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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

## Promoting reconciliation, accountability and human rights in Sri Lanka

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present written update is submitted pursuant to Human Rights Council resolution 46/1. The Office of the United Nations High Commissioner for Human Rights presents its observations on the human rights situation in Sri Lanka and the continuing challenges for advancing reconciliation, accountability and human rights. It focuses on developments since the previous report of the High Commissioner on Sri Lanka in February 2021, including the broader trends identified at that time. It also includes an update on the steps taken to implement the accountability-related aspects of resolution 46/1.

The High Commissioner remains concerned about the continued lack of accountability for past human rights violations and recognition of victims' rights in Sri Lanka, particularly those stemming from the conflict that ended in 2009. She highlights continuing trends towards militarization and ethno-religious nationalism that undermine democratic institutions, increase the anxiety of minorities and impede reconciliation. At the same time, the High Commissioner recognizes the recent signs of renewed openness of the Government of Sri Lanka in engaging with her Office and the initial steps taken to initiate some reforms. The High Commissioner believes, however, that a comprehensive vision for a genuine reconciliation and accountability process is urgently needed, as well as deeper institutional and security sector reforms that will end impunity and prevent the recurrence of violations of the past

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\* The present report was submitted after the deadline as a result of consultations with the Member State.



## I. Introduction

1. The present written update is submitted pursuant to Human Rights Council resolution 46/1, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to enhance its monitoring of and reporting on the situation of human rights in Sri Lanka, including on progress in reconciliation and accountability, and to present a written update at its forty-ninth session. The update focuses on developments that have taken place since the High Commissioner's report on Sri Lanka in February 2021, including the broader trends she identified at that time.<sup>1</sup> It also includes an update on steps to strengthen the capacity of OHCHR to collect, consolidate, analyse and preserve information and evidence; develop possible strategies for future accountability processes; advocate for victims and survivors; and support relevant judicial and other proceedings, including in Member States, with competent jurisdiction.

2. OHCHR appreciates the constructive engagement of the Government of Sri Lanka throughout the preparation of the update. It sent a list of questions to the Government on 25 October 2021 and received detailed written inputs on 8 December 2021 and several later updates.<sup>2</sup> The Government agreed to an OHCHR delegation visiting Sri Lanka in January 2022 for further consultations, however this could not take place owing to the coronavirus disease (COVID-19) pandemic. Virtual consultations were held instead between OHCHR and government representatives on 24 January and OHCHR representatives met with a range of other stakeholders. OHCHR appreciates the open and substantive nature of these exchanges. The report was shared with the Government to provide an opportunity to comment.

3. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, visited Sri Lanka between 26 November and 3 December 2021.<sup>3</sup> The Government has also agreed to a visit by the Special Rapporteur on the right to education, which has still to be scheduled. On 5 February 2021, eight special procedure mandate holders and members of the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention issued a joint statement recalling key recommendations made by them following official visits between 2015 and 2019.<sup>4</sup> During 2021, special procedure mandate holders issued nine communications on Sri Lanka; as of 14 February 2022, the Government had responded to five.<sup>5</sup>

## II. Context

4. Since 2020, Sri Lanka has faced several waves of the COVID-19 pandemic, which have had a multidimensional human rights impact on public health and economic and social rights. Sri Lanka enjoys free universal health care and the Government has achieved a high vaccination rate and implemented various stimulus and economic support measures. Prolonged lockdowns and travel disruptions have nevertheless affected important sectors of the economy, such as tourism, garment production, services and transportation, as well as decreased export earnings and remittances. Moreover, policies to tackle a looming financial

<sup>1</sup> [A/HRC/46/20](#).

<sup>2</sup> The inputs and updates from the Government informed much of the present update. They are not available online.

<sup>3</sup> See end of mission statement available from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27895&LangID=E>.

<sup>4</sup> Available from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26725&LangID=E>.

<sup>5</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36694>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36775>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36580>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36496>; and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36539>.

debt crisis have had various economic and social consequences, such as import restrictions, depreciation of the currency and inflation in food and fuel prices.<sup>6</sup>

5. According to the World Bank, over 500,000 people in Sri Lanka may have fallen below the poverty line since the beginning of the pandemic, with widespread loss of jobs and work hours mainly affecting informal sector workers and micro-, small- and medium-sized enterprises.<sup>7</sup> With women making up a significant percentage of the workforce in the informal, garment and textile sectors, they have been disproportionately affected by job or income loss.<sup>8</sup> Many Sri Lankan migrant workers also lost their jobs in host countries, affecting remittance income.<sup>9</sup>

6. The economic conditions have had an impact on food security; a World Bank survey indicated that 44 per cent of households were concerned about food.<sup>10</sup> The introduction of a ban on the use of fertilizers to promote organic agriculture, later reversed after protests, also had an impact on food production. In August, the Government introduced new emergency regulations, reportedly to curb speculative practices of traders amid high food prices and shortages of some essential commodities; the regulations have now lapsed.<sup>11</sup>

7. Discontent about the economic situation and government policies has led to protests. In response, the Government has enforced COVID-19 measures, including quarantine rules and other laws, to limit demonstrations over economic and social issues and in some cases to arrest and charge protesters, although the protests were peaceful.<sup>12</sup> The Government asserts that this was necessary on public health grounds. On several occasions, however, courts refused to grant injunctions to stop protests requested by the police, citing the right to freedom of expression or peaceful assembly.

8. In June 2021, a police spokesperson announced that the Criminal Investigation Department had formed a special team to patrol cyberspace and arrest those who spread “fake news” on social media about COVID-19 or other sensitive issues.<sup>13</sup>

9. In a note verbale of 8 December 2021, the Government also informed OHCHR that it was drafting a new law on protection from online falsehoods and manipulation. The High Commissioner encourages the Government to take careful account of the observations made by United Nations human rights mechanisms on laws of this kind, which can seriously impact the exercise of the rights to freedom of expression, opinion and information, and to ensure full consultation with representatives of civil society and independent media in the formulation of the law.

