



SPOTLIGHT ON SRI LANKA

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Sri Lanka

Regime type: Mid-range performing democracy since 1989 except for the period between 2010 and 2014 when the country was classified as a hybrid regime.

State of emergency: No state of emergency has been declared.

Covid-19 democracy and human rights impact summary: Sri Lanka's pandemic experience to date has highlighted existing governance shortcomings and patterns in the country. The Government's response to the pandemic has been criticized as overly militaristic, with President Gotabaya Rajapaksa appointing the army chief General Shavendra Silva (also accused of gross human rights violations) to lead the National Operation Centre for Prevention of Covid-19 Outbreak. Restrictions on civil rights like freedom of association continue and many criticize the lack of legal grounds for increasingly restrictive measures taken by the state. Most recently in August 2021 the President imposed new emergency-style measures without a clear constitutional or legal basis. There is a real fear that these measures will remain in place long after the end of the crisis justifying them at present, allowing the Government to further erode democratic norms and institutions.

Quarantine regulations continue to be abused by authorities to thwart freedom of expression and assembly, and in July 2021 many activists were arrested during protests carried out across the country and forcibly taken to quarantine facilities, despite being granted bail.¹

CREEPING MILITARIZATION

On 20 March 2020, following detection of the first case of infection in late January, the Government (in power since President Rajapaksa's victory in presidential elections in mid-November 2019), declared a national lockdown, which remained in force on and off until late June 2020. From the start, Rajapaksa placed the emphasis firmly on law and order—within 2 months, over 66,000 civilians had been arrested for alleged lockdown violations.

In line with this emphasis, moreover, the President gave the country's military a leading role in that response: a role that many analysts view as part and parcel of the creeping militarization seen under Rajapaksa's leadership, and that—as a result of the country's near three decades long experience of civil war—is hardly new to many.

Thus, the 40-strong Presidential Task Force and the National Operation Centre for Prevention of Covid-19 Outbreak are both dominated by senior military figures, serving and retired, with the latter headed by Army Commander-in-Chief Shavendra Silva. Whether the military are best suited to steer things in what is, after all, a public health crisis, not a war, remains debatable. Indeed, the potential perils of military involvement in a civilian operation were aptly illustrated in May 2020, when a major pandemic cluster was traced to a naval complex, where cadets had been allowed to go on home leave directly following curfew duty, with no checks or testing. And amid all this military involvement, moreover, the extent to which the country's highly capable and well-developed medical services have had a real say on key pandemic-related issues remains unclear.

Statistics regarding pandemic infections and mortalities have remained a subject of rumbling controversy. Allegations that the authorities have consistently under-reported the actual numbers—for example, by keeping testing, and thus reported infection, levels artificially low—came to a head in August 2021. The then Health Minister Pavithra Wanniarachchi, notorious for having publicly endorsed sorcery and magic potions to battle the virus, was replaced following allegations of data manipulation on the back of revelations of significant discrepancies between official statistics and actual regional data.

One certainty was that, following the New Year celebrations in spring 2021, the country experienced a rapid upsurge in infections from the Delta variant. Although less dramatic than parallel developments in, for example, neighbouring India, the upsurge left health services, especially hospitals, struggling to cope. In terms of an official response, what followed was months of partial social and movement-related restrictions, often delivered confusingly and at short notice.

In August 2021, a 14-day national lockdown was announced—subsequently extended until 1 October.—. ‘Success’, in the shape of modestly declining infection rates, was eventually claimed. The claim, however, needs to be weighed against the fact that, by mid-August, Sri Lanka was reportedly registering the world’s fourth highest number of deaths per million inhabitants for countries with a population over 1 million²; and that, 18 months in, the pandemic had infected some 500,000 and claimed over 12,000 lives—official figures that may well significantly underplay the real picture.

REPRESENTATIVE GOVERNMENT

Elections. Over the months following the March 2020 introduction of a national lockdown, parliamentary elections, originally scheduled for 25 April 2020, became something of a political football, kicked around energetically by government, opposition, the judiciary, parliament and civil society alike, arguing about their timing and in particular the constitutional basis for determining this.

