haven outside Sri Lanka. Nearly a million citizens took to the street on 09 July and sealed the fate of the Rajapaksa autocratic rule. Accountability for economic crimes was one of the main demands of the protesting citizens led by the younger generation. This report is a direct result of the citizens' movement that showed the world the power of a peaceful and determined struggle that toppled the most corrupt and ruthless ruling family in Sri Lanka. The struggle for systemic change towards an informed citizenry and people-centered democracy is continuing, and this report forms part of that struggle.

THE CONTEXT

Sri Lanka is facing its worst socio-economic crisis since independence. This crisis is manmade. The man responsible for the crisis is former president Gotabaya Rajapaksa.

Sri Lanka's Official Poverty Line (OPL) has risen by 78.64 per cent within the last two years. Around 11.7 per cent of people in Sri Lanka earn less than USD 3.20 per day, the international poverty line for lower-middle income countries, up from 9.2 per cent in 2019. In 2019, 3.04 million of Sri Lanka's population was poor. This accounted for 14.3 per cent of Sri Lanka's population that year. The OPL in 2019 was a mere Rs. 6,966. It has since, i.e., in the span of two-and-a-half years, risen by 78.64 per cent (Rs. 5,478) to Rs. 12,444 by June 2022, driven by record high inflation and static income levels ostensibly, driving more people to poverty. More Sri Lankans will slip into poverty this year, the World Bank has warned.¹ The World Bank (WB) expects Sri Lanka's economy to contract by 7.8 per cent in the year 2022.

A social survey conducted during the first week of August 2022 shows that a majority of the people interviewed experience economic difficulties. About 80% have stated that their income does not cover their needs, one-half of whom experience severe difficulties. Due to the economic crisis, 87% find it difficult to afford increasing household expenses, while 83% stated that they no longer purchase the same food items they used to. Close to two-thirds stated that they find difficulties in affording their medicine. 42% stated that they have reduced the portion of their meal or the number of meals eaten per day.²

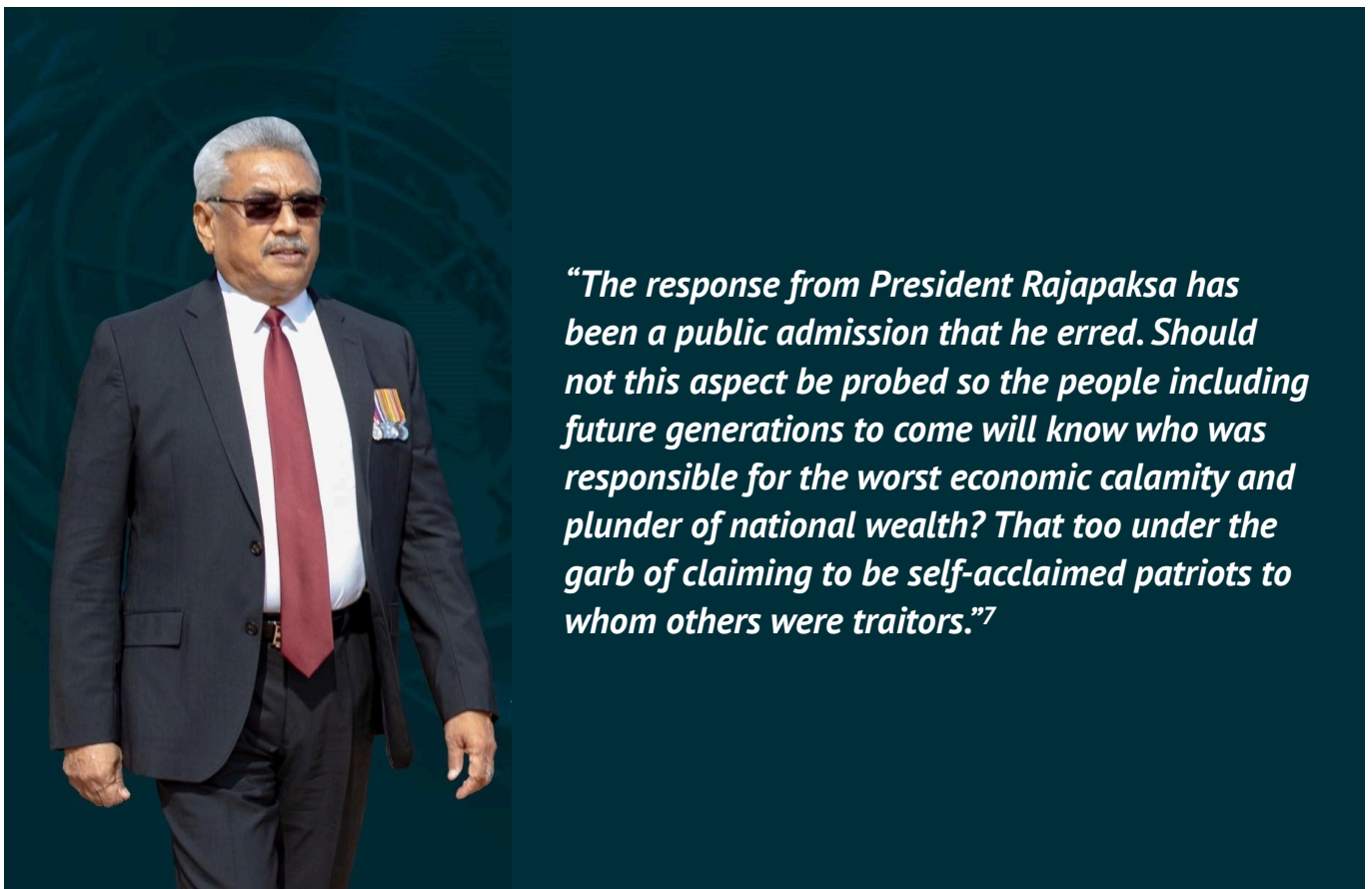
According to the United Nations, nearly five million people or 22 per cent of the Sri Lankan population, are estimated to have become food insecure due to the ongoing economic crisis in the country.³

Not only economic activities but also education, health care, and public transport have been badly affected. For instance, UNFPA, the United Nations sexual and reproductive health agency, has launched an appeal for \$10.7 million to deliver lifesaving healthcare to more than two million women and girls in Sri Lanka in the next six months. The country's once robust healthcare system is teetering on the edge of collapse amid debilitating power shortages and a lack of critical supplies, equipment, and medicine.⁴



Acute shortage of fuel, cooking gas, milk powder etc., forced people to queue up for days, and poorer sections of the population suffered the most. During the period from 19 March to 31 July 2022, 27 deaths in queues and deaths associated with queues were reported in the media. That is an average of one death every five days. Five deaths each were reported in March, April, and June, and 12 in July. All the deceased have been men. Many of them were senior citizens. Five were 60 to 65 years of age, while another five were between 70 and 85 years.⁵ In the words of International Monetary Fund Managing Director Kristalina Georgieva, "It is heartbreaking to watch the pictures of what is happening in the country, that was once quite prosperous. It is a result of mismanagement, and therefore the most important thing to be done is to put the country back on a sound microeconomic footing".⁶

Even before fleeing the country, the former President himself accepted that corrective measures should have been taken much earlier. In short, it is an admission of guilt for the economic disaster he engineered by mismanagement.