## A. Legal and institutional developments affecting human rights

10. In her previous report, the High Commissioner warned of the erosion of the independence of key institutions in Sri Lanka, particularly following the twentieth amendment to the Constitution that changed the appointment process for the judiciary and independent institutions, including the Human Rights Commission of Sri Lanka.<sup>14</sup>

11. In November 2021, following a special review, the Global Alliance of National Human Rights Institutions recommended that the Human Rights Commission of Sri Lanka

<sup>6</sup> See World Bank, “Sri Lanka overview” (October 2021).

<sup>7</sup> World Bank, “Economic and poverty impact of COVID-19”, p. 27.

<sup>8</sup> Ibid. See also International Labour Organization, “The supply chain ripple effect: how COVID-19 is affecting garment workers and factories in Asia and the Pacific” (October 2020).

<sup>9</sup> See Bilesha Weeraratne, “Repatriation and replacement of lost foreign jobs: handling labour migration in Sri Lanka during COVID-19”, Talking Economics, 14 May 2020.

<sup>10</sup> World Bank, “Sri Lanka overview”.

<sup>11</sup> Extraordinary Gazette No. 2243/1 and No. 2243/3, Emergency (Provision of Essential Food) Regulation No. 1 of 2021, 30 August 2021.

<sup>12</sup> See joint communication AL LKA 4/2021 of 17 August 2021 from three Special Rapporteurs and the Working Group on Arbitrary Detention, available from <https://spcommreports.ohchr.org/LatestReports/CommunicationSent?page=24>.

<sup>13</sup> See Pamodi Waravita, “No warrant needed for ‘fake news’ arrests”, The Morning, 9 June 2021.

<sup>14</sup> A/HRC/46/20, para. 24.

be downgraded from A to B status on three grounds: the lack of a transparent and independent appointment process; the lack of plurality and diversity; and the failure by the Commission to independently and effectively exercise its human rights mandate.<sup>15</sup> A retired Supreme Court Justice, Rohini Marasinghe, was appointed as the new Chair of the Commission in December 2021.

12. The High Commissioner is also concerned that the independence of the Right to Information Commission, which has made important rulings, may also be undermined following the appointment of retired Supreme Court Justice, Upali Abeyratne, as the Chair. As highlighted in previous reports, Justice Abeyratne served as Chair of the Presidential commission of inquiry on alleged political victimization, which obstructed and intervened in judicial proceedings in several “emblematic” human rights cases.<sup>16</sup>

13. The High Commissioner stresses that the process now under way to draft a new constitution will be of fundamental importance for the protection of human rights in Sri Lanka, the independence of key institutions and the devolution of political authority, which the Human Rights Council has noted “is integral to reconciliation and the full enjoyment of human rights by all members of its population”.<sup>17</sup> A committee of experts appointed by the Government is working on a draft constitution and has invited the public to provide comments. The High Commissioner urges the Government to take into account the observations and recommendations made over the years by various United Nations human rights mechanisms with respect to human rights in the constitution. She also urges the Government to make the draft available for public consultation and debate before it is presented to the parliament.

## **B. Militarization and land issues**

14. As observed in previous reports, the past two years have seen an increase in the militarization of civilian government functions in Sri Lanka.<sup>18</sup> The Government justifies these appointments in terms of improving efficiency and being in conformity with the law. The High Commissioner remains concerned, however, that the concentration of civilian positions in the hands of military officials, affects the democratic governance and the long-term character of the State.

15. Current or former military officers, including some implicated in alleged grave human rights violations, now occupy positions of authority in several ministries in addition to the Ministry of Defence, including the Ministries of Foreign Affairs, Public Security, Finance, Health and Wildlife and Forest Resources Conservation. Although the secretariat regulating non-governmental organizations has been transferred to the Ministry of Foreign Affairs, the Ministry of Defence controls at least 31 other agencies, dealing with issues ranging from the media to immigration. In August 2021, for example, a Major-General was appointed as Commissioner of Essential Services to oversee implementation of the emergency regulations to ensure food security and price controls. In December 2021, army Commander-General Shavendra Silva was appointed to implement the President’s “green agriculture operative centre” to promote and distribute organic fertilizer.

16. The President continued to renew Gazette notifications under section 12 of the public security ordinance, which “authorizes recourse to the armed forces in circumstances where the performance of police functions requires to be strengthened”.<sup>19</sup> Such orders continue the militarized approach to law enforcement and expand the role of the military in policing functions. Reports indicate a disproportionately high number of military checkpoints in the Northern Province and complaints of discriminatory treatment or harassment during security checks, particularly for women.

<sup>15</sup> Global Alliance of National Human Rights Institutions, “Report and recommendations of the virtual session of the Sub-Committee on Accreditation, 18–29 October 2021”, page 31.

<sup>16</sup> [A/HRC/46/20](#), paras. 26–27.

<sup>17</sup> Resolution 25/1.

<sup>18</sup> [A/HRC/43/19](#), para. 33, and [A/HRC/46/20](#), paras. 20–23.

<sup>19</sup> See, for example, Extraordinary Gazette No. 2259/2 of 20 December 2021.

17. The release of land occupied by the military, particularly in the Northern and Eastern Provinces, has been an important element of peacebuilding and reconciliation. The Government reports that the total amount of private land released by the armed forces between 2009 and 31 October 2021 is 2,601,796 acres or 92.42 per cent of the land they had taken originally, with a further 53 acres proposed for release. However, a renewed trend of land disputes, related to the conservation of Buddhist heritage or forestry protection, has created new tensions with minority communities, particularly in the Eastern Province given the diverse population and heritage of the region.