In view of pandemic-induced delays in holding elections, and mindful of President Rajapaksa’s clear desire to reschedule them as soon as possible, the lack of public testing led some to conclude that, in an effort to bolster the case for it being safe to go ahead with polls, the authorities were doing everything in their powers to keep the number of reported infections down to minimum—not testing, and therefore not bringing new infections to light, being central to that strategy.

At any rate, Rajapaksa’s determination to press forward was highly evident in efforts to get elections rescheduled for June 2020. Importantly, however, the Constitution requires the Election Commission to approve such decisions and, on the back of reforms initiated by the previous government, the Commission still appeared to be operating relatively independently over such matters as election timing.

Despite heavy pressure from the Government, the Commission blocked the June polls proposal, arguing that more time was needed to finalize election preparations. ‘Covid elections’ were eventually duly held on 6 August, with a high level of attention to safety measures such as face masks and social distancing. To no one’s surprise Rajapaksa’s Sri Lanka Podujana Peramuna (SLPP) party won by a landslide, securing 145 out of a total 225 seats, which together with those of its smaller allies delivered the two-thirds majority required to enact constitutional changes. As expected too, the Rajapaksa’s older brother and ex-President, Mahinda Rajapaksa, was installed as Prime Minister. In electoral terms, little has changed since then, with the next important poll being Provincial Council elections: in March 2021, the Government announced that these would be postponed to an as yet indefinite date before the year’s end.

FUNDAMENTAL RIGHTS

Even before the start of the pandemic, there were reports of media intimidation, security forces questioning civil society activists—notably in the majority-Tamil north of the country and the multi-ethnic east—arbitrary arrests and detentions, as well as instances of ethnic and religious discrimination.

Freedom of speech. Early on in the national lockdown, the police issued a warning that anyone criticizing either the Government or public officials’ pandemic approach would be arrested. As a result, several people who condemned this move were reportedly arrested, while others were on the receiving end of online intimidation and stigmatization.

Moving into April 2020 and full lockdown, the police then announced their intention to arrest 40 people for spreading 'false information', with media reports indicating that 17 individuals had been arrested by mid-April.

Of particular concern for human rights is the role of security forces across the country, particularly in the north where, for the majority-Tamil population, their heightened presence is highly redolent of not-so-distant wartime experience. Furthermore, the fact that contact tracing is largely carried out by security personnel means that, in many Tamils' perception, their personal integrity is directly threatened. Interviews with activists, moreover, make it clear that an atmosphere of fear has returned as a consequence of both the heightened military presence in the region and the military's frequently intimidatory behaviour.³

Equally concerning from a human rights perspective is the fact that, soon after Gotabaya Rajapaksa's election and in advance of the pandemic, 30 official agencies, including the police and so-called NGO Secretariat (which regulates civil society groups), were placed directly under the Defence Ministry's supervision. The overall picture of tightened official restrictions and increasing intimidation and repression on the ground chimes with a 2020 regional survey by the non-governmental organization (NGO) watchdog Minority Rights Group, which found that the pandemic had served to further restrict what it described as 'an already diminished space for civil society' across the region.⁴

Serious, and serial, human rights abuses under the cover of anti-pandemic efforts and a new anti-drug campaign—including extrajudicial killings, torture and arbitrary detentions—appear to have continued, and if anything escalated, during 2021. Concerns in this regard were voiced by the United Nations High Commissioner for Human Rights, Michelle Bachelet, whose report to the January 2021 UN Human Rights Council meeting highlighted what it termed a 'militarized approach to law and order'.⁵ Furthermore, commenting on the fatal shooting of two men while in police custody, the country's generally cautious Bar Association (BASL) noted that both cases bore 'all the hallmarks of extra-judicial killings'.⁶

And, further to an August 2021 Human Rights Watch report, the regional analyst noted that the police 'seem intent on building on their past record of serious abuses instead of cleaning up their act'.⁷ More widely, BASL has issued forceful condemnations of the police force's selective pandemic-related use of force as an excuse to curtail freedom of expression, notably via the arrest of peaceful protesters and in some instances through their forcible subsequent detention in quarantine centres, irrespective of vaccination status.⁸

