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Sri Lanka's Vistas of Prosperity and Splendour: A Critique of Promises Made and Present Trends

REPORT

CENTRE FOR POLICY ALTERNATIVES



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ACRONYMS

CDF	Civil Defense Force
ECT	East Container Terminal
FTZ	Free Trade Zone
GSP	Generalized System of Preference
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
KNDU	General Sir John Kotelawala National Defence University
LTTE	Liberation Tigers of Tamil Eelam
MCC	Millennium Challenge Corporation
NMRA	National Medicines Regulatory Authority
NPP	National People's Power
PTA	Prevention of Terrorism Act
SJB	Samagi Jana Balawegaya
SLPA	Sri Lanka Ports Authority
SLPP	Sri Lanka Podujana Peramuna
TNA	Tamil National Alliance
TMTK	Thamizhi Makkal Tesiya Kootani
UNHRC	United Nations Human Rights Council
WCT	West Container Terminal
WHO	World Health Organisation

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Introduction

Sri Lanka is at present confronted with unprecedented challenges. The COVID-19 crisis in Sri Lanka has been characterized not only by the immediate public health and economic challenges which have been pervasive across the world. It has also brought to the fore a number of underlying issues that have been made explicit in the context of the pandemic. Weaknesses in governance, processes which threaten to undermine constitutional democracy in Sri Lanka and structural inequalities within society have each been amplified during this period.

Sri Lanka has now seen 12 years since the end of the war yet we continue to witness ethnic tensions, militarization and authoritarian governance loom large in the Sri Lankan political landscape. The pandemic has created the conditions to further legitimize and accelerate processes of democratic backsliding which have already been underway, whilst also shining a light on the inter-ethnic issues that continue to influence the political trajectory of the country.

The present Government enjoyed overwhelming support from voters promising a move towards a more 'disciplined' no-nonsense approach to governance, paving the way to increases in the efficiency of administration and the acceleration of economic development.

Promises of increased efficiency and development have been tied up with the increased authoritarianism we have seen since President Gotabaya Rajapaksa took office. Indeed, even before the election, processes such as executive aggrandizement and militarization were framed as the very mechanisms by which efficiency and development could be brought about in the country. The constitutional project of the new Government, it was argued, would result in governance that was free from the constraints of checks and balances on executive power. These checks and balances it was argued, created indecisiveness and inefficiency within government. The pandemic represented a perfect opportunity to demonstrate this in practice. However, the multiple setbacks in the handling of the COVID-19 response have called into question this narrative of efficiency and exposed the limitations of the proposed technocratic and militarized governance model. Moreover, centralised leadership has proven to be ineffective within this context, resulting in mismanagement and a number of policy mishaps that have had a significant impact on the Government's image.

Militarization both before and after the onset of the pandemic has also been driven by both this narrative of efficiency in the service of development as well as a populist conception of the military as an institution representing the people. These are not narratives that are shared by all of the population however and the increased involvement of the military in governance may

have significant implications with regard not only to issues of governance, but for reconciliation and inter-ethnic relations more broadly.

The focus on development to the exclusion of other political considerations has further implications beyond the anti-democratic processes that are justified and laundered by this focus. The prioritisation of development initiatives such as the Port City project and other such ventures over considerations of constitutional democracy will have long term implications. This has also been evident during the pandemic with regard to the hardships faced by workers tasked with actually carrying out the economic production required to keep the economy running and bringing about the Government's developmentalist vision.

We have also seen a consolidation of the ethno-majoritarian ideology which played a significant role in the return to power of the Rajapaksa's, with significant repercussions for minority rights. The influence of this ideology on state activity is visible at all levels, influencing long term constitutional projects, the priorities of public policy formulation and the ways in which these policies are implemented.

This study examines the varied challenges faced by Sri Lanka through the lens of governance, militarization, reconciliation and development. It will provide a critique of Government policy, exploring how a lack of coherent and considered policy making, the adoption of ethno-majoritarian political ideology and the implementation of militarized governance has resulted in adverse outcomes

At the outset it must also be noted that this is not an exhaustive study but an attempt to give a representative overview of areas of concern since the inauguration of the government, especially in the context of the pandemic and the economic crisis the country is currently facing

1. Governance

The Promise of Technocratic Governance

Sri Lankans were promised a dramatic change in governance in 2019 with the policy document of ‘Vistas of Prosperity and Splendour’ speaking to a range of areas. Efficiency, prosperity and stability were some of the ambitious benchmarks promised, with a technocratic and military style governance promoted as the vehicle to achieve these ideals. The lead up to the 2019 Presidential Election witnessed the emergence of non-governmental organisations such as Viyathmaga and Eliya comprising of professionals and former military officials who were billed as the change agents meant to help usher in this transformation. The image of a strong leader with a military background ably supported by the technocratic military governance model was billed as what was needed after a disastrous few years of coalition government that witnessed a terrorist attack in 2019 and chaotic and corrupt governance. A complete change from conventional politics was projected as necessary in November 2019.¹

Expectations were high for a system change. The early days of the Gotabaya Rajapaksa government witnessed a range of appointments to key institutions that comprised professionals and former and serving military officials. The increased militarized governance model was defended on the basis of the discipline, efficiency and security that was needed.

The first wave of the pandemic hit Sri Lanka in early 2020 and with it opened the door to increased authoritarian and militarized governance. Executive overreach, extra-legal measures and heightened militarization were defended on the basis of fighting a pandemic.² As the section below on the pandemic highlights, several measures taken during this time raised multiple questions including that of legality, proportionality and necessity. There was also the extremely troubling aspect of the rule by executive fiat with no functioning Parliament for over five months and the increasing reliance on powerful task forces.³ The first wave exposed the tendency to resort to executive rule with little to no regard for democratic processes, making the case that the pandemic required decisive and strong political leadership and that the systems that were in place were cumbersome. The government’s ability to contain numbers during the first wave of the pandemic in 2020 cemented the justification used for a technocratic and militarized governance model and increased calls for further consolidating power with the executive.