18. Since June 2020, a task force for archaeological heritage management in the Eastern Province, headed by the Defence Secretary, has been working with the Archaeological Department, the Mahaweli Authority, the Forest Department, the Wildlife Department, the police, the military and Buddhist clergy to identify archaeological monuments and facilitate the repair or construction of Buddhist sites. The Government has also imposed restrictions on land use in these areas on the basis of environmental and forest preservation. Minority communities fear the programme is being used to change the demographic landscape of the region. That could impact livelihoods and increase the potential for new conflicts.

19. OHCHR has recorded reports of 45 disputes over land, involving State actors and minorities, between January and November 2021. For instance, around 340.33 acres of land in 11 locations in the Kuchchaveli Division of Trincomalee District was leased out to the trustees of seven Buddhist temples for 30 years. In September 2020, the media reported that the Archaeological Department had taken over 358 acres of land in Thennamaravadi, Trincomalee district, which are claimed by Tamil farmers, after they were identified as archaeological sites.

### **C. Increasing majoritarianism and the effects on reconciliation and peacebuilding**

20. In his address to the seventy-sixth session of the General Assembly in September 2021, the President affirmed the Government's firm intention to build a prosperous, stable and secure future for all Sri Lankans, regardless of ethnicity, religion or gender. However, actions by the Government during the past year have reinforced the nexus between Sinhalese nationalism, Buddhism and the State, increasing the sense of marginalization and anxiety among Tamil, Muslim and Christian minority communities, and undermining the prospects for reconciliation.

21. In October 2021, the President appointed a presidential task force, with a mandate to formulate a framework and make recommendations for the implementation of the concept of "One country, one law" promised in his election manifesto and present a final report by 28 February 2022. Controversially, he appointed as its chair a Buddhist monk Gnanasara Thera, the leader of the Bodu Bala Sena, a Buddhist extremist organization known for its anti-Muslim rhetoric and hate speech. Mr. Thera has been accused of provoking anti-Muslim violence in the past, for instance the riots in Aluthgama in 2014 and Digana in 2018. In August 2018, he was sentenced to six years' imprisonment for contempt of court for a separate incident, but received a presidential pardon in May 2019.

22. The Constitution already recognizes Sri Lanka as a unitary State (article 2) and the equality of citizens before the law (article 12), but the concept of "One country, one law" may have implications for the devolution of political authority and law-making powers to the provincial level. It may also relate to sets of customary personal laws that have allowed different communities to retain specific practices, preserving the diversity of multiple identities in Sri Lankan society. Today these are defined as the Thesawalamai Law that applies to Tamils in the Northern Province, the Kandyan law that is an elective matrimonial and inheritance framework for Kandy Sinhalese, and the Muslim personal law. All three regimes deal primarily with issues of property, including land, inheritance, including interstate succession, and marriage and divorce, but also have important identity-based symbolic value.

23. Separately, the Government informed OHCHR that an Advisory Committee on Muslim law reform, appointed by the Minister of Justice, had made recommendations for the

amendment of the Muslim Marriage and Divorce Act of 1951, the General Marriages Ordinance and the Civil Procedure Code, to bring them into conformity with prevailing international standards. The legal draftsman is now preparing the amendments. Reportedly, the amendments will, *inter alia*, introduce a minimum age of 18 for marriage for Muslims, introduce minimum educational qualifications for members of Qazi courts and the possibility of female members, and give Muslims the choice of registering their marriages under the General Law. The High Commissioner welcomes any progressive reforms that will strengthen the rights of women and girls in line with international human rights standards and encourages maximum consultation with the Muslim community, in particular women.

24. In 2021, new Buddhist temples, statues and shrines were erected at symbolic locations with the patronage of military and government officials. On 18 January 2021, the State Minister for National Heritage and military officers inaugurated a statue of the Buddha that had allegedly been erected on the site of an ancient Hindu temple in Mullaithivu district, despite a court order forbidding it.<sup>20</sup> In November 2021, a new monumental stupa in Anuradhapura, built with the support of the military, was consecrated as a tribute to “war heroes”, reinforcing narratives that depict the conflict in ethno-religious terms.<sup>21</sup> The appointment in November 2021 of a Buddhist monk as Chancellor of the University of Colombo, the country’s premier academic institution, prompted protests by teachers and students as undermining secularism and academic independence.

25. Several government figures made policy proposals that would disproportionately affect the Muslim community. In February 2021, the Government revoked the forced cremation policy for those who had died from COVID-19. However, the distant location of the burial sites poses practical challenges for grieving families as they must travel a long distance to visit or perform rituals. In March 2021, the Minister for Public Security proposed a ban on burqas and niqabs, stating that such veils were signs of “religious extremism” which affected national security.<sup>22</sup> The Government has clarified that the proposed ban on face coverings that hinder identification would apply to all communities and both sexes. In October 2021, the Cabinet approved a proposal to ban cattle-slaughtering in the country (an activity mostly conducted by Muslim butchers). Although these proposals have not been advanced or implemented, they have contributed to a climate of anti-Muslim rhetoric and added to the feelings of alienation of the Muslim community.

26. Incidents of attacks targeting Christian evangelical and non-denominational churches have continued to be reported, including intimidation or harassment of pastors by public officials or members of other creeds, and disturbance at places of worship.<sup>23</sup>

#### **D. Intimidation and threats to civil society and victims**

27. The pattern of surveillance and harassment of civil society organizations, human rights defenders and victims highlighted in previous reports has continued, particularly for those in the north and east of the country. OHCHR continues to receive allegations of intimidation, monitoring and surveillance by the security services of human rights defenders, civil society representatives, journalists and families of the disappeared. The Government stresses that all such complaints should be submitted to the relevant national mechanisms.