Migrant labour. Notably in South Asian countries, such as India and Sri Lanka, migrant labourers have been on the receiving end of discrimination, police violence and a lack of economic support in circumstances where their normal means of sustenance—daily wage labour—has effectively been wiped out by pandemic-related restrictions. In Sri Lanka, the early stages of lockdown rendered this issue readily apparent, with many labourers who had migrated to Colombo over the years stranded without any means of material support. Foreign workers also suffered on the same count, with most of the country's estimated 2,000 Indian migrant workforce still stuck—and under similar conditions—several weeks after national lockdown was introduced. The other side of the coin—large numbers of Sri Lankan migrant labourers in the Middle East and other Asian countries—presents an equally troubling picture. While national authorities have prioritized their safe return, by spring 2021 significant numbers remained abroad, stranded and penniless.

On a related note, a major early October 2020 spike in infections in the Katunayake Free Trade Zone (KFTZ) placed the spotlight on health and safety issues, in particular working conditions in the Brandix garment factory—part of one of the country's largest garment export companies. Simultaneously, a further round of infections was detected among construction workers in Colombo, further highlighting the extent to which the poorest and most economically vulnerable sections of Sri Lankan society continue to bear the pandemic's brunt.

In both cases, moreover, reports of night-time roundups of workers forcibly relocated to temporary quarantine facilities, provided with inedible food and little information on what was happening, underlined the contrast between reality—workers subjected to intimidation and an increased threat of contagion—and official accounts. More widely, while medical experts suggested that the situation in the KFTZ pointed to the likelihood of community pandemic

transmission, the authorities steadfastly continued to insist on a 'Zero Community Transition' ground situation: an insistence eerily similar to the official 'Zero Civilian Casualties' myth propagated during the civil war's final stages.

Minority rights. Religious rights, in particular of Muslims, have emerged as a major issue, not least because a high proportion of Covid-19 mortalities are thought to come from within that community. In March 2020, the World Health Organization (WHO) issued guidelines stating that either burial or cremation were acceptable means of disposing of the bodies of those killed by the virus. Uniquely in the world (other than China), in April 2020 the authorities elected to require that all bodies be disposed of by cremation—chiefly, some suggested, under pressure from sections of the Buddhist community, which held that burying bodies would potentially contaminate groundwater, a view later repeated by the Government's chief epidemiologist. The ructions caused by this decision were far-reaching, not least for Muslims, whose beliefs holds that cremation is a sacrilegious act.

In March 2021, regulations were finally changed to allow for burials. Designated burial sites, however, were located in geographically inaccessible areas. Taken together with latent religio-cultural hostilities between sections of the Sinhala Buddhist majority and Muslim minority communities, the pandemic's capacity to inflame already existing societal tensions remains palpable.

Economic rights. On a macro-economic level, the pandemic continues to prove little short of a financial disaster. While many countries are struggling with negative economic growth and increased unemployment, Sri Lanka's very high debt-to-GDP ratio (currently around 87 per cent) means that it is particularly vulnerable on this front. Borrowing your way out of trouble has long been an integral component of Rajapaksa-style governance, and the pandemic era has proved no exception. In April 2020, the authorities secured an 'urgent' USD 500 million loan from China to help fight the pandemic, while in late November the Finance Minister stated that a further USD 700 million loan from the China Development Bank was expected during the course of December 2020.

In a sign of continuing financial struggles, in particular a mounting currency crisis, in late September 2021 the authorities announced that they would be seeking an emergency USD 100 million World Bank loan to fund a national vaccination drive—this coming shortly after President Rajapaksa declared a constitutionally dubious state of emergency, ostensibly to deal with food shortages. At the same time, the Government continues to resist calls to secure a bail-out from the International Monetary Fund to deal with the continuing foreign exchange crisis, and thereby avoid what some fear could culminate in a sovereign debt default.

To date, there have been no major economic stimulus packages of the kind implemented in other regional countries. In their place, since April 2020, there have been occasional LKR 5,000 (USD 25) cash handouts, later reduced to LKR 2,000 (USD 10), to households in need. Handout delivery, however, has at times been confused, and at best intermittent. Thus, for example, in early November 2020, there were reports of angry Colombo citizens protesting over officials' failure to distribute cash handouts in some areas, and widespread failure to include sub-family units in their delivery.