INTRODUCTION

The essence of this report is that during the years 2019 to 2022, the administration of the former President of Sri Lanka, Gotabaya Rajapaksa, by a series of irrational, arbitrary, patently illegal, wrongful actions and decisions and failures to act, in complete dereliction of their statutory duties and fiduciary responsibility, for collateral and extraneous purposes, caused the people of Sri Lanka to be denied their rights to life, equality and equal protection of the law, the freedom of occupation, the right of access to information etc. guaranteed by the Constitution of Sri Lanka and the various international human rights treaties and instruments to which Sri Lanka is a party.⁸

Those acts caused the country to default on the repayment of foreign debts for the first time in its history and have relegated Sri Lanka to a state of bankruptcy and insolvency. The said actions/inaction and gross mismanagement of the economy have resulted in an unprecedented economic crisis driven by debt unsustainability, which has garnered the attention of the world at large.⁹

Gotabaya Rajapaksa was elected President of Sri Lanka at the Presidential election on 16 November 2019. President Rajapaksa appointed his elder brother Mahinda Rajapaksa as Prime Minister and Minister of Finance. The latter has been Prime Minister and President earlier and is the leader of the Sri Lanka Podujana Peramuna (SLPP), which nominated Gotabaya Rajapaksa. Younger brother Basil Rajapaksa became a Member of Parliament in 2021 and was appointed Minister of Finance.

On or about 19 May 2022, Sri Lanka defaulted on loans that fell due and has now been downgraded by rating agencies as a defaulting nation.

The actions, inactions and failures of the administration could be broadly categorised as follows:

1. The illegal, arbitrary and unreasonable abolition, removal and/or reduction of taxes effected in the year 2019 and the consequent reduction in government revenue and the failure to obtain available aid to combat the economic hardships faced because of COVID-19, especially in the face of a lack of government revenue.
2. The failure to act in terms of the Monetary Law of Sri Lanka, to maintain international reserves and the international stability of the Sri Lanka Rupee and the unreasonable, arbitrary actions and/or omissions resulted in a default of the country's foreign debt.
3. Completely restricting the import of chemical fertilisers and pesticides by the Gazette Extraordinary No 2226/48 of 06 May 2021, and thereby causing a drastic reduction in agricultural production, engendering food security in Sri Lanka.
4. Under the Gotabaya Rajapaksa administration, large-scale corruption continued making huge losses to the Government. Rajapaksa family is accused of financial mismanagement and corruption at many levels. This report has excluded the issue of corruption as it is not specifically related only to the Gotabaya administration and has no direct bearing on the present crisis.

The Gotabaya Rajapaksa Administration has been clearly and directly responsible for, inter alia, the unsustainability of Sri Lanka's foreign debt, its hard default of foreign loan repayments, food insecurity caused by forced organic farming and the current state of the economy of Sri Lanka, and must be held accountable for the patently illegal, arbitrary and unreasonable acts and/or omissions which culminated in the above.

Gotabaya Rajapaksa, as the Head of the Executive, and his administration are responsible for the violations of the fundamental rights of the citizens of Sri Lanka that occurred as a result. They acted arbitrarily and



breached the doctrine of public trust and the rule of law. Various attributes of the right to life have been denied to citizens as a result of the economic crisis.

The Supreme Court of Sri Lanka has held on numerous occasions that such actions amount to a violation of the fundamental right to equality before the law and the equal protection of the law guaranteed by Article 12 (1) of the Constitution.

The failure on the part of the administration to keep the citizens informed of the true state of the economy is a violation of the right of citizens to access information guaranteed by Article 14A. Millions of citizens have been denied their freedom of occupation guaranteed to citizens by Article 14 (1) (g) as a result of the actions, inactions and failures of the administration.

The Gotabaya Rajapaksa Administration is also guilty of the violation of the right to life recognised by Article 6, the right to equality recognised by Article 26 and the right to receive information recognised by Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR).

Actions, inaction and failures of the Gotabaya Rajapaksa Administration also resulted in serious violations of rights recognised by the International Covenant on Economic, Social and Cultural Rights. Notable among them are: the right to work (Article 6), the right to social security (Article 9), the right to an adequate standard of living (Article 11), the right to health (Article 12) and the right to education (Article 13).

The said actions, inaction and failures of the Gotabaya Rajapaksa Administration caused unprecedented price increases in consumer goods, making a huge dent in the quality of life. A list of price increases recorded by the Central Bank of Sri Lanka is provided on page 7.

“Actions, inaction and failures of the Gotabaya Rajapaksa Administration also resulted in serious violations of rights recognised by the International Covenant on Economic, Social and Cultural Rights.”





PRICES OF BASIC FOOD ITEMS: JANUARY 2020 – AUGUST 2022

| Food item | Unit | January 2020 (LKR) | August 2022 (LKR) |
|----------------------|---------|--------------------|-------------------|
| Rice -Kakuku-Red | Kg | 102.90 | 247.59 |
| Rice – Kakuku -White | Kg | 105.69 | 231.95 |
| Rice-Nadu-White | Kg | 98.34 | 257.12 |
| Rice-Nadu-Red | Kg | 96.45 | 245.52 |
| Cowpea | Kg | 287.29 | 724.38 |
| Green Gram | Kg | 292.13 | 1016.75 |
| Coconut | One | 59.35 | 88.98 |
| Coconut Oil | 750 ml | 300.81 | 497.25 |
| Chicken | Kg | 482.16 | 1222.30 |
| Eggs | One | 20.34 | 42.59 |
| Red Onion | Kg | 613.61 | 476.63 |
| Big Onions | Kg | 168.65 | 226.22 |
| Potatoes | Kg | 189.87 | 333.83 |
| Garlic | Kg | 403.55 | 733.97 |
| Dried Chilies | Kg | 539.76 | 2019.86 |
| Green Chilies | Kg | 454.01 | 819.92 |
| Sugar | Kg | 106.81 | 335.50 |
| Pepper | Kg | 1386.39 | 2801.59 |
| Carrot | Kg | 421.46 | 419.97 |
| Snake Gourd | Kg | 237.66 | 427.64 |
| Tomatoes | Kg | 338.48 | 476.29 |
| Beetroot | Kg | 301.74 | 416.24 |
| Beans | Kg | 425.94 | 614.85 |
| Seer Fish | Kg | 1762.35 | 3224.55 |
| Talapath Fish | Kg | 1213.40 | 2516.09 |
| Paraw Fish | Kg | 1229.9 | 2682.22 |
| Sprats Dried Fish | Kg | 757.03 | 1829.14 |
| Kerosene oil | Lt | 70.00 | 87.00 |
| Petrol | Lt | 139.50 | 454.29 |
| Diesel | Lt | 104.00 | 422.14 |
| Gas | 12.5 Kg | 1493.00 | 5376.25 |

Source : <http://www.statistics.gov.lk/>

Note: Since January 2020 to date there have been no wage increases in the state and private sectors.