28. Civil society organizations and activists are regularly visited in their offices or homes, or called in by the police for “inquiries” and questioned about the bank details of staff and donors, their foreign contacts and travel history, or the passwords of their social media accounts. For instance, in December 2021, the Terrorist Investigation Division of the police called in the staff of at least four organizations in the Northern Province for inquiries and questioned them for several hours. They were requested to submit all the information on their

<sup>20</sup> See Uwin Lugoda, “Antiquities excavation in North, East: work commences on 10 sites”, *The Morning*, 24 January 2021.

<sup>21</sup> See <https://www.army.lk/news/gigantic-%E2%80%98sanda-hiru-seya%E2%80%99-offered-maha-sangha-immortalizing-memories-%E2%80%98ranaviru%E2%80%99-sacrifices>.

<sup>22</sup> See Dinitha Rathnayake, “Niqab included in proposed ban”, *The Morning*, 15 March 2021.

<sup>23</sup> A faith-based organization reported 77 incidents directed against freedom of religion in 2021.

funding bodies in the past and details of the beneficiaries. The Government asserts that such scrutiny is necessary to combat money-laundering and the financing of terrorism.

29. A range of restrictions have affected the operating space for civil society organizations, particularly in the north and east of the country. Organizations report being unable to work without surveillance or scrutiny and having to inform and get approval from the district secretariat for any activity. Some areas of work that do not involve material service delivery, such as psychosocial support, are particularly discouraged. Civil society organizations informed OHCHR that banks often require them to get approval from their respective district secretariat before releasing funds, placing administrative hurdles in their way.

30. The High Commissioner is concerned by the Government's recent public responses to human rights advocacy by well-known and respected civil society representatives and its conflation with propaganda by the Liberation Tigers of Tamil Eelam (LTTE). Similar interventions in the past have had a chilling effect on Sri Lankan human rights defenders, including in their interaction with the Human Rights Council.

31. The High Commissioner notes as a positive development the transfer of the National Secretariat for Non-governmental Organizations, which regulates civil society organizations, from the Ministry of Defence to the Ministry of Foreign Affairs in November 2021, and hopes that this will lead to a fundamental change in the current securitized approach and promote a more enabling environment for civil society.<sup>24</sup> The Government reports that it has begun consultations on a proposed revision of the Voluntary Social Services (Registration and Supervision) Act No. 31 of 1980.

32. OHCHR has received a number of reports stating that victim groups continue to face harassment and intimidation from the authorities, including multiple visits from intelligence and police officers inquiring about plans for protests or commemorations, or their past links with LTTE. In addition, rehabilitated LTTE members and their families or anyone considered to have had any link to LTTE during the conflict are targets of constant surveillance. The High Commissioner is concerned about the gender dimension of these policies in a context where many of those advocating for justice are women survivors or family members and face additional vulnerability in their dealings with the security forces and the authorities. Civil society organizations and victims' groups, especially those that are from the grassroots and women-led, should be treated as vital partners in peacebuilding and must be allowed to mobilize, advocate and carry out activities related to peacebuilding and reconciliation.

33. There have also been cases in which victims' groups, civil society organizations and politicians were prevented by the authorities from holding peaceful events and commemorative activities. In May 2021, police obtained court injunctions against 27 individuals to prevent them from organizing a commemoration of the war in Mullivaikkal. Although the court amended the restraining order the next day, lockdown was imposed in Mullivaikkal and surrounding areas and the military blocked road access. In September 2021, a court issued a restraining order on the leaders of the association of the families of the disappeared to prevent them participating in rallies and meetings. In December 2021, the police obtained a court injunction to stop an event organized in Kandy by a local human rights organization to celebrate Human Rights Day, stating that it might cause "disunity" among different ethnic groups.

## **E. Custodial deaths, torture and other ill-treatment**

34. The High Commissioner welcomes the steps that have been taken to reduce prison overcrowding in the context of the COVID-19 pandemic, particularly the release of pretrial detainees on bail. As a result, the Government reports that the prison population shrank from 32,000 in October 2020 to 18,903 on 17 February 2022. The Judicial Services Commission has issued directives to judges to increase the use of bail and the Attorney General has also

<sup>24</sup> Gazette No. 2254/30 of 17 November 2021.

issued directions to the police to reduce the incarceration of people arrested for possession of user quantities of drugs.

35. The High Commissioner remains seriously concerned about the repeated incidents of deaths in custody and alleged armed encounters with police. For example, on 6 June Mohamed Ali Khan, who had been arrested for an alleged quarantine violation, died in police custody in Wattalpola, Panadura, near Colombo. Police reported that he jumped from a moving police vehicle; however, his family alleged that he was beaten and killed by police. Two suspects, Chandran Vidushan and Ramzan, died within hours of their arrests in Batticaloa in June 2021 and in Mannar in October 2021 respectively, reportedly due to drug-related causes. On 18 July 2021, a gang leader, Lalith Wasantha Pinto, was killed by the Special Task Force, reportedly when resisting arrest. On 11 January 2022, Rajapaksa Mudiyansele Menike died after falling out of a window on the fifth floor of the Criminal Investigations Department building in Fort, Colombo, where she was being held over fraud allegations; according to the police she committed suicide.

36. The High Commissioner is alarmed to note that on at least two occasions, the Bar Association and private lawyers notified the authorities that detainees' lives were at risk. For instance, on November 16, police killed Hewa Lunuwilage Lasantha in Kalutara while he was being escorted to recover firearms, allegedly used in another crime; he reportedly attacked the police officers. A day before, Lasantha's lawyer had contacted the Bar Association to report that his client's life was in danger. The Bar Association in its statement confirmed that it had warned the Inspector-General of Police and the Human Rights Commission about the risk of an imminent killing and stated that the incident "has the hallmarks of an extrajudicial killing".<sup>25</sup> In similar incidents, Malon Mabula and Tharaka Perera Wijesekera were shot dead on 11 and 12 May in Nawagamuwa and Meengawa (Western Province) respectively, while they were being escorted out of detention to assist in an investigation.