CHECKS ON GOVERNMENT

Parliament was dissolved on 2 March 2020, in advance of elections scheduled for late April. The pandemic-induced delay in holding them soon began to raise a number of knotty constitutional issues. As long as parliament continued not to sit, for example, where was the necessary legislative oversight of government? Over time, pressure mounted to reconvene the 'old'—i.e. existing—parliament. This demand was, however, brushed aside by the Rajapaksa Administration, which was both confident of its public support and—in clear breach of the Constitution—content to continue ruling without parliament.

A nod to the pandemic's health implications was given by the health authorities in early August 2020—by which point, parliament had not sat for five months—when it was announced that, following elections now slated for 6 August

2020, MPs would be required to wear face masks, sit in their designated seats and maintain the same basic social distancing regulations in wider operation.

In early June 2021, Justice Minister Ali Sabry presented the Covid-19 (Temporary Provisions) Bill to parliament, provisional two-year legislation aimed at providing relief for people facing work-related difficulties on account of the pandemic, including the inability to fulfil contractual obligations. The two-year Bill also provides for remote court proceedings.

Despite prevailing health restrictions, things have remained as busy as ever for the judiciary, particularly the Supreme Court. Following the April 2020 decision to postpone parliamentary elections, several petitions were filed before the Supreme Court. In these, it was argued that dissolution of parliament was subject to the condition that a new one was convened within three months: postponement of the elections violated this condition and thus dissolution was deemed unconstitutional. For reasons that remain unclear, however, the five justices considering the petitions dismissed them outright.

Next came a major bun-fight over recalling a prorogued parliament. The pandemic's advent put paid to all this idea, but not Constitutional provisions that a government without the legislature for more than three months was illegal. Such objections, however, were brushed aside by the President—at ease with ruling on his own terms and seemingly cowed by the fraught political climate. On 2 June 2020, the Supreme Court ruled against legal challenges to Gotabaya Rajapaksa's continued rule without a sitting parliament.

Even more emblematic, perhaps, was the Supreme Court's May 2020 decision to reject a set of petitions challenging Rajapaksa's attempt to hold parliamentary elections in June. Finally, the pandemic era has been accompanied by the arrest or detention of a number of lawyers, in particular Hejaaz Hizbullah, known for his defence of victims of human rights violations. Arrested in June 2020 under the draconian Prevention of Terrorism Act—a legal leftover from the civil war—Hizbullah has been held without trial ever since.

Constitutional Amendment to increase the President's powers. As promised during the 2019 election campaign, following its victory, the new Rajapaksa Administration announced that it would soon be introducing a new (20th) Constitutional Amendment, the main objective being to sweep away reductions in presidential powers introduced by the previous government and replace them with significantly strengthened presidential powers, and consequent weakening of both the legislature and judiciary's oversight functions. The Amendment was duly passed by Parliament on 22 October 2020, narrowly achieving the two-thirds majority required for it to become law. Emotionally charged—and highly polarized—controversy regarding its provisions, as well as its political impact on the country, continues to this day.

Media. Even before the onset of the pandemic, the presidency of Gotabaya Rajapaksa gave rise to heightened fears of renewed media intimidation and repression—not least among those who had been on the receiving end of his brutal treatment of journalists in his wartime role as Defence Secretary. True to form, as early as November 2019, there were confirmed reports of journalists being assaulted or called in for questioning. Before long, their ranks were joined by Dharisa Bastians, ex-editor of the Sunday Observer and a noted investigator and reporter on human rights-related issues, and a number of other high-profile journalists for whom the emerging situation left them compelled to leave the country.