RIGHT TO LIFE: LOCAL AND INTERNATIONAL STANDARDS

RIGHT TO LIFE: CONSTITUTIONAL PROVISIONS

The Constitution of Sri Lanka contains a Bill of Rights in Chapter III. The fundamental rights guaranteed by the Constitution are mainly civil and political rights.

The Constitution does not expressly recognize the right to life. In the absence of an expressly guaranteed right to life, recourse was had to Article 12(1) of the Constitution ('All persons are equal before the law and are entitled to the equal protection of the law.'). which has been given a broad interpretation by the Supreme Court to include freedom from arbitrary action. The well-known examples include *Environmental Foundation Ltd. v Urban Development Authority*,¹⁰ *Wijewardena v Geological Survey and Mines Bureau*¹¹ and *Ashik v Bandula (Noise Pollution Case)*.¹² Arbitrary action and inaction on the part of the Executive, which threatens the various attributes of right to life, have been held to violate Article 12(1) by the Supreme Court. This proactiveness on the part of the Apex Court has resulted in the welcome reading of right to life into the Constitution. The Court has also recognised the doctrine of public trust and that a violation of the doctrine amounts to a violation of Article 12(1).

Article 14 (1) (g) of the Constitution guarantees the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise. Article 14A guarantees the right of access to information.

RIGHT TO LIFE: INTERNATIONAL HUMAN RIGHTS NORMS

Article 3 of the Universal Declaration of Human Rights states as follows: 'Everyone has the right to life, liberty and security of person.' The ICCPR considers the right to life to be 'inherent', and non-derogable. Article 6(1) reads as follows: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' The ICCPR thus creates a positive obligation for State Parties when stating that the right to life 'shall be protected by law. The right to equality is recognised by Article 26, and the right to receive information is recognised by Article 19 (2) of the ICCPR. Sri Lanka is a party to the ICCPR.

ISSUE NO 01: THE ABOLITION AND REDUCTION OF TAXES

The abolition, removal and/or reduction of taxes effected in the year 2019 caused the consequent fall in government revenue. This arbitrary policy was implemented despite the clear warning by experts. For example, former Finance Minister Mangala Samaraweera warned as early as October 2019 that Gotabaya Rajapaksa's tax plan would land Sri Lanka in bankruptcy.



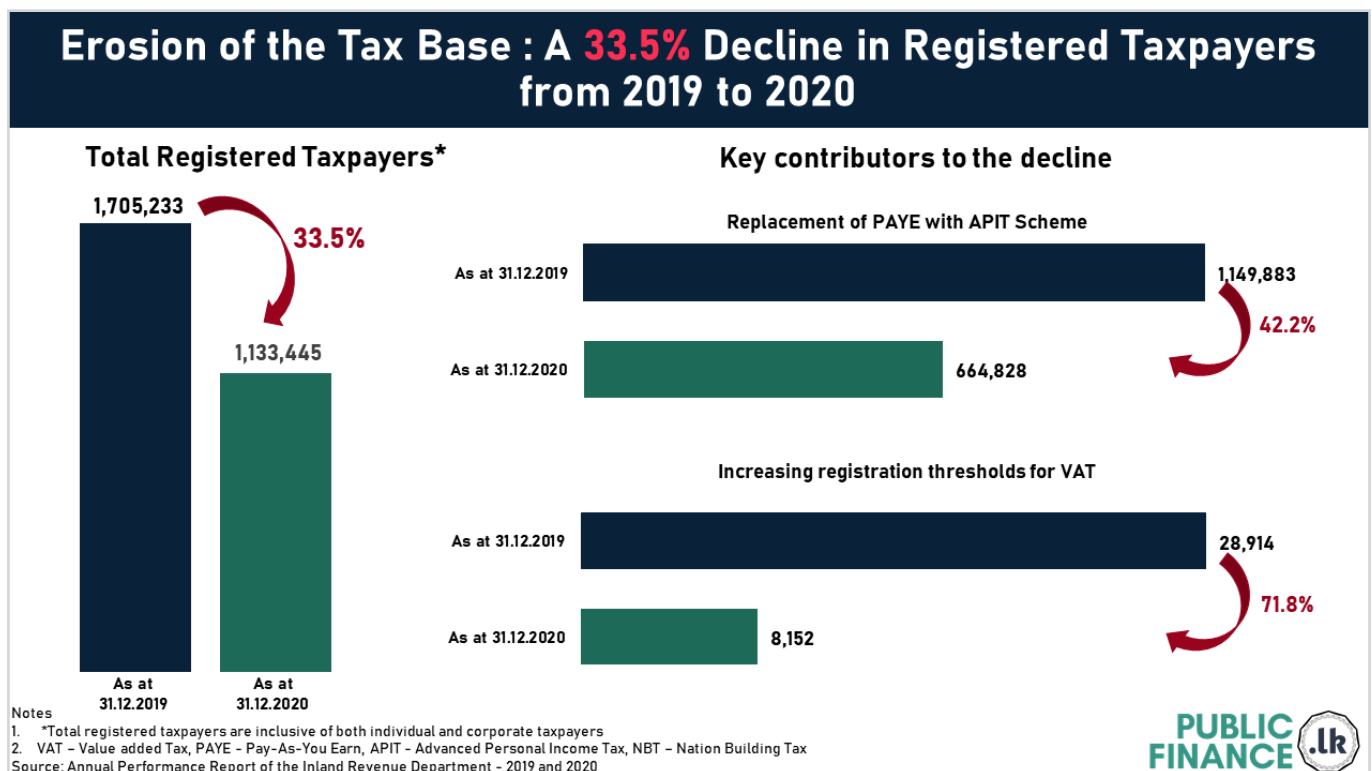
Gotabaya Rajapaksa ignored the early warnings!



In or around November/December 2019, the Commissioner General of Inland Revenue issued a number of notices on the instructions of Mahinda Rajapaksa, Minister of Finance, that sought to effect several tax revisions, including the following:

- a. Abolishing taxes under the Nation Building Tax Act, No. 9 of 2009 as last amended by Act, No. 20 of 2019.
- b. Removing/ abolishing the taxes under the Economic Service Charge Act, No. 13 of 2006.
- c. Removing/ Abolishing the Debt Repayment Levy.
- d. Reducing the threshold for payment for Value Added Tax from 12% to 8%.
- e. Increasing the Value Added Tax (VAT) registration threshold from LKR 12 million LKR 300 million.
- f. Increasing the threshold of taxable income for Personal Income Tax from LKR 500,000 to LKR 3,000,000.
- g. Reducing the Top Marginal Tax Rate on Personal Income Tax from 24% to 18%.
- h. Abolishing the mandatory withholding tax for most employees.
- i. Reducing Standard Corporate Income Tax from 28% to 24%.