37. The Government informed OHCHR that nine custodial deaths occurred between 1 January 2021 and 30 November 2021, that two police officers were charged and seven police officers faced disciplinary actions in relation to custodial deaths, but it is not clear in which cases. The High Commissioner believes that in addition to attributing individual responsibility for the crimes and ensuring reparations for the families, these cases warrant independent investigation to identify patterns and any command responsibility within the police service.

38. Several other allegations of ill-treatment and torture by the police were also reported in 2021. The family of Chandran Vidushan, who died in police custody on 3 June, reportedly of a drug overdose, alleged that the police had tied him to a tree and beaten him severely with poles before taking him away. Cases have also been reported of ill-treatment and torture by military personnel. For instance, on 22 December 2021, a fisherman alleged that he was severely beaten by Sri Lankan military officers in Jaffna. On 27 November, a journalist was reportedly beaten by Sri Lankan military personnel while he was photographing the roadside name board at Mullivaikkal. Lawyers for detainees under the Prevention of Terrorism Act have also reported torture and ill-treatment during interrogation by the Terrorist Investigation Division of the police in Joseph Camp, Vavuniya.

39. It was widely reported that in September 2021, the State Minister for Prison Management and Prisoner Rehabilitation, Lohan Ratwatte, forcibly entered a prison in Colombo with a group of friends to show them the gallows and later a prison in Anuradhapura, where he allegedly forced two Tamils detained under the Prevention of Terrorism Act to kneel at gunpoint and threatened to kill them. Mr. Ratwatte resigned from the prisons portfolio, but retains his position as State Minister for Gems and Jewellery.

40. In what the Government highlights as a torture prevention measure, the Criminal Procedure Code was amended, requiring magistrates to visit police stations at least once a month to personally see suspects in police custody to check on whether they have been subject to torture or ill-treatment during or after arrest. Concerns have been expressed that

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<sup>25</sup> See statement by the Bar Association of Sri Lanka, 26 November 2021, available from <https://basl.lk/statement-killing-of-a-suspect-in-police-custody/>.



this alternative inspection regime will be difficult to implement in practice, owing to limited time and capacity. Meanwhile, there has been no further progress towards the establishment and operationalization of a national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The High Commissioner recalls the comprehensive observations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2016 and urges the Government to take concrete steps to implement his recommendations.<sup>26</sup>

## F. Prevention of Terrorism Act

41. On 10 February 2022, the Prevention of Terrorism Act amendment bill was presented to the parliament. The Government states that these are initial steps towards the promulgation of more comprehensive legislation. The High Commissioner recognizes the importance of this initial step and notes the proposed amendments, such as the increase of magistrates' powers to visit places of detention, the speeding-up of trials and the repeal of section 14, which imposes serious limitations on publications. However, other parts of the proposed amendments do not comply fully with the country's international human rights obligations and leave intact some of the most problematic provisions of the Act, which have led to alleged human rights violations, including arbitrary detention and torture. They include an overly broad and vague definition of terrorism, which may result in a discriminatory or arbitrary application of the law and the admissibility of confessions under the Act made to law enforcement officials without a lawyer present, often used as primary evidence in courts in cases under the Act; lengthy administrative and pretrial detention of up to 12 months; and provisions for the immunity from prosecution of officers, none of which are in compliance with international human rights standards.

42. The High Commissioner urges the Government and the parliament to give full consideration to the analysis and recommendations made by United Nations human rights mechanisms over many years regarding the Prevention of Terrorism Act, in particular the five key benchmarks identified by seven special procedure mandate holders in their communication of 9 December 2021, which they consider as "necessary prerequisites" to ensure that the Act is amended so as to be compliant with international legal obligations.<sup>27</sup>

43. Meanwhile, the Government continues to detain, investigate and prosecute individuals under the Prevention of Terrorism Act. The High Commissioner reiterates her call for the Government to apply a moratorium on the use of the Act until it is replaced by legislation that fully complies with the country's international human rights obligations. According to government data, as of 2 December 2021, 333 people remained in detention under the Act, of whom 16 had been convicted, 11 were under appeal and the remaining 306 were detained as suspects. Since 24 June 2021, 81 detainees have been released. Among prominent cases, Ahnaf Jazeem, detained for over 18 months under the Act, was released on bail on 15 December 2021. Hejaaz Hizbullah, a lawyer who had been detained under the Act since 14 April 2020, was granted bail by the High Court on 7 February 2022.

44. In June 2021, 16 prisoners nearing the end of their sentences under the Act were released on a presidential pardon. On 24 August 2021, the President appointed a three-member Advisory Board, headed by a retired Chief Justice, to which detainees or their representatives could apply for review.<sup>28</sup>

45. Reports indicate that at least 70 people have been arrested under the Prevention of Terrorism Act for sharing social media posts commemorating victims of the war that included LTTE images or Tamil nationalist iconography. On 18 May, the police arrested 10 people near Batticaloa under the Act for organizing a memorial event; they were finally released on bail on 8 December. A journalist, Murugupillai Kokulathasan, has been detained for 15 months since November 2020 in relation to photos of the LTTE leader appearing on his social

<sup>26</sup> A/HRC/34/54/Add.2, paras. 115–122.

<sup>27</sup> See joint communication OL LKA 7/2021 of 9 December 2021.