¹ SLPP Manifesto- <https://gota.lk/sri-lanka-podujana-peramuna-manifesto-english.pdf>

² Fonseka, B., Ganeshathasan, L. and Welikala, A., 2021. Sri Lanka: Pandemic-Catalyzed Democratic Backsliding. In V.V. Ramraj, ed. 2021. *Covid-19 in Asia: Law and Policy Contexts*, Oxford: Oxford University Press. pp. 349 – 364

³ Evolving Legal Issues in the Context of COVID-19 (2020). Ibid; <https://www.cpalanka.org/brief-guide-i-evolving-legal-issues-in-the-context-of-covid-19/>

The popularity of successfully handling the first wave and the promise of ‘prosperity and splendour’ propelled the government with a massive electoral victory at the Parliamentary Elections in August 2020, providing the necessary majority to usher in sweeping constitutional reforms. The 20th amendment Bill, introduced within a few weeks post elections, rolled back the pro-democracy reforms ushered in 2015-2018 and with it instituting an all-powerful executive presidency with limited checks and balances.⁴ This legislative victory with the amendment, discussed below, not only highlighted early signs of internal fissures within government and disgruntled sections of some of the government’s support bases but also the weak opposition in Parliament.

The triumphalism with tackling the first wave, electoral victory in August 2020 and the passage of the 20th amendment contributed to an overconfidence in governance that saw a disastrous turn with the handling of the second wave and troubling indicators with a looming health and economic crisis. Multiple incidents of mismanagement and failures in the subsequent months, reports of corruption and overall incompetence in a range of governance areas has exposed the flailing technocratic and militarized governance model. With the outlook looking increasingly bleak, the immediate future will bring unparalleled challenges to Sri Lanka and its fragile democracy.

Crafting an Image of a Strong Ruler and Promise of Change

During the early months of the presidency, the image of a strong efficient ruler who departed from excesses linked to conventional politicians was carefully crafted. Images of the president visiting government offices to personally check on work was conveyed to the people as a leader who prioritised efficiency. The image was of a technocratic government and an executive who prioritised addressing people’s grievances. The idea of a government that reduced red tape, addressed allegations of corruption and ensured systems in place to attract investor confidence was one of the key aspects (the other being security) that attracted many voters to support the Gotabaya Rajapaksa candidacy in 2019. This image was a welcome change to the delays and numerous stumbling blocks in governance evident during previous governments including the ‘Yahapalanaya’ years, with many enamoured by a government that was finally listening to the grievances of the people.

The tackling of the first wave also showed a President who was not caught in the messy details of procedures and laws. The first wave occurred soon after Parliamentary Elections were announced.⁵ With Parliament dissolved and with the Election Commission indicating the untenability of holding elections during a pandemic, Sri Lanka was in the throes of a

⁴ Dinesha Samararatne, Sri Lanka’s Constitutional Ping Pong, Himal Magazine, 25 September 2020; A Brief Guide to the 20th amendment to the Constitution, CPA June 2021

⁵ Centre for Monitoring Election Violence (CMEV) “CMEV Calls for Postponement of General Election 2020”, 17 March 2020; <https://cmev.org/2020/03/17/cmev-calls-for-postponement-of-general-election-2020/>

constitutional crisis. Despite provisions in the Constitution to recall Parliament during an emergency and calls from political parties urging the President to take these steps, the President decided to rule by executive fiat with no functioning Parliament for over five months.⁶ Despite the serious implications for Sri Lanka's constitutional democracy, the executive arm continued to govern without parliamentary oversight till elections were finally held in August 2020.

The image of a no-nonsense executive who was not hampered by conventions or procedures and who prioritized getting things done was portrayed, and in doing so also raised doubts as to the need for a 225-member Parliament.⁷ The success of tackling the first wave and the false security given to people of having defeated the pandemic further cultivated support for a hyper presidential model ably supported by a loyal group of professionals and the military.

Against the backdrop of the multiple disasters experienced under the Yahapalanaya government including the failures that lead to the Easter Sunday attack and subsequent violence and scandals such as the 'Bond Scam', the overwhelming desire among many was for stability and security. The technocratic governance model with a strong executive was meant to assuage these fears. The fact that the first wave was successfully tackled by the executive arm with a strong role played by the military, fed into the narrative as to whether the messiness and costs involving a parliament and other aspects of democratic procedures were needed.

The success in containing the first wave witnessed electoral gains for the Sri Lanka Podujana Peramuna (SLPP) at the parliamentary elections with a resounding victory that saw them obtain 145 seats out of the 225 in parliament. The campaign period saw many in government asking for a massive victory to be able to deliver on the government's ambitious reforms. Basil Rajapaksa, the key architect of the SLPP and its national organiser was quoted with the following⁸- *"But the main thing is the expectations of the people from President Gotabaya Rajapaksa's Government and the SLPP. When a government is formed, people hope for a lot of things. To fulfil these expectations, we need a two-thirds majority. It will be easy once we have a clear mandate from the people. It is up to the people to give us a two-thirds majority, but if they give us this I can assure that the President will fulfil their expectations."*