As a direct result of the tax revisions, the VAT base of the country contracted by as much as 71%, while its income tax base contracted by as much as 33%.¹³



Sri Lanka’s Government revenue declined in 2020, both in nominal terms and as a percentage of the Gross Domestic Product (GDP), due to the combined impact of the tax revisions implemented in late 2019, as well as the COVID-19 pandemic, as per the Annual Report 2020 of the Central Bank (at page 153-155).

The grave extent to which the Government revenue was severely affected by these tax revisions is reflected in the annual report of the Central Bank of Sri Lanka 2020 as follows:

- a. Tax revenue declined from Rs. 1,734.9 billion in 2019 to Rs. 1,216.5 billion in 2020, mainly due to low revenue from income tax, VAT, NBT, CESS and excise duties, a reduction of 29.9%.
- b. The revenue from Income Tax declined from Rs. 427.7 billion in 2019 to 268.3 billion in 2020, a reduction of 37.3%.
- c. The revenue from VAT declined from Rs. 443,877 million in 2019 to 233,786 million in 2019, a reduction of 47.3%.

The said tax reductions were all made in the run-up to the General Election of 2020. No rationale, calculation or proper reasoning was given. Clearly these changes were not made after exercising due diligence and forethought, and for the benefit of the citizens.

After the election, at which the ruling Sri Lanka Podujana Peramuna (SLPP) won a near two-thirds majority in the new Parliament, the Parliament passed amendments to the following, among others. Tax statutes were made retrospectively to give effect to the unlawful notices mentioned above:

- a. Nation Building Tax Amendment No. 3 of 2020.
- b. Economic Service Charge Amendment Act No. 4 of 2020.
- c. Inland Revenue Amendment Act No. 10 of 2021.
- d. Value Added Tax Amendment Act No. 9 of 2021.

The revision of taxes was not done after due consultation with the Revenue Collection Agencies or after any informed cost-benefit analysis as to the impact such a drastic reduction of government revenue would have on the economy of Sri Lanka. The abolition, removal and/or reductions were so drastic in nature and the consequent reduction of revenue so severe that it would have required an impossible level of economic growth to compensate for the same. This is exacerbated when the said decision was made without due deliberation in Parliament and was made by the Executive acting illegally and with no rational basis.

According to the Ministry of Finance's Annual Report (2020), Sri Lanka's budget deficit has doubled between the period of 2019 and 2020. The budget deficit increased from Rs. 1,052 billion in 2019 to Rs. 2,115 billion in 2020, an increase of Rs. 1,063 billion (page 208). This increase in the budget deficit can be attributed to a decline in revenue by Rs. 526 billion and an increase in expenditure by Rs. 548 billion in 2020.

Although Gotabaya Rajapaksa and Mahinda Rajapaksa were repeatedly warned, as early as 2019, that many significant sovereign debts had to be paid in the upcoming years and asked to explain how they would make good on the shortfall in government revenue caused by the aforesaid tax cuts, they did not make any efforts to set out the government strategy or policy for meeting the said shortfall.¹⁴

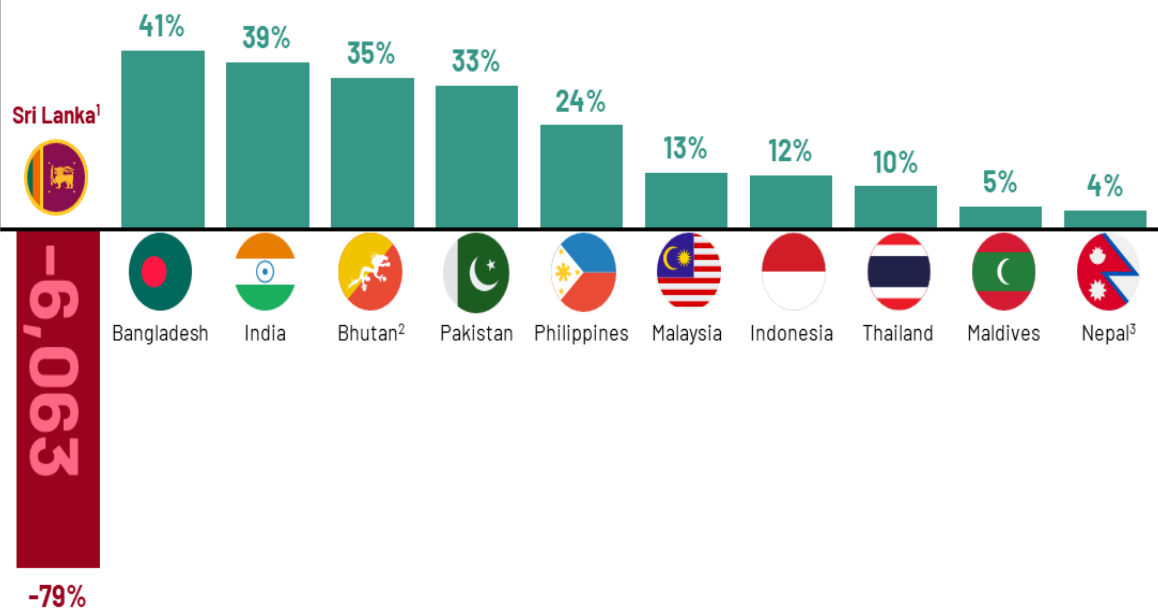


THE REDUCTION OF STATE REVENUE WEAKENED THE ECONOMY

Is the Pandemic the Sole Cause for the Depletion in Sri Lanka’s Foreign Reserves? South Asian Peers Grow Their Foreign Reserves While Sri Lanka’s Decrease