<sup>28</sup> The Advisory Board is envisaged in section 13 of the Act, but was never established.

media. The Government shared with OHCHR a directive issued by the Inspector-General of Police, dated 23 October 2021, providing guidance on restricting the use of the Act and exercising greater discretion in evaluating cases such as the possession of pictures.

46. In March 2021, new deradicalization regulations were issued that permit arbitrary administrative detention of individuals for up to two years, without any legal proceedings, for the purposes of rehabilitation in relation to violent extremism.<sup>29</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and six other special procedure mandate holders warned that the new regulations could jeopardize the rights and liberties of persons who might be detained arbitrarily, especially religious and ethnic minorities, and might curtail political dissent with no effective due process guarantees.<sup>30</sup> Civil society organizations have obtained a stay order on the implementation of the regulations, while the Supreme Court considers a fundamental rights petition against them.

### III. Progress in reconciliation and accountability

#### A. Transitional justice mechanisms

47. When the Government decided to withdraw its co-sponsorship of Human Rights Council resolution 40/1 and related resolutions 34/1 and 30/1, it expressed its intention to pursue an “inclusive, domestically designed and executed reconciliation and accountability process”.<sup>31</sup> Two years on, the Government has yet to come forward with any credible new road map on transitional justice towards accountability and reconciliation. A commission of inquiry, appointed by the President in November 2020 “to review the reports of previous Sri Lankan commissions of inquiry, assess the status of implementation of their recommendations, and propose deliverable measures to implement them in line with the new Government’s policy”, submitted a second interim report to the President in February 2022.

48. The two transitional justice structures established by the previous Government, the Office on Missing Persons and the Office for Reparations, continue to exist. However, they have struggled to achieve the confidence of victims, particularly following changes in their membership.

49. In December 2021 a new Chair and Commissioners were appointed to the Office on Missing Persons. According to the Government, the Office has been working on verification of the 6,025 complaints it received in the first phase of its work between 2000 and 2020, and has shared 6,025 files with the relevant authorities to obtain additional information. The Office determined that 4,200 complaints required further documentation and notified 3,230 families to provide the further details needed to process their cases. The Government reported that in November 2021 the Office had established four panels of inquiry to conduct investigations and to enable it to issue certificates of absence or certificates of death to the families concerned. OHCHR is concerned that the verification process seems to be aimed at reducing the case load and closing files, rather than a comprehensive approach to establishing the truth and ensuring justice and redress for the families.

50. The High Commissioner is gravely concerned about the continuing precarious situation of the families of the disappeared, the majority of whom are represented by women. In addition to their suffering and anguish in not knowing the fate and whereabouts of their loved ones, they continue to struggle with the desperate economic and social consequences that this has had on their lives. COVID-19 has increased their economic hardship and their isolation. In that context, the harassment and surveillance by security agencies and the obstruction of their activities only compound the injustices they face. The families of the

<sup>29</sup> See Gazette No. 2218/68 of 12 March 2021, available from [http://www.documents.gov.lk/files/egz/2021/3/2218-68\\_E.pdf](http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf).

<sup>30</sup> See communication OL LKA 3/2021 of 9 August 2021, available from <https://spcommreports.ohchr.org/LatestReports/CommunicationSent?page=26>.

<sup>31</sup> Human Rights Council, forty-third session, high-level segment, statement by the Minister for Foreign Relations, Skills Development, Employment and Labour Relations, 26 February 2020.

disappeared have a right to truth, justice, reparation and guarantees of non-recurrence, and the High Commissioner urges the Government to acknowledge their suffering, urgently determine the fate or whereabouts of victims, provide reparations and bring the perpetrators to justice.

51. In 2021, the Office for Reparations was allocated SLRs 800 million (\$3.96 million) for the payment of processed claims, of which SLRs 400 million was utilized according to the Office for Reparations. Unfortunately, the data available to OHCHR regarding compensation payments is not sufficiently disaggregated and it is unclear which payments correspond to human rights violations. The reparations policy was tabled in the parliament on 9 February 2021. The Government informed OHCHR that the Office for Reparations was developing pilot programmes for livelihood and psychosocial support.

52. The Office for National Unity and Reconciliation has continued to conduct peace and reconciliation workshops and activities throughout the country. It is reported to be developing a strategic road map for national healing, peacebuilding and reconciliation through a consultation process with civil society and political parties. The High Commissioner stresses that reconciliation will only be achieved when it is supported by comprehensive transitional justice measures and recalls the report of the very meaningful national consultations already held by the Consultation Task Force on Reconciliation Measures in 2017 that remain an important guide to the expectations of victims and other stakeholders.<sup>32</sup>

## **B. Impunity in emblematic cases**

53. The High Commissioner is seriously concerned at the continued lack of progress and even steps backward in several emblematic human rights cases before the courts. In August 2021, the Attorney General's Department decided not to proceed with charges against former Navy Commander Wasantha Karannagoda in the case of the enforced disappearances of 11 individuals in 2008 and 2009. Mr. Karannagoda had filed a writ with the Court of Appeal and secured a stay order as interim relief on the basis that he had been wrongly implicated. The families of the victims challenged the decision before the Court of Appeal and hearings are expected in April 2022. While the hearings on the case concerning 14 other navy personnel are set to continue, in December 2021 Mr. Karannagoda was appointed Governor of the North Western Province. In January 2021, the Attorney General informed the Batticaloa High Court that he would not proceed with the prosecution of five individuals accused in another emblematic case, the murder of Member of Parliament Joseph Pararajasingham at a Christmas mass in December 2005.