⁶ Arjuna Ranawana., "Constitutional Crisis looms as poll date goes beyond three months of dissolution" 23 April 2020, [economynext](https://economynext.com/constitutional-crisis-looms-as-poll-date-goes-beyond-three-months-of-dissolution-67839/#modal-one); <https://economynext.com/constitutional-crisis-looms-as-poll-date-goes-beyond-three-months-of-dissolution-67839/#modal-one>; Asanga Welikala and Suren Fernando., "Balancing efficiency with law and liberty: Dealing with the pandemic without democratic backsliding", 8 April 2020, The Daily FT; <https://www.ft.lk/opinion/Balancing-efficiency-with-law-and-liberty-Dealing-with-the-pandemic-without-democratic-backsliding/14-698609>

⁷ "Sri Lanka is becoming a one-family state", 16 August 2020, The Economist; <https://www.economist.com/asia/2020/08/13/sri-lanka-is-becoming-a-one-family-state> ; Asanga Welikala., "The Return of Sri Lanka's Imperial Presidency: The Twentieth Amendment to the Constitution Bill" 8 September 2020, constitutionnet; <https://constitutionnet.org/news/return-sri-lankas-imperial-presidency-twentieth-amendment-constitution-bill>

⁸ Uditha Jayasuriya., "Upto the People to give us a two-thirds majority-Basil" 29 July 2020, The Daily FT; <https://www.ft.lk/opinion/Up-to-the-people-to-give-us-a-two-thirdsmajority-Basil/14-703809>, 29 July 2020

With the support of allies, the government was guaranteed a near two thirds in parliament and with it paving the way for the enactment of the 20th amendment to the Constitution. The triumphalism of the big election victory resulted in several lapses including an inability to take necessary steps to contain the pandemic which resulted in the second wave and subsequently the third wave and increasing signs of failures to deliver on the promises made in 2019 and 2020.

Backsliding of Democracy and State Capture of Power

One of the initial steps following the super majority received at the 2020 elections was the enactment of the 20th amendment to the Constitution. The speed with which it moved was not a surprise considering statements made prior to the election.⁹ What was proposed in the 20th amendment Bill saw the strengthening of the executive presidency, providing immunity from legal challenge, further consolidating the power of the President by weakening the role of the Prime Minister and Cabinet, replacing the Constitutional Council with a Parliamentary Council comprising solely of Members of Parliament (MP), weakening independent institutions, introducing Urgent Bills and reducing time for citizens to engage with draft legislation, among others.¹⁰ These proposals were justified on the basis of the need for a strong ruler who needed broad powers to be able to deliver and to prevent the formation of two power centres that can create uncertainty, as recently experienced during Sri Lanka's constitutional crisis of 2018.

Despite the government's electoral victory and popularity after the first wave, the response to the 20th amendment Bill was striking. The unveiling of the Bill saw opposition from sections within cabinet, some MPs from the government group and several ardent supporters of the government including Buddhist clergy. The political pushback coupled with many challenging the Bill in the Supreme Court resulted in the government rushing through several amendments which were presented at the committee stage in Parliament.¹¹ The opposition to the Bill was the first instance which publicly highlighted fissures within government and also from some within their loyal supporters.

Despite this opposition, the government was able to pass the Bill with the support of their own MPs and additionally with 8 MPs from the Samagi Jana Balavegaya (SJB). The enactment of the 20th amendment to the Constitution was the first major legislative test of the government and with it exposed some unexpected obstacles. However, its enactment demonstrated the ability of the government to steer forward key pieces of legislation despite opposition from varied

⁹ Center for Policy Alternatives (CPA) 2020, "Statement on the Twentieth Amendment" 4 September 2020. Available at: <https://www.cpalanka.org/statement-on-the-twentieth-amendment-2/>

¹⁰ A Brief Guide to the 20th amendment to the Constitution, CPA June 2021

¹¹ A Brief Guide to the 20th amendment to the Constitution, CPA June 2021

quarters. It was also the first test for Opposition Leader Sajith Premadasa which saw several in his own party voting in support for the amendment.

The impact of the amendment is significant. It has transformed the executive presidency into an all-powerful office with limited checks. For example, members of independent institutions such as the superior courts and the Attorney General are now appointed by the President with the Parliamentary Council merely approving names, thus ensuring that loyalists of the president and government hold key positions. As subsequent developments have shown, institutions that are meant to be a check on executive overreach have weakened considerably in recent years with limited to no push back on arbitrary action. There is also no space for an alternative view among those holding key positions as indicated by the President when he made it clear that no opposition is expected in carrying out his vision: *“I do not envisage public officials, lawmakers or the judiciary to impede my implementing this commitment.”*¹² Such statements have resulted in making many subservient to the executive, with those who raise their voices being reprimanded for their action or side-lined.

Compounding this is the appointments of Rajapaksa family members and loyalists to key institutions and positions, ensuring the steady state capture of power and with it undermining democratic processes and institutions.¹³ Another key development in 2020 was the appointment of several task forces initially as a response to the pandemic but broadened to other areas such as maintaining discipline as well as another on archaeology in the Eastern Province.¹⁴ Questions of legality have been raised with some of these task forces and whether their mandates encroach into existing line ministries and civil administration. Further, the composition of some of these task forces raised concerns. Several were either headed or composed of former and serving military officials, and significantly, the task force appointed for the Eastern Province was entirely Sinhala despite the province being majority Muslim and Tamil.¹⁵

The increased militarized nature of governance carries significant implications (discussed more in detail later in the report). Many key positions in government including the pandemic

¹² Lahiru Pothmulla., “I don’t expect interference from legislators, judiciary when fulfilling duties to people” 4 February 2020, Daily FT; http://www.dailymirror.lk/breaking_news/Dont-expect-interference-from-legislators-judiciary-when-fulfilling-duties-to-people-Prez/108-182475