Percentage Change in Gross Official Reserves from end of 2019- end of 2021

Figure in USD millions

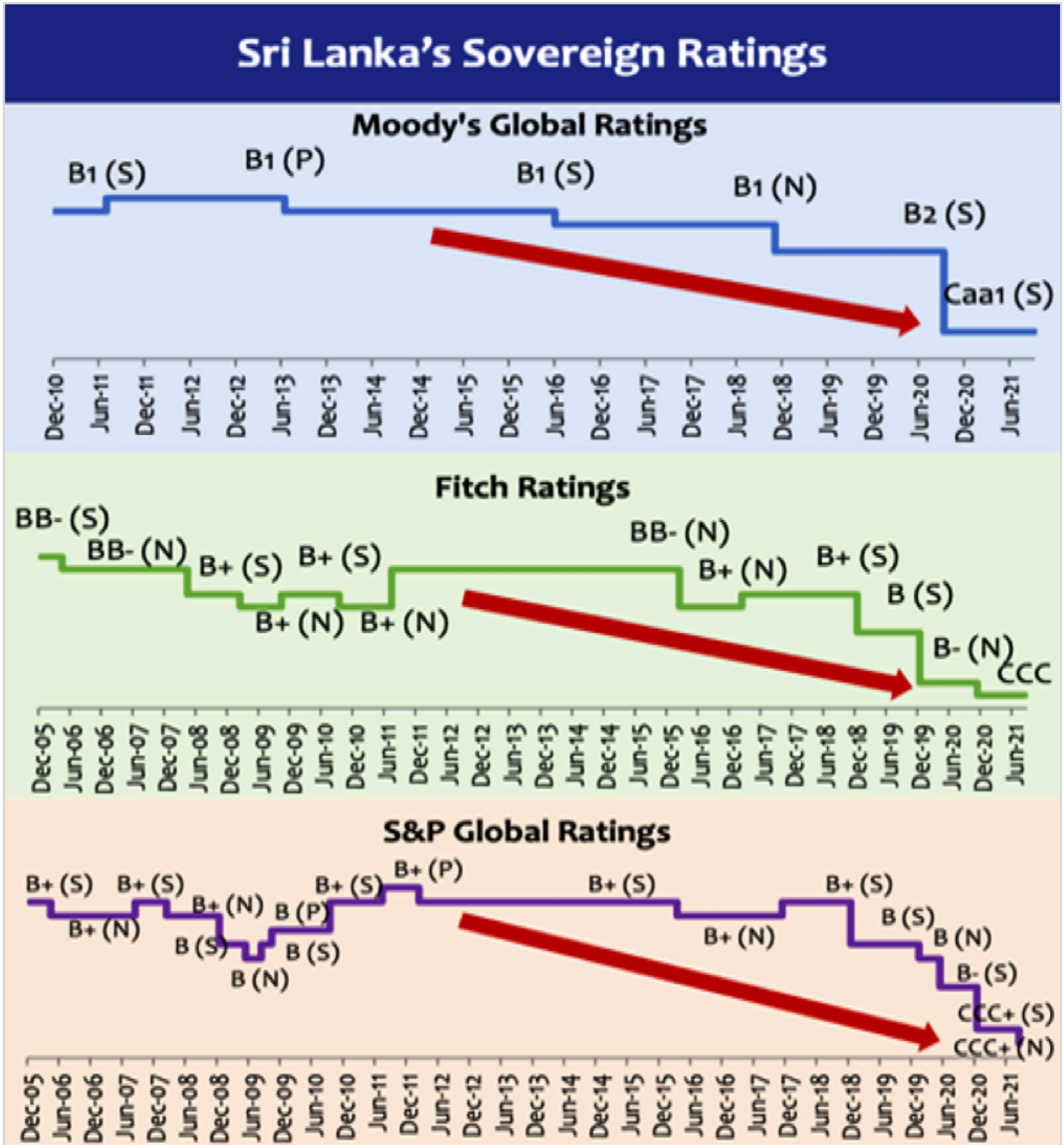


Notes: 1) December 2021 reserves excludes the Yuan 10 billion swap with the People’s Bank of China since it is unclear if this swap can be used to settle US dollar denominated liabilities
 2) The comparison of reserves have been considered from end of 2019 till the latest available data online (November 2021)
 3) Data for Nepal is a comparison between Mid December 2019 to Mid December 2021
 Source: Central Bank of Sri Lanka | Central Banks of Relevant Countries



Major reduction in government revenue affected Sri Lanka’s ability to face any external shocks. It was due to this unstable environment, the drastic reduction of government revenue and the consequent inability to borrow from capital markets, that Sri Lanka’s economy did not recover like its neighbouring countries with similar economies recovered after the onset of the COVID-19 pandemic. In fact, in most comparable South Asian economies, the external reserves have increased in clear contrast to the reduction of the foreign reserves of Sri Lanka.

As a result of the aforementioned tax revisions, Sri Lanka began to experience a sharp decline in its credit ratings in the latter portion of 2019 onwards, with its Long-Term Foreign-Currency Issuer Default Rating (IDR) stipulated by Fitch Rating (hereinafter referred to as 'Fitch') falling to 'C' in the year 2022 from B1. As repeatedly stated by Fitch, the said downgrading was due inter alia to "Sri Lanka’s worsening external liquidity position."¹⁵



Sri Lanka's credit ratings plummeted further on or about 20 May 2022, when Fitch Ratings downgraded Sri Lanka's Long-Term Foreign-Currency (LTFC) Issuer Default Rating (IDR) from 'C' to 'RD' (Restricted Default). The said downgrade was the result of the country's inability to make payments on two international sovereign bonds by the 30-day grace period provided, and the downgrade to 'RD' reflects a 'default event.'

Despite the compelling need to remedy the said credit rating downgrade, Gotabaya Rajapaksa and his administration should have necessarily made a timely decision in this regard, failed and/or refused to do so.



ISSUE NO 02: THE DEVALUATION OF SRI LANKA RUPEE

The downgrade in credit ratings and the decline in government revenue resulted in Sri Lanka having to use its foreign reserves to pay debts, with no hope of replenishing the foreign reserves. This caused a deficit in the international balance of payments of such magnitude that it caused a serious decline in the international reserves.

The gross official reserves of the country had fallen to US \$3.1 billion at the end of 2021, from US \$5.6 billion at the end of the year 2020 and US \$7.6 billion at the end of the year 2019. The said decline signifies a reduction from 4.2 months of import cover to 1 month within a year. This is evidenced by Table 5.12 on page 170 of the Annual Report of the Central Bank for 2021.

The LKR to USD exchange rate depreciated sharply from Rs. 185 in September 2020 to approximately Rs.200 by May 2021. Since May 2021, it remained relatively stable until it depreciated to approximately Rs. 256 in March 2022. Today it has depreciated to 360 per US dollar.

The failure and/or omissions of Sri Lankan authorities to devalue the Rupee in accordance with the exigencies at the time in an orderly manner resulted in far-reaching ramifications, including those affecting foreign remittances.

Such 'fixing' of the Rupee was met with resounding criticism by independent economists and analysts, who had long-warned the government and the Central Bank that the fixing of the rupee-dollar rate at such values, without a favourable foreign exchange rate, was detrimental to the economy.

The failure to appropriately devalue the currency in light of the changing economic situation in the country resulted in further prejudice to the economy, including the reserves therein, which reserves were employed in order to buttress the currency in order to maintain its stability when the same was fixed at a selling rate of Rs. 203 to the US dollar.

Official worker remittances fell by as much as 61.6% within a year (i.e., from January 2021 to January 2022), as migrant workers remitted monies through unofficial channels at a higher exchange rate.

When the Central Bank and Nivad Cabral, the then Governor of the Central Bank, directed commercial banks to fix the buying and selling rate of the dollar Rs. 203 on or around September 2021, it resulted in the following sequence of events:

- a. In September 2021, the Central Bank (CB) set an upper limit of SLR 203 per USD.
- b. The demand for USDs was higher than the supply of USDs at the upper limit of SLR 203 per USD.
- c. The demand for foreign currency exceeded its supply in the unofficial market for dollars.
- d. With the significant price difference between the official and unofficial market rates for the USD, the Hawala/Undiyal arrangements (informal methods of transferring money without cash actually moving) provided as a ready alternative an unofficial avenue for Sri Lankan workers to remit income.
- e. Remittances through the banking system declined precipitously, from USD 600-700 million per month to USD 200-300 million per month.