54. On 12 January 2022, the Colombo High Court delivered judgments in the case of three officers charged on 33 counts, including murder and conspiracy to commit murder, for the incidents that resulted in the death of 27 inmates during the Welikada prison riot on 9 November 2012.<sup>33</sup> The first accused, Inspector of Police, Neomal Rangajeewa, of the Narcotics Bureau was acquitted of all charges. The second accused, former Superintendent of Welikada prison, Lamahewage Emil Ranjan, was found guilty and given a death sentence. The third accused, Indika Sampath, an officer attached to the prisons intelligence unit, has absconded and will be tried in absentia. No action appears to have been taken against other members of the security forces involved in the incident.

55. The victims of the 2019 Easter Sunday bombings and religious leaders continue to call urgently for truth, justice, reparation for victims and a full account of the circumstances that permitted those attacks, in particular the role of the security establishment. The full results of the Presidential commission of inquiry into the attacks have not been published, but it is understood that it has recommended that criminal charges be laid against key officials. On 4 October 2021, charges were laid against 25 suspects in the bombings and the High Court case is pending. Charges have been filed in the High Courts of Colombo, Kegalle and Puttalam in eight other cases. The church community was recently disturbed by a serious

<sup>32</sup> See <http://war-victims-map.org/wp-content/uploads/2017/02/CTF-Final-Report-Volume-I-Nov-16.pdf>.

<sup>33</sup> [A/HRC/25/23](#), para. 24.

incident on 11 January 2022 at St Anthony's Church, Borella, when an unexploded hand grenade was discovered in the church, days before an interfaith event was due to be held as part of the campaign for justice. The police made initial arrests of some people present at the church, but the investigation to date has been criticized as ineffectual and not comprehensive.

56. While hearings continue to be scheduled in several other emblematic cases highlighted in previous reports, the High Commissioner is concerned that these cases continue to linger before the courts a decade or more after the original indictments.<sup>34</sup> The Attorney General's recent use of his discretion to withdraw long-standing cases raises serious concerns about the independence of his office and the Government's commitment to pursuing accountability. The High Commissioner is deeply disturbed by the general lack of progress over the past years in most cases and the active reversal of others, which continues to indicate the inability and unwillingness of the Government to prosecute and punish perpetrators of crimes when State agents are the alleged perpetrators.

#### **IV. Implementation of other aspects of Human Rights Council resolution 46/1**

57. In the absence of progress towards accountability by domestic mechanisms, in resolution 46/1, the Human Rights Council decided "to strengthen in this regard the capacity of the Office of the High Commissioner to collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law in Sri Lanka, to advocate for victims and survivors, and to support relevant judicial and other proceedings, including in Member States, with competent jurisdiction". This accountability mandate presents an important opportunity for OHCHR, members of the Human Rights Council and the international community to support victims and pursue accountability for serious international crimes committed in Sri Lanka, through complementary strategies.

58. OHCHR has begun implementing those aspects of resolution 46/1 with a start-up team that has been undertaking preparatory work since April 2021. It has now recruited most of the staff it needs, who include specialists on international criminal and humanitarian law, human rights, sexual and gender-based violence, victims' rights and information management. However the start date of different members of the team will be further constrained by the budget allocated for 2022.

59. OHCHR has published online introductory material on the mandate set out in resolution 46/1, including questions and answers translated into the Sinhala and Tamil languages.<sup>35</sup>

60. OHCHR has developed an information and evidence repository using e-discovery software and has identified a large number of individual information items already held by the United Nations. The team will further analyse that information from a criminal justice perspective, with a view to identifying gaps and priorities for further information collection, incorporating a victim-centred approach. The information held and gathered relates to alleged violations and abuses by both State and non-State actors.

61. In her previous report, the High Commissioner recommended that, among a range of measures, Member States explore possible targeted sanctions against credibly alleged perpetrators of grave human rights violations and abuses. On 10 December 2021, the Government of the United States of America announced that two Sri Lankan military officers implicated in grave violations would be designated under section 7031 (c) of the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2021 and be ineligible for entry to that country.

<sup>34</sup> See, for example, [A/HRC/43/19](#), para. 21, and [A/HRC/46/20](#), paras. 49–50.

<sup>35</sup> Available from <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Sri-Lanka-accountability-project.aspx>.

62. While the High Commissioner will report on further progress on this subject in September 2022, it is already clear that the scale of the work given to OHCHR by the Council in resolution 46/1 is substantial. Full implementation of the mandate will also require effective cooperation by Member States, alongside adequate human and financial resources.

## V. Conclusions

63. The High Commissioner remains concerned about the lack of accountability for past human rights violations and recognition of victims' rights. In the last two years, the independence of the judiciary, of the Human Rights Commission and of other key institutions has been eroded and the democratic space, including for human rights advocacy, constricted. There has been a further drift towards militarization and an emphasis on Sinhala nationalism and Buddhism in State institutions has become more visible, increasing the marginalization and uncertainty of minority communities and undermining reconciliation. The forthcoming drafting process for the new constitution will be of critical importance for the independence of key institutions and issues of devolution and human rights should be monitored closely. The situation has been affected by the deep impact of the COVID-19 pandemic and the economic crisis, which has affected the realization of economic, social and cultural rights. The Government's heavy-handed response to criticism and dissent has undermined the civic space. There is also a risk that the economic downturn will further fuel the prevailing marginalization of and discrimination against minority communities.

64. The High Commissioner recognizes the recent signs of renewed openness of the Government in engaging with OHCHR and the initial steps taken to initiate some reforms, including changes to the Prevention of Terrorism Act. She urges the Government to go much further and deeper with the legal, institutional and security sector reforms that are necessary to comply with the country's international human rights obligations and prevent the recurrence of grave violations. OHCHR continues to stand ready to assist Sri Lanka on this path. The High Commissioner is deeply concerned by the continued obstruction and setbacks in most of the emblematic human rights cases that have reached the courts and the harassment of victims and families of the disappeared campaigning for truth and justice, or seeking to commemorate their loved ones. While the Government emphasizes practical measures of reparation and development as the basis for reconciliation, the High Commissioner stresses that this will not be achieved without a comprehensive approach to ensure truth, justice, redress for victims and institutional reforms that guarantee non-recurrence.