¹³ Most recently, Basil Rajapaksa was appointed as a national list MP with significant implications to franchise and sovereignty- <https://www.cpalanka.org/cpa-statement-on-the-constitutionality-of-the-slpp-national-list-appointment/>; Transparency International Sri Lanka, “A Look Back At The Alleged Sugar Scam That Never Took Place” 1 May 2021; <https://www.tisirilanka.org/a-look-back-at-the-alleged-sugar-scam/>

¹⁴ Centre for Policy Alternatives (CPA), 2020. *Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force*. [online] Centre for Policy Alternatives. Available at: < <https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/>

¹⁵ Centre for Policy Alternatives (CPA), 2020. *The Appointment of the Two Presidential Task Forces*. Centre for Policy Alternatives. Available at: <<https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>,

response are now occupied by individuals with a military background, thus undermining and side-lining subject matter experts and experienced civilian administrators. Prominence is also given to individuals who are identified as having a hardline Sinhala nationalist ideology with several appointed to key positions in defence, law and order and other areas. It has also transformed a professional military to one that is increasingly partisan and political. With the Rajapaksa's providing political opportunities and cover, the military has become an all-powerful and popular institution in Sri Lanka. Considering their taste of power in recent months, fears increase as to whether it will be near impossible to get the military back to being solely a professional fighting force.

The Spiralling Costs of the Pandemic

The pandemic response in Sri Lanka has been framed along the lines of a 'war on the pandemic' which saw a largely militarized approach with health and other professionals often side-lined, new structures introduced, wide ranging restrictions imposed with questions raised on legality, proportionality and necessity and questions of accountability and transparency raised with regard to processes and finances.¹⁶ The pandemic also exposed the failings of a hyper presidency that relied on technocratic and militarized governance, carrying with it serious health and economic consequences.

Lack of Legal and Policy Coherence- The first few weeks of the pandemic in 2020 exposed the inability of the government to have a coherent policy and public messaging, with similar trends witnessed during the second and third waves. Whilst it was recognised that new measures were required to respond to the pandemic, concerns remained on the legality of some of the measures introduced such as restrictions on travel.¹⁷ Similarly, concerns remain as to why existing laws that provide for emergencies and disasters were not utilized, raising the question whether such decisions are driven by the need to push for an executive driven approach and prevent legislative oversight.

There was also confusion as to who was leading the decision making and communicating decisions as several occasions saw statements from the president's office being used to communicate decisions while others saw police media releases. Further, the Government has

¹⁶ Fonseka, B., Ganeshathasan, L. and Welikala, A., 2021. Sri Lanka: Pandemic-Catalyzed Democratic Backsliding. In V.V. Ramraj, ed. 2021. *Covid-19 in Asia: Law and Policy Contexts*, Oxford: Oxford University Press. pp. 349 – 364

¹⁷ The confusion as to whether Sri Lanka had a 'curfew' or not was seen early on with subsequent attempts referring to it as 'isolation' as per the Ordinance or 'travel restrictions' and 'lockdown', exposing legal issues and the ad hoc nature of these initiatives. Similarly, questions were posed as to the legality of arrests that took place as a result of violating 'curfew' and attempts to impose other restrictions

relied on the outdated Quarantine and Prevention of Diseases Ordinance dating back to 1897, contributing to further confusion.¹⁸

Practical Challenges- The suddenness of the ‘lockdown’ also meant that many faced socio-economic challenges, with those relying on day labour and the informal sector hit hardest. It also was a time when there were no clear plans in place to provide assistance for the most vulnerable.

Further, several policies disproportionately targeting minorities were introduced during the pandemic such as the forced cremation policy (discussed later in the report), a direct assault on the religious beliefs of the Muslim community and devoid of any scientific basis. Despite medical experts including the World Health Organisation (WHO) indicating to the contrary, the government continued the forced cremation policy for several months and only backtracked after immense pressure from the community and in the face of international condemnation around the United Nations Human Rights Council (UNHRC) process in 2021.

The first wave also saw fewer positive cases reported and fatalities which was soon used by the authorities to boost their image of having successfully tackled the pandemic. This misplaced triumphalism transformed into election propaganda during the parliamentary elections campaign with the government projecting itself as having successfully defeated the pandemic. This saw massive election rallies and limited health precautions taken during election campaigns. Soon after elections and the enactment of the 20th amendment, increasing cases were reported with the second wave confirmed.

Contrasted with the ability to contain cases during the first wave, subsequent months in 2020 and 2021 have witnessed numerous setbacks in the pandemic response. Amidst rising numbers of positive cases and deaths, allegations have revolved around the lapses with testing, quarantine process, vaccine roll out, public information campaigns and resources allocated for the pandemic response.

Fundamentally there is also a denial by the politicians to recognise the failures to prevent the spread and mitigate its damage. Despite the steady rise in positive cases and deaths, as of June 2021, there is yet no official recognition of community spread but instead references are made to ‘clusters’.¹⁹ The unwillingness to recognise community spread must also be considered in light of health professionals admitting to the present strain of the virus being highly infectious.

¹⁸ Centre for Policy Alternatives (CPA), 2021. *An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka*. Centre for Policy Alternatives. Available at: <https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/>

¹⁹ In 2020, these included the Minuwangoda cluster, the navy cluster and Paliyagoda cluster with 2021 seeing a new cluster titled the ‘New Year’ cluster.

Unlike the previous strain, the present wave is also witnessing many younger patients experiencing serious complications including deaths.

Undermining the Health Sector- The pandemic response benefitted from a strong public health system that has been in place in Sri Lanka but this too has been tested in unprecedented ways. Recent years have witnessed a concerted effort to cut spending in some areas including health as opposed to consistent increases to the defence budget. In an unsurprising move, and twelve years after the end of the war, the defence line item receives the highest amount.²⁰ Such prioritization highlights the thinking and strategy of the government, particularly given that Sri Lanka is facing its biggest health crisis in a post-war context.