- f. In November 2021, foreign worker remittances through official channels had declined by USD 340 million compared to November 2020.
- g. By February 2022, the month up to which official data is available, the official remittances had fallen to USD 204 million compared to USD 579 million in February 2021.¹⁶

The loss in worker remittances emanated directly from the failures and/or inaction on the part of the Minister of Finance, the Governor of the Central Bank and the Monetary Board to devalue the Rupee in an appropriate and timely manner, as averred above. Had worker remittances continued to flow through official channels, such remittances would have buttressed the country's reserves, and the loss stemming directly from migrant remittances, which declined from January to November 2021, over the corresponding period in 2020, resulted in a loss in excess of USD 1 billion.

The abolition, removal or reduction of taxes and the reduction of workers' remittances coupled with the continued servicing of debt acted as a catalyst to set off a chain reaction which culminated in a greater budget deficit, greater effect on the balance of payment and declining of gross official reserves to perilous levels.

The government refused to seek IMF assistance. The continued servicing of debt was carried out even when the lack of dollars was already holding up goods from coming into the import-dependent country of 22 million people, which typically spends about \$1.6 billion every month on imports of fuel, essential food and medicine.

The actions and omissions on the part of Gotabaya Rajapaksa and his administration which led to the default are evinced by the notice of default, dated 12.04.2022, signed by Basil Rajapaksa, which admits to the absence of a 'tenable policy' in the absence of preemptive attempts to restructure debt or engage in negotiations with creditors, as well as the hard default and subsequent ratings downgrade on or about May 2022, on account of the country's inability to make repayments on two international sovereign bonds.

The indebtedness of the Sri Lankan Government, compounded by its inability to borrow requisite funds from international markets, resulted in its failure to secure even the most basic of needs for its citizens, as indicated by the sustained food, medicine, medical supplies, fuel and gas shortages across the country, as well as the electricity shortages that persist up to now.

Ali Sabry, who was Minister of Finance at the time in Parliament on 04 May 2022, conceded, inter alia, the following, which demonstrate that the impugned actions and/or omissions and/or failures of the Gotabaya Rajapaksa Administration were ill-thought and detrimental to the economy of the country:

- a. The reduction in taxes resulted in grievous ramifications for the economy.
- b. The Rupee should have been floated earlier, and its depreciation should have been managed
- c. The assistance of the IMF should have been sought with greater promptitude
- d. The delay in rescheduling foreign loans resulted in severe ramifications for the economy
- e. The conspicuous drops in foreign reserves and government revenue.¹⁷

Gotabaya Rajapaksa and officials of his administration must be held accountable for the said actions and/or inactions and/or omissions mentioned above, a culmination of which has given rise to the most serious of fundamental rights violations of the citizenry, as well as the destruction of jobs and livelihoods, whilst causing permanent damage to the economy.



ISSUE NO 03: FAILURE OF THE ARBITRARY 100% ORGANIC FARMING POLICY

In May 2021, the Sri Lankan government, under the direction of then President Gotabaya Rajapaksa, completely banned chemical fertiliser imports and declared Sri Lanka a 100 per cent organic farming nation. As an immediate and complete shift to organic farming was not feasible, this move led to a substantial decline in agricultural produce, especially rice and tea and caused food inflation to soar.¹⁸

Gotabaya Rajapaksa appointed younger brother Basil Rajapaksa to head the Presidential Task Force, Creating a Green Sri Lanka with Sustainable Solutions to Climate Change, in May 2021. This task force is charged with establishing the plan for the national transformation of organic agriculture.

In Sri Lanka, twenty-seven per cent of the economically active population, out of a labour force of 8 million, engages in agricultural production and related industries. The lack of organic fertiliser productive capacity, coupled with the absence of a formalised plan to import organic fertilisers in lieu of chemical fertilisers, risked an adverse impact on food security.

| Fertilising losses? | |
|--|------------------------------|
| <i>Predicted short-term drop in the performance of some economically important crops consequent to the ban of the importation of inorganic fertilisers</i> | |
| Crop | Predicted loss of production |
| Tea | up to 50% |
| Paddy | 30-35% |
| Maize | up to 50% |
| Potato | 30-50% |
| Sugarcane | 30-40% |
| Cinnamon | 25% |
| Betel | 20% |
| Upcountry vegetables | 30-50% |
| Floriculture/foilage plants | almost 100% |
| Controlled environment agriculture/Hydroponics | almost 100% |

Graphic from Daily FT

A group of 30 scientists and experts informed President Gotabaya Rajapaksa of the substantial loss of production in a sample of select crops by the ban on inorganic fertiliser.¹⁹ Farmers' organisations took to the street against the decision to move agriculture to 100% organic overnight. But Gotabaya Rajapaksa was adamant about his decision to ban all chemical fertilisers.

A few months after the catastrophic decision, a statement from the President's Media Centre emphasised that "The Government has not granted permission to import chemical fertilisers for local agricultural purposes, neither has it made any changes to the decision taken by the President to use only organic fertilisers for local agriculture. And there will be no changes to this decision in the future either."²⁰

At the United Nations Food Systems Summit 2021 Gotabaya Rajapaksa remarked that the policy was aimed at ensuring "greater food security and nutrition" and encouraged other nations to follow Sri Lanka's example.

Finally, in January 2022, Rajapaksa had to admit his 100 per cent organic agriculture gamble failed and overturned his decision. By this time, the price of rice had almost doubled, and there was an acute shortage of vegetables in the market. Gotabaya Rajapaksa is directly responsible for this misadventure and should be held accountable.



*A farmer rests during the seedling planting in a paddy field in Bandaragama, Sri Lanka.
Photographer: Buddhika Weerasinghe. Source: Bloomberg*



ACCOUNTABILITY FOR THE SOCIO-ECONOMIC CRISIS



Gotabaya Rajapaksa, as the Head of the Executive, is directly responsible for the violations of the fundamental rights of the citizenry of Sri Lanka, which have emanated from the present economic crisis and unsustainability of debt.

Gotabaya Rajapaksa, as the Head of the Executive, has failed most patently and abjectly to take timely and meaningful measures to mitigate or negate the several issues mentioned above. Decisions pertaining to inter alia, abolition, removal and/or reduction of taxes, credit ratings downgrades, restructuring or servicing debt and default, fall squarely within the purview of the Executive, and as such, Gotabaya Rajapaksa, as the Head of the Executive, should necessarily have anticipated the impending debt unsustainability issue, and made timely decisions and interventions, particularly where he as President, had direct jurisdiction to do so.

In such circumstances, the negligence on the part of Gotabaya Rajapaksa assumes odious proportions but is also violative of the Fiscal Management (Responsibility) Act, No. 3 of 2003, which, in sections 2 and 3, stipulates the objectives underlying responsible fiscal management, which includes, inter alia, the mitigation of financial risks, as per the changing economic circumstances, adoption of nuanced policies in respect of spending and taxation, and management of the liabilities of the Government, and significantly, the cognisance of the impact of executive decisions and/or government action on future generations.