65. The Sri Lankan State, including successive governments, has consistently failed to prosecute international crimes and serious human rights violations and pursue an effective transitional justice process. The current Government has not only continued to demonstrate its unwillingness to recognize serious international crimes and pursue accountability but has also incorporated some military officials who may have been implicated in alleged war crimes into the highest levels of government, reinforcing a narrative of impunity. In the absence of tangible results that ensure justice for victims, the Human Rights Council should continue to pursue international strategies for accountability.

66. The Human Rights Council and its special procedures, the treaty bodies, international and national civil society organizations and the Government's own domestic commission, the Lessons Learnt and Reconciliation Commission have put forward many concrete recommendations to the Government for improving the human rights situation and addressing the legacy of the past. Those recommendations should be used as benchmarks by the Government, as well as the international community and the United Nations in advancing reconciliation, accountability and human rights.<sup>36</sup> OHCHR stands ready to support Sri Lanka and provide technical assistance in this regard. Sri Lanka will only achieve sustainable development and peace and lasting reconciliation if it ensures that the civic space and independent and inclusive institutions are protected and puts an end to systemic impunity.

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<sup>36</sup> See joint communication OL LKA 7/2021 of 9 December 2021.

## VI. Recommendations

67. The High Commissioner reiterates the recommendations made to the Government of Sri Lanka in paragraph 60 of her report to the Council in 2021.<sup>37</sup> She further recommends that the Government:

(a) Ensure that the drafting process for a new constitution is based on broad and inclusive consultations, entrenches the independence of the judiciary and key national institutions, such as the Human Rights Commission, and advances the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population;

(b) Take into account the recommendations made by various United Nations human rights mechanisms on the protection of human rights in the new constitution and the guarantees needed for effective, independent and inclusive national institutions;

(c) Avoid reliance on the military to run civilian affairs and take steps to reduce the influence of the military on civilian life;

(d) Ensure that the Attorney General's Department is able to operate independently in practice and pursue prosecutions against any suspected perpetrators of human rights violations and serious violations of international humanitarian law, irrespective of military rank or official or other position of power;

(e) Take a comprehensive approach to determining the fate and whereabouts of all the disappeared, including immediately opening military archives relevant to cases of enforced disappearance, independently investigate all those suspected of criminal responsibility for enforced disappearances and provide comprehensive reparation to the families of the disappeared;<sup>38</sup>

(f) Publish the findings of the commission of inquiry into the 2019 Easter Sunday bombings to ensure transparency for victims and pursue further independent investigations into the involvement of any other State or non-State actors;

(g) Undertake more fundamental reforms to the Prevention of Terrorism Act to ensure it fully complies with the country's international law obligations. In the meantime, establish a moratorium on the use of the Prevention of Terrorism Act until it is replaced by legislation that fully complies with international human rights norms and standards;<sup>39</sup>

(h) Expedite the review of all detainees held under the Prevention of Terrorism Act, release everyone detained without a sufficient legal and evidentiary basis and ensure that counter-terrorism measures do not undermine the democratic and civic space;

(i) Ensure inclusive and broad-based consultation in the drafting and amendment of key laws, including the Prevention of Terrorism Act, the Voluntary Social Services (Registration and Supervision) Act, the Muslim Marriage and Divorce Act and other personal laws;

(j) Order all security agencies to immediately end all forms of surveillance and harassment of and reprisals against human rights defenders, social actors and victims of human rights violations and their families;

(k) Adjudicate land disputes in ways that are transparent, consultative, impartial and non-discriminatory, and ensure interfaith dialogue about the erection of religious sites.

<sup>37</sup> A/HRC/46/20.

<sup>38</sup> A/HRC/33/51/Add.2, paras. 77–85.

<sup>39</sup> See joint communication OL LKA 7/2021 of 9 December 2021.

68. The High Commissioner reiterates the recommendations she made in paragraph 61 of her report to the Council and Member States in 2021 and further recommends that they:<sup>40</sup>

(a) Cooperate with victims and their representatives to investigate and prosecute international crimes committed by all parties in Sri Lanka through judicial proceedings in domestic jurisdictions, including under accepted principles of extraterritorial or universal jurisdictions, and continue to explore possible targeted sanctions against credibly alleged perpetrators of grave human rights violations and abuses;

(b) Review asylum measures with respect to Sri Lankan nationals to protect those facing reprisals and refrain from any refoulement in cases that present a real risk of torture or other serious human rights violations;

(c) Cooperate with OHCHR in its discharge of accountability-related work under Human Rights Council resolution 46/1 and provide it with adequate human and financial resources to enable it to effectively deliver the full mandate given under the resolution.

69. The High Commissioner recommends that United Nations entities:

(a) Scale up their protection work to prevent threats against and increase support for civil society organizations and firmly defend civic space;

(b) Ensure a strict, coherent and expanded application of human rights due diligence and its principles in engagement with the security forces and all bodies under the purview of the Ministry of Defence or the Ministry of Public Security, and review their engagement with, and advice from, structures whose independence has been undermined, such as the Human Rights Commission;

(c) Advocate with the Government of Sri Lanka to address the concerns of the Global Alliance on National Human Rights Institutions to ensure the independence of the Human Rights Commission;

(d) While fully understanding force generation challenges in the context of United Nations peacekeeping, given the current circumstances of the Human Rights Commission of Sri Lanka, review the contributions of Sri Lanka to United Nations peacekeeping operations and the systems for screening Sri Lankan personnel.

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<sup>40</sup> [A/HRC/46/20](#).