The pandemic also witnessed health staff demoted to a secondary role with political appointees and military taking the lead. For example, Sri Lanka did not have a Director General for Health Services for several weeks in 2020 with decisions on the pandemic response largely dominated by military and others with no medical expertise.²¹ Health professionals seen as critical or not toeing the official position were demoted. Those who did speak to the problems were undermined, for instance when the State Minister for Health was accused of being upset by a fellow government minister.²² All effort was made to restrict the truth of the situation, the mishandling and internal chaos, from coming out and those who spoke of the dangers faced censure.

There were also indicators of the advice of health professionals and others with expertise on public health being ignored such as when advice for travel restrictions to be imposed in April 2021 were ignored which subsequently saw the third wave and high numbers of people testing positive and increased deaths.²³ Even decisions taken by the health community were often disregarded or overturned. This was seen with the case of imposing isolation in Piliyandala area due to high cases being detected with confusion soon prevailing as isolation in some areas were lifted.²⁴ It was subsequently reported that a government minister from the locality had insisted the isolation be lifted despite contrary advice from health professionals, an indicator of the politicised nature of the pandemic response.

²⁰ Verite Research, PUBLIC REPORT ON THE 2021 BUDGET: Assessment on whether the expenditure allocations and taxation policies are in line with the government's policy 2020

²¹ Bhavani Fonseka., "Uncomfortable Truths with the Pandemic Response in Sri Lanka" 5 November 2020. Groundviews; <https://groundviews.org/2020/11/05/uncomfortable-truths-with-the-pandemic-response-in-sri-lanka/>

²² Aruna Fernando., "Minister Johnston says that State Minister Sudarshani is under stress" 19 May 2021. The Colombo Post; <http://www.thecolombopost.net/en/topstories-en/76824/>

²³ Further, the advice of experts was also disregarded when the authorities continued to have the airport open to tourists including the travel bubble between India and Sri Lanka, despite India facing a catastrophic crisis with thousands dying on a daily basis.

²⁴ Centre for Policy Alternatives (CPA), 2021. *An Update on the Legal Framework to Address the COVID-19 Pandemic in Sri Lanka*. Centre for Policy Alternatives. Available at: <https://www.cpalanka.org/an-update-on-the-legal-framework-to-address-the-covid-19-pandemic-in-sri-lanka/>

Treatment and Vaccines- The lack of coherent policy and planning was also evident with government initiatives with medication and vaccines. Despite no scientific evidence, the government resorted to religious and other non-scientific methods such as pirith chanting, pot throwing into rivers, Buddhist clergy traveling by helicopters to sprinkle pirith pan, and promoting concoctions with no proven data of effectiveness. Much of this was encouraged by key government ministers including the health minister who took the concoction on media, claiming that she would be protected from the virus. Soon after the Minister tested positive and had to be hospitalized.²⁵ Such stunts provided a sense of false security to the populace and a distraction from the real crisis engulfing Sri Lanka.

Similar chaos was evident with the approval and implementation of the vaccine. Whilst there were global challenges in the procurement of vaccines, the government also failed to sufficiently plan and procure vaccines in early 2021. Whilst the drive to vaccinate using Astra Zeneca commenced, there was no information publicly available as to how those getting the first dose would subsequently get the second dose. Nor was there information as to whether it would be given to those outside of the Colombo district. What soon became evident were discrepancies and politicization in implementation as well as a lack of planning. Amidst the drive to vaccinate in Colombo district, media reports highlighted gaps in front line staff getting the vaccine and that political influence was used to administer the vaccine to others.²⁶

There were also reports of shortages with the government scrambling to fast track approval with other vaccines including the Chinese Sinopharm vaccine and the Russian Sputnik vaccine. Media also reported to how the State Minister for Health arbitrarily sacked four members of the National Medicines Regulatory Authority (NMRA) who are mandated to approve vaccines but had withheld their approval of the Sinopharm vaccine as the WHO had yet to approve its use.²⁷ As a result, the NMRA chairman resigned in protest. The NMRA board was soon reconstituted with those who would go along with government plans and the Sinopharm vaccine was duly approved.

The further mishandling of the vaccine drive is evident with the confusion as to timelines and official messages and chaotic implementation. This was amplified in a context where privilege

²⁵“Health Minister admitted to IDH Intensive Care Unit for further treatment” 29 January 2021. ColomboPage; http://www.colombopage.com/archive_21A/Jan29_1611905865CH.php

²⁶ Siithara., “Powerful and Connected? Go to the Head of the Queue” 16 May 2021. Groundviews; <https://groundviews.org/2021/05/16/powerful-and-connected-go-to-the-head-of-the-queue/>

²⁷ Kumudini Hettiarachchi, Ruqyyaha Deane & Meleza Rathnayake., “Amid moves to import Chinese vaccine sans data, four NMRA board members sacked” 14 March 2021. The Sunday Times; <https://www.sundaytimes.lk/210314/news/amid-moves-to-import-chinese-vaccine-sans-data-four-nmra-board-members-sacked-436357.html>

and political connections favour some over others.²⁸ This was evident during the roll out of the limited stocks available of the Astra Zeneca 2nd dose with social media posts indicating to preference given to government allies and their families, those with political connections and arbitrary vaccine drives taking place at Buddhist temples and some travelling to other provinces despite the apparent travel restrictions.²⁹

Many disgruntled voices were seen critical of the government's mishandling of the entire process. The fall out of the mismanagement has impacted the popularity of the government with many frustrated and angry at the slow pace of vaccine roll out, the chaotic testing and quarantine process, rising numbers of deaths and inability to contain the spread. This is further compounded by the economic hardships faced by many, with no sustained assistance offered to ease the economic challenges.