Entering the pandemic, reporting was made significantly more difficult by the police's early April 2020 threat of legal action against anyone deemed to have made 'defamatory or malicious' social media posts. Add to that, self-censorship imposed by media editors, in particular when the threat of legal action or intimidation became palpable, and the nature of the prevailing media environment becomes clear. Any suggestion, moreover, that all this was a passing phase is countered by, for example, an independent report for October 2020, which finds that during that month alone there were serious physical assaults on five provincial journalists. In 2021, deep concern has been expressed in some quarters regarding the impact of official efforts to counter 'fake news' regarding the pandemic on social media. Responding to reports that the police Criminal Investigation Division had set up a special unit tasked

with monitoring ‘fake news’ of all types and prosecuting its perpetrators, BASL (among others) expressed deep concern, notably regarding the unit’s reported powers to arrest suspects without a warrant—a measure it noted could potentially be used to stifle any type of criticism or dissent, however legitimate.⁹

PARTICIPATORY ENGAGEMENT

Civil Society. Pandemic-related restrictions have affected many sectors, including civil society organizations (CSOs). That this has been registered more widely is underscored by a joint international NGO submission to a July 2020 meeting of the UN Human Rights Council. The UN submission states that ‘for several months, CSOs have been subject to intensified military surveillance and questioning by . . . government authorities. Worryingly, the Covid-19 pandemic has been exploited by the government to impose restrictions on the rights to freedom of expression, association and peaceful assembly, resulting in the arrest and detention of social media commentators’.¹⁰ All in all, an apt summary of the current state of play with respect to the pandemic’s civil society-related impact.

ENDNOTES

- ¹ From International IDEA’s Global Monitor of Covid-19’s Impact on Democracy and Human Rights.
- ² As reported in Jayasinghe, C., ‘Sri Lanka to probe COVID-19 data cook-up allegations’, *EconomyNext*, 18 August 2021, <<https://web.archive.org/web/20210820154510/https://economynext.com/sri-lanka-to-probe-covid-19-data-cook-up-allegation-85168/>>, archived 20 August 2021.
- ³ One local activist reportedly reacted to persistent checks by security personnel by observing, ‘How’s that going to stop a virus then?’—Fernando, R., ‘Corona and curtailed human rights’, *Lanka News Web*, 4 May 2020, <<https://web.archive.org/web/20210722170754/https://www.lankanewsweb.net/67-general-news/61358-Corona-and-curtailed-Human-Rights>>, archived 22 July 2021.
- ⁴ Minority Rights Group, ‘Covid-19 further restricts already diminished space for civil society in South Asia, report finds’, 7 December 2020, <<https://minorityrights.org/2020/12/07/sac-report/>>, accessed 10 October 2021.
- ⁵ Office of the High Commissioner for Human Rights (OHCHR), Sri Lanka on alarming path towards recurrence of grave human rights violations – UN report’, 27 January 2021, <<https://web.archive.org/web/20210929062141/https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E>>, archived 29 September 2021.
- ⁶ Bar Association of Sri Lanka (BASL), ‘Statement on Killing of Suspects in Custody of the Police’, 13 May 2021, <<https://web.archive.org/web/20210806115041/https://basl.lk/statement-by-the-executive-committee-of-the-bar-association-of-sri-lanka-on-killing-of-suspects-in-custody-of-the-police/>>, archived 6 August 2021.
- ⁷ Human Rights Watch (HRW), ‘Sri Lanka: Police abuses surge amid Covid-19 pandemic’, 6 August 2021, <<https://web.archive.org/web/20210929110902/https://www.hrw.org/news/2021/08/06/sri-lanka-police-abuses-surge-amid-covid-19-pandemic>>, archived 29 September 2021.
- ⁸ Bar Association of Sri Lanka (BASL), ‘Arrest and Quarantining of Persons Engaged in Peaceful Protests – Letter to DGHS and IGP’, 20 July 2021, <<https://web.archive.org/web/20210806115038/https://basl.lk/arrest-and-quarantining-of-persons-engaged-in-peaceful-protests-letter-to-dghs/>>, archived 6 August 2021.
- ⁹ Nilar, A., ‘CID team appointed to crackdown fake news’, *Ceylon Today*, 7 June 2021, <<https://web.archive.org/web/20210607092623/https://ceylontoday.lk/news/cid-team-appointed-to-crackdown-on-fake-news>>, archived 7 June 2021.
- ¹⁰ CIVICUS, ‘Sri Lanka: Civil society subjected to intensified military surveillance and other restrictions’, 10 July 2020, <<https://web.archive.org/web/20210608171936/https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/4518-sri-lanka-civil-society-subjected-to-intensified-military-surveillance-and-other-restrictions>>, archived 8 June 2021.



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