Gotabaya Rajapaksa, as the Head of the Executive and officials of his administration, failed to manage the critical financial needs of the country and, in doing so, seriously violated the fundamental rights of the public.

VIOLATION OF THE PUBLIC TRUST

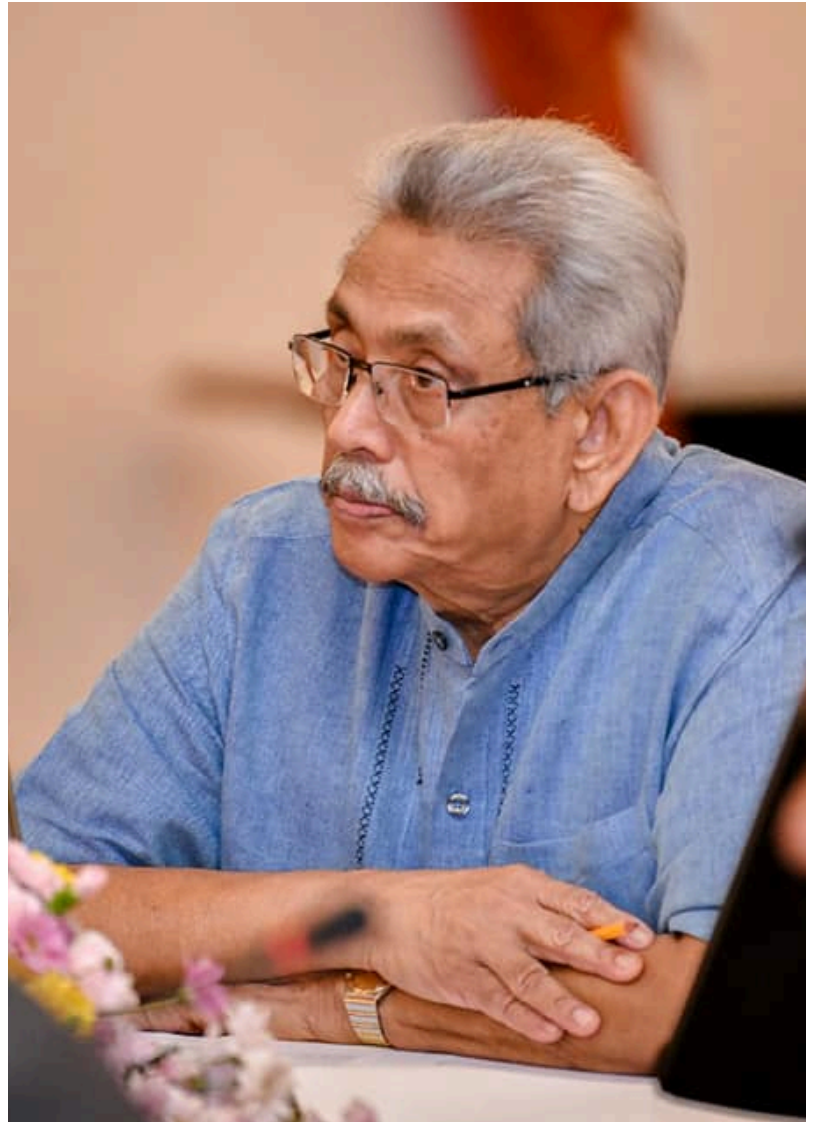
The actions and/or failures and/or omissions on the part of Gotabaya Rajapaksa, Mahinda Rajapaksa, Basil Rajapaksa, and other relevant authorities constituted grievous mismanagement of the economy, and which were a series of illegal, arbitrary and unreasonable actions and inactions, which necessitated the present decision to default on repayment of foreign loans, resulting in the violation of fundamental rights of the citizenry.

The concept of the rule of law requires that public power should be exercised in good faith, reasonably, for the purpose it was given and should ensure that the basic human rights of the citizens are protected.

Further, citizens have a right to be informed. This requires obligations and responsibilities be placed on the State, to fairly and transparently be accountable for all its decisions. The right of access to information is guaranteed by Article 14A of the Constitution.

The citizens of Sri Lanka have a right as provided in, inter alia, Articles 3 (Sovereignty of the People), 4 (Exercise of Sovereignty), 12 (equality before the law and equal protection of the law), and 14 (various freedoms including the freedom of occupation), 14A (right of access to information) read together with Article 27 (directive principles of state policy) of the Constitution to:

- a. Live in contemporary society with dignity.
- b. Freedom to engage by themselves or in association with others in any lawful occupation, profession, trade, business or enterprise.
- c. Demand that the State secures or protects, as effectively as it may, a social order in which social and economic justice shall guide all the institutions of national life.



Gotabaya Rajapaksa and his administration breached the Doctrine of Public Trust. The willful and gross negligence in the exercise of lawful power and authority of the State as represented by them is a gross violation of the Doctrine.



- d. Demand that the State secures and protects the right of the citizens to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and cultural opportunities.
- e. Demand that the State provides for the continuous development of the whole country by means of public and private economic activities.
- f. To be proactively given information as to the manner in which decisions affecting them are taken, and as to the basis on which these decisions are taken and, in such matter, to be able to effectively participate and hold public authorities accountable for their actions/ inactions.

Gotabaya Rajapaksa and his administration breached the Doctrine of Public Trust, and the willful and gross negligence in the exercise of lawful power and authority of the State as represented by them is a gross violation of the said Doctrine. They were reposed with all power and authority under the Public Trust Doctrine, and in recklessly ignoring or failing to take cognisance of external advice and opinions, failing to react proactively with due promptitude to prevent debt sustainability spiraling out of control, and failing to make rational, reasonable decisions which could demonstrate that an objective mind has been brought to bear on the same, they violated the said Doctrine.

The Sri Lankan Supreme Court has consistently held (*De Silva v Atukorale*,²¹ *Jayawardene v Wijayatilake*,²² *Bandara v Premachandra*,²³ *Mundy v Central Environmental Authority*²⁴) that:

- a. The basic premise of public law is that power is held in trust.
- b. Powers conferred on the Executive are solely used for the public good, as such powers are held in trust for the public to be exercised reasonably and in good faith, and upon lawful and relevant grounds of public interest.
- c. The Doctrine of Public Trust assures each and every citizen that their best interests and the nation's best interests are paramount and pivotal, and the only and central concern would be the safeguarding of the people's interests.
- d. Such public trust extends to all facets of the Country, including economic opportunities or other assets, all of which must be used in a manner for economic growth and always for the benefit of the entirety of the citizenry.
- e. The Directive Principles of State Policy recognised by Chapter VI of the Constitution must be taken into account when considering the responsibility of the State in respecting and protecting fundamental rights.

The Supreme Court has held that a violation of the public trust amounts to a violation of the concept of equal protection of the law guaranteed by Article 12(1) of the Constitution. The Court has also held that arbitrary action on the part of the Executive amounts to a violation of the right to equal protection of the law guaranteed by Article 12(1) of the Constitution (*Jayasinghe v Attorney-General*,²⁵ *Jayawardena v Dharani Wijayatilake*,²⁶ *Wickramasinghe v Ceylon Petroleum Corporation*²⁷).