Financial Accountability- Further concerns were raised with financial transparency and accountability with the creation of the Itukama Fund established to receive funds to tackle Covid19. Recent media reports indicated that whilst Rs 1.7 billion was received to the Fund, only 23 percent of the funds were utilized, resulting in public outrage.³⁰ The creation of the Fund saw much enthusiasm with donations coming from various actors from the state sector, private sector and individuals but more than a year later, limited information is publicly available as to how it was managed and how funds were utilized. This when Sri Lanka is facing multiple challenges and in need of funds to purchase vaccines and equipment needed to tackle the pandemic. In the absence of public information and the bungling of efforts in the pandemic response, more questions remain unanswered.

The Growing Failures and Unravelling of Promises

The popularity of this government in 2019 and 2020 hinged on key campaign promises of security, stability, efficiency and prosperity but the 'vanishing vistas'³¹ are fast starting to show the inability to deliver on the most basic of promises. The multiple setbacks seen with the pandemic response, allegations of corruption, disasters with the environment and marine life and the economic downturn, among many others, are directly attributed to a combination of

²⁸ Imesh Ranasinghe., "Moratuwa vaccine hijack attempt: Sri Lanka police arrest mayor" 28 May 2021. Economynext; <https://economynext.com/moratuwa-vaccine-hijack-attempt-sri-lanka-police-arrest-mayor-82518/#modal-one>

²⁹ Chanka Jayasinghe., "Abhayarama's unsanctioned vaccine rollout: Chief incumbent blames Sri Lanka govt" 31 May 2021. economynext; <https://economynext.com/abhayaramas-unsanctioned-vaccine-rollout-chief-incumbent-blames-sri-lanka-govt-82578/#modal-one>

³⁰ Ceylon Today, 2021. Remaining 'ITUKAMA' COVID-19 Fund for. *Ceylon Today*, [online] 11 May. Available at: <https://ceylontoday.lk/news/remaining-itukama-covid-19-fund-for>

³¹ Ameer Ali., "Gota's Vanishing Vistas & Worrying Prognosis 21 May 2021, Colombo Telegraph; <https://www.colombotelegraph.com/index.php/gotas-vanishing-vistas-worrying-prognosis/>

mishandling and ineptness, a far cry from what was promised. Amidst these failures and mismanagement, disillusion and anger are evident among the public

A criticism of the previous government and a direct reason for its unpopularity and decline was the 'Bond Scam' and its fallout, with the then Joint Opposition using it to target the government and its credibility. Despite the promises of a system change, this government has been plagued by several financial scandals and mismanagement with fears of potential new scandals due to a lack of genuine safeguards and in a situation where there has been escalated state capture of power.³² One of the biggest is the 'Sugar Scam' which is reportedly costing the government a Rs15.9 billion loss, making it the most costly scandal Sri Lanka has seen in recent times.³³

The government has also been heavily criticised for its ill-advised policy decisions and the uncertainty created as a result of sudden changes to policy. A recent example is the attempt to import luxury vehicles for MPs amidst the pandemic. This move was met with stinging criticism on social media due to the timing and rationale behind such a move when the government is cash strapped with multiple areas requiring attention.³⁴ Another was the hurried decision to ban chemical fertilizer and to introduce organic fertilizer without ensuring proper preparations were in place.³⁵ As a result, media reported farmer organisations experiencing shortages of fertilizer with the likelihood of livelihoods of many being affected and exacerbating economic woes of many farmers.³⁶ Similar criticism was seen with the discrepancies with testing and politicisation of the vaccine roll out with no clear plans on a comprehensive plan in the face of a pandemic.³⁷

The disaster with the handling of the X-Press Pearl ship is the latest incident in a long list of lapses from the government. Media reports indicated that the ship was carrying chemicals and

³² "Muddled decision-making must end" 19 June 2021. Daily FT; https://www.ft.lk/ft_view_editorial/Muddled-decision-making-must-end/58-719380

³³ "Sugar scam costs Sri Lanka Rs 15.9 billion in tax revenue: Finance Ministry" 19 June 2021. *economynext*; <https://economynext.com/sugar-scam-costs-sri-lanka-rs-15-9-billion-in-tax-revenue-finance-ministry-79636/#modal-one>; The JVP has challenged the 'Sugar scam' with the matter now before the Supreme Court.

³⁴ "Preparations to import Luxury vehicles for MPs at a cost of over 3.6 billion rupees" 24 May 2021. *Newsfirst*; <https://www.newsfirst.lk/2021/05/24/preparations-to-import-luxury-vehicles-for-mps-at-a-cost-of-over-3-6-billion-rupees/>

³⁵ Chris Kamalendran., "Shipments turned away; Govt. pushes ahead with chemical fertiliser ban" 2 May 2021. *The Sunday Times*; <https://www.sundaytimes.lk/210502/news/shipments-turned-away-govt-pushes-ahead-with-chemical-fertiliser-ban-442126.html>

³⁶ "SAEA warns of big economic losses due to import restrictions on chemical fertilizers and pesticides" 30 May 2021. *The Island*; <https://island.lk/saea-warns-of-big-economic-losses-due-to-import-restrictions-on-chemical-fertilizers-and-pesticides/>

³⁷ Shashika Bandara., "Sri Lanka is Alarmingly Overdue for a Long-Term Strategy for COVID-19 21 June 2021." *Groundviews*; <https://groundviews.org/2021/06/21/sri-lanka-is-alarmingly-overdue-for-a-long-term-strategy-for-covid-19/>; Kanchana N. Ruwanpura, Samantha Gunawardana and Buddhima Padmasiri., "Vaccine Inequality and the Cost to Garment Sector Workers" 22 May 2021. *Groundviews*; <https://groundviews.org/2021/05/22/vaccine-inequality-and-the-cost-to-garment-sector-workers/>

other material with a leak resulting in both India and Qatar refusing it entry into their waters.³⁸ Despite this and the potential serious consequences of such a leak, Sri Lanka had allowed the ship entry into Sri Lankan waters. The leak subsequently resulted in the ship being engulfed in fire resulting in unprecedented devastation to marine life and the environment. Questions have now been raised as to why the Government allowed the ship entry into Sri Lankan waters when two other countries had previously refused it entry and in the absence of a clear understanding of the consequences a leak may have. With the matter now being investigated, more details have emerged that raises questions with the process and responsibility of the government. The full cost of the fire and the fears of oil leak are yet unknown but early reports indicating this to be Sri Lanka's worst environment disaster with severe impact on marine life and livelihoods that could amount to billions.³⁹ The devastation is also likely to have long term implications affecting the environment and fishing and tourist industries with stinging criticism seen on social media as to the government's mishandling of this issue.

The decreasing popularity of the government can be directly attributed to the economic crisis and inability to provide for the promised efficiency, stability and prosperity. The government's 'Vistas of Prosperity and Splendour' promised an efficient system to investors and was meant to provide them with confidence. The following by Basil Rajapaksa captures these sentiments- *"I want to give a message to all Sri Lankans, especially the business community, that President Gotabaya Rajapaksa will create a business-friendly environment in the country and it will be a country that is without corruption, drug trafficking and underworld gangs. This will be the decade of development, of economic revival. So please join us. We have to work hard"*⁴⁰

The list of failures and mishandlings has exposed the spectacular unravelling of the technocratic government. The combination of Viyathmaga and Eliya groups and the military were meant to have brought professionalism, efficiency and a confidence boost to investors and the business community. This is yet to materialize and the handling of the third wave of the pandemic and continuous bungling in other areas has had a massive dent on a government that promised something very different.

One significant area of concern has been the Government's response to Sri Lanka's sovereign debt crisis. The downgrading of Sri Lanka's sovereign rating from B- to CCC by the credit rating agency Fitch was an indicator of decreasing confidence in the Government's ability to form a credible strategy to ensure debt repayments.⁴¹ This downgrading occurred in response to the

³⁸ "SOS for the ocean" 2 June 2021. Daily FT; https://www.ft.lk/ft_view_editorial/SOS-for-the-ocean/58-718684

³⁹ Ranga Sirilal and Andreas Illmer., "X-Press Pearl: The 'toxic ship' that caused an environmental disaster" 10 June 2021. BBC News; <https://www.bbc.com/news/world-asia-57395693>

⁴⁰ Uditha Jayasuriya., "Upto the People to give us a two-thirds majority- Basil" 29 July 2020. Daily FT; <https://www.ft.lk/opinion/Up-to-the-people-to-give-us-a-two-thirdsmajority-Basil/14-703809>

⁴¹ "Fitch downgrades Sri Lanka sovereign rating to 'CCC' after budget" 27 November 2020. [economynext; https://economynext.com/fitch-downgrades-sri-lanka-sovereign-rating-to-ccc-after-budget-76360/#modal-one](https://economynext.com/fitch-downgrades-sri-lanka-sovereign-rating-to-ccc-after-budget-76360/#modal-one)

release of the Government's 2021 budget⁴² and has resulted in severe constraints on Sri Lanka's access to foreign capital markets. The country's debt as a proportion of its GDP currently stands at 115 percent⁴³ and foreign exchanges reserves have fallen to alarming levels with measures such as import controls being implemented to halt the crisis.⁴⁴ The Government has also relied on bilateral currency swaps with countries like China, India and Bangladesh in order to meet the immediate balance of payment needs.⁴⁵ Despite these stop gap measures however, the long-term economic outlook remains bleak with severe structural problems remaining unaddressed.⁴⁶

Further, the inability to move on several key projects due to protests from the government's own supporters is a telling sign of the president's inability to control his constituencies. This was seen with the protests around the East Container Terminal (ECT) of the Colombo Port, when trade unions close to the government scuttled the agreement signed between Sri Lanka, India and Japan.⁴⁷ Government policies have continuously seen several of the government's own allies taking a critical position as seen with both the 20th amendment to the Constitution and the Port City Bill. Such criticism and challenges have resulted in the government having to propose amendments and go on a public relations overdrive, resulting in several compromises. In the case of the ECT, the protests contributed to the cancelling of the agreement.

The numerous failures have also been met with stinging criticism targeting the authorities on social media platforms. Despite attacks and threats of arrests, the criticism against the authorities has continued with new levels of creativity found to project the growing frustration and anger felt by many Sri Lankans. Some of this is directly targeting the President, Prime Minister and others in the Rajapaksa family, highlighting the spiralling unpopularity of the

"Fitch affirms Sri Lanka rating at CCC" 16 June 2021. Daily FT;<https://www.ft.lk/front-page/Fitch-affirms-Sri-Lanka-rating-at-CCC/44-719284>

⁴² Ibid

⁴³ "Sri Lanka debt to GDP to rise to 115-pct in 2021, poverty 10.9-pct: World Bank" 2 April 2021. [economynext;https://economynext.com/sri-lanka-debt-to-gdp-to-rise-to-115-pct-in-2021-poverty-10-9-pct-world-bank-80356/#modal-one](https://economynext.com/sri-lanka-debt-to-gdp-to-rise-to-115-pct-in-2021-poverty-10-9-pct-world-bank-80356/#modal-one)