GUILT OF GOTABAYA RAJAPAKSA ADMINISTRATION

It is clear that the Gotabaya Rajapaksa Administration is guilty of and must be held accountable for the violation of the following fundamental rights guaranteed by the Constitution to the people of Sri Lanka:

- a. The right to equality before the law and equal protection of the law guaranteed by Article 12 (1).
- b. The freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise guaranteed by Article 14 (1) (g).
- c. The right of access to information guaranteed by Article 14A.

The Gotabaya Rajapaksa Administration is also guilty of the violation of the right to life recognised by Article 6, the right to equality recognised by Article 26 and the right to receive information recognised by Article 19 (2) of the ICCPR.

The actions, inaction and failures of the Gotabaya Rajapaksa Administration mentioned above also resulted consequently in serious violations of rights recognised by the International Covenant on Economic, Social and Cultural Rights. The economic crisis that ensued resulted in a severe scarcity of essentials, including food and medicine. The supply of electricity was severely hampered. The shortage of gas affected the daily lives of the people. The scarcity of fuel resulted in a virtual shutdown of the country. Public, as well as private transport, was paralysed. People were unable to go to work. The economic crisis severely affected the informal working sector and casual labour. Industries had to close down or perform in a limited manner. The construction industry was most affected, resulting in job losses among the informal working sectors. Educational institutes were forced to close down or function on a limited scale. Notable among economic and social rights impaired as a result are the right to work (Article 6), the right to social security (Article 9), the right to an adequate standard of living (Article 11), the right to health (Article 12) and the right to education (Article 13).



*Waiting for fuel: Scene at Horana, Sri Lanka.
Photographer: Indika Handuwala Source: www.sundaytimes.lk*



RECOMMENDATIONS

International Human Rights Community, including the United Nations, should further investigate the economic crimes inflicted by former President Gotabaya Rajapaksa on the Sri Lankan people and should take appropriate steps to ensure that justice is carried out. Gotabaya Rajapaksa, his Ministers and officials responsible must be made accountable for their actions and inactions. They must also be brought within the procedures of the UN Human Rights Council, the relevant treaty bodies and Special Rapporteurs.

The international human rights community should closely monitor the ongoing fundamental rights cases at the Supreme Court of Sri Lanka in relation to Gotabaya Rajapaksa's accountability for economic crimes to take follow-up action. Whether the "new" Sri Lankan Government would defend the perpetrators in the Supreme Court and thereby acquiesce in their actions needs to be watched.

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1. https://www.business-standard.com/article/international/more-sri-lankans-to-slip-into-poverty-this-year-warns-world-bank-122042600440_1.html
 2. https://www.cpalanka.org/wp-content/uploads/2022/08/CONFIDENCE-IN-DEMOCRATIC-GOVERNANCE-INDEX-WAVE-3_Summary-Findings-and-Overview_CPA-SI_08.08.2022.pdf
 3. [https://www.dailymirror.lk/business_main/WB-expects-SL-economy-to-contract-by-7-8-in-2022/245-239312#:~:text=The%20World%20Bank%20\(WB\)%20expects,in%20electricity%2C%20food%20and%20fuel](https://www.dailymirror.lk/business_main/WB-expects-SL-economy-to-contract-by-7-8-in-2022/245-239312#:~:text=The%20World%20Bank%20(WB)%20expects,in%20electricity%2C%20food%20and%20fuel)
 4. <https://www.ft.lk/front-page/UNFPA-appeals-for-10-7-m-to-meet-urgent-needs-of-2-m-women-girls-affected-by-economic-crisis/44-738472>
 5. <https://srilankabrief.org/sri-lanka-bodies-on-beaches-deaths-in-queues/>
 6. <https://www.newsfirst.lk/2022/05/26/sri-lankas-crisis-is-due-to-mismanagement-imf-chief/>
 7. <https://www.sundaytimes.lk/220626/columns/president-makes-last-minute-changes-to-21a-cabinet-approval-likely-tomorrow-487221.html>
 8. This report has used material contained in the fundamental rights application filed in the Supreme Court in Chandra Jayaratne and others v. Attorney General, bearing no. SC FR 212/2022 pleading that the Gotabaya Rajapaksa Administration be held accountable for Sri Lanka's present grave economic crisis. A similar application Dr Athulasiri Samarakoon v. Ranil Wickremesinghe, SC FR 195/2022 is also before the Supreme Court.
 9. Statement issued by the Ministry of Finance dated 12th April 2022.
 10. [2009] 1 Sri LR 123.
 11. SC (FR) App no 81/04.
 12. SC (FR) App no38/2005, SCM 09 November 2007.
 13. <https://publicfinance.lk/en/topics/erosion-of-the-tax-base-a-33-5-decline-in-registered-taxpayers-from-2019-to-2020-1638797962>
 14. News article in the Daily FT dated 18th October 2019.
 15. <https://www.fitchratings.com/research/sovereigns/sri-lanka-25-10-2019>; <https://www.fitchratings.com/research/sovereigns/sri-lanka-02-07-2021>; <https://www.fitchratings.com/research/sovereigns/sri-lanka-04-01-2022>; <https://www.fitchratings.com/research/sovereigns/fitch-downgrades-sri-lanka-to-c-13-04-2022>
 16. https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/sheets/table2.14.2_20220331_e.xlsx
 17. Parliamentary Debates, 04 May 2022.
 18. <https://www.orfonline.org/expert-speak/sri-lankan-crisis-the-perils-of-inherited-fallacies-and-economic-mismanagement/>
 19. <https://www.ft.lk/front-page/Inorganic-fertiliser-ban-could-harm-production-with-major-implications/44-719325>
 20. <https://www.ft.lk/top-story/President-s-Office-insists-no-U-turn-in-organic-fertiliser-push/26-721336>
 21. [1993] 1 Sri LR 283.
 22. [2001] 1 SriLR 132, 149, 159.
 23. [1994] 1 SriLR 301, 312.
 24. SC Appeal 58/2003, SCM 20 January 2004.
 25. [1994] 2 Sri LR 74.
 26. [2001] 1 Sri LR 132.
 27. [2001] 2 Sri LR 409.



Gotabaya Rajapaksa appointed the single member MP of the United National Party as Prime Minister and after Gotabaya fled the country, ruling Rajapaksa Party elected him as the President in a parliamentary vote. Instead of re-establishing rule of law and reconciliation President Wickremasinghe runs the country under harsh Emergency Rule and security forces have been given a free hand to suppress the citizens movement.

GENERATION
පරපුර
தலைமுறை

21ST JULY 2022 -
09TH AUGUST 2022

SINCE THE SWEARING IN OF
PRESIDENT WICKREMESINGHE

**STATE
CRACKDOWN**



51 PROTESTORS
ARRESTED

02 ABDUCTIONS

18 OVERSEAS
TRAVEL BANS
ON PROTESTERS



Briefing Notes