⁴⁴ "Sri Lanka net forex reserves fall to 33-pct of reserve money" 11 June 2021. [economynext;https://economynext.com/sri-lanka-net-forex-reserves-fall-to-33-pct-of-reserve-money-82874/#modal-one](https://economynext.com/sri-lanka-net-forex-reserves-fall-to-33-pct-of-reserve-money-82874/#modal-one)

"Sri Lanka facing 'biggest forex crisis in history' triggering import controls: Minister" 28 May 2020. [economynext;https://economynext.com/sri-lanka-facing-biggest-forex-crisis-in-history-triggering-import-controls-minister-70431/#modal-one](https://economynext.com/sri-lanka-facing-biggest-forex-crisis-in-history-triggering-import-controls-minister-70431/#modal-one)

⁴⁵ Central Bank of Sri Lanka., "The Central Bank of Sri Lanka enters into a Bilateral Currency Swap Agreement with the People's Bank of China" March 22 2021. Available at; <https://www.cbsl.gov.lk/en/node/9944>

"Bangladesh Bank approves US\$200mn currency swap for Sri Lanka: report" 25 May 2021. [economynext;https://economynext.com/bangladesh-bank-approves-us200mn-currency-swap-for-sri-lanka-report-82351/#modal-one](https://economynext.com/bangladesh-bank-approves-us200mn-currency-swap-for-sri-lanka-report-82351/#modal-one)

"Sri Lanka reverts to foreign currency swap with RBI" 12 June 2021. Daily News;<https://www.dailynews.lk/2021/06/12/local/251468/sri-lanka-reverts-foreign-currency-swap-rbi>

⁴⁶ Umesh Moramudali., "Sri Lanka's Foreign Debt Crisis Could Get Critical in 2021" 9 February 2021. The Diplomat;<https://thediplomat.com/2021/02/sri-lankas-foreign-debt-crisis-could-get-critical-in-2021/>

⁴⁷ Meera Srinivasan., "India, Japan back in another Sri Lanka port project" 2 March 2021. The Hindu;<https://www.thehindu.com/news/international/sri-lanka-now-clears-indian-investment-at-another-colombo-port-terminal/article33969407.ece>

government and discontent among the public. The fact that criticism is even possible in such a heightened repressive setting is noteworthy and may be attributed to the space that opened up during 2015-2019 when citizens were able to critic and challenge the government with no fear of reprisals.

Lack of Accountability, Entrenching Impunity & Political Victimization

The backsliding of democracy has also seen an attack on democratic processes and institutions that attempted to address entrenched corruption and impunity in Sri Lanka. A serious concern in recent months has also centred around the dismantling of the work done with emblematic cases and pro-democracy reforms.⁴⁸

Efforts couched as ‘political victimization’ have witnessed the targeting of investigators, lawyers and others who worked on key cases during the previous regime, with several arrested and targeted for work they did in their professional capacity.⁴⁹ The dismantling of the limited work done in these areas and the political victimization was evident with the appointment of the Presidential Commission appointed to investigate these cases. Several questions were also raised with the process followed by heavy criticism levelled against its arbitrary findings⁵⁰ with several cases filed challenging these findings. Further, its recommendation of imposing civic disabilities on some individuals saw the appointment of the Special Presidential Commission headed by a sitting Supreme Court Justice with its mandate now extended till October 2021.⁵¹

In the attempt to legitimize efforts at political victimization, the Prime Minister tabled a resolution on April 9th in Parliament which was aimed at getting charges dropped against the Rajapaksa family members and their supporters who face criminal charges in court.⁵² This was a shocking move by the Government as it went to the heart of the separation of powers, attempting to use Parliament to undermine cases before the judiciary. It was also a blatant move to undermine the rule of law and ensure that those in power were above the law. As noted by Tisaranee Gunasekara *“Under Rajapaksa rule, all doors to justice and accountability*

⁴⁸ Bhavani Fonseka, Charya Samarakoon and Kushmila Ranasinghe., “Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive” 20 January 2021. Center for Policy Alternatives. Available at; <https://www.cpalanka.org/revisiting-ten-emblematic-cases-in-sri-lanka-why-justice-remains-elusive/>

⁴⁹ “Sri Lanka: Reject ‘Political Victimization’ Findings” 30 April 2021. Human Rights Watch; <https://www.hrw.org/news/2021/04/30/sri-lanka-reject-political-victimization-findings>

⁵⁰ Bhavani Fonseka, Kushmila Ranasinghe and Charya Samarakoon., “A Commentary on the PCoI and the Special PCoI on Political Victimization” 21 April 2021. Centre for Policy Alternatives. Available at; <https://www.cpalanka.org/a-commentary-on-the-pcoi-and-the-special-pcoi-on-political-victimization/>

⁵¹ Ibid

⁵² Centre for Policy Alternatives, “Short Note on the Resolution Seeking Parliamentary Approval to Implement the Recommendations of the CoI on Political Victimization” 19 April 2021. Centre for Policy Alternatives. Available at; <https://www.cpalanka.org/short-note-on-the-resolution-seeking-parliamentary-approval-to-implement-the-recommendations-of-the-coi-on-political-victimization/>

will remain closed and bolted”⁵³ The multi-pronged efforts at dismantling the limited work done in 2015-2019 is very much influenced by the interests of the Rajapaksa family and further entrenching impunity in Sri Lanka.

Attacks also continued against those who raised questions on past action and the murkiness surrounding the Easter Sunday attacks. Cardinal Malcolm Ranjith, a supporter of the government has in recent months questioned the delays with accountability around the attacks. Prior to the second anniversary of the attack, he claimed that the attacks were the result of political rather than religious extremism and went on to say *“Easter Sunday attack was not a result of a craze over religion but an attempt to capture and safeguard power”*.⁵⁴ The murkiness surrounding the Easter Sunday attacks were compounded by the statement made by the outgoing Attorney General who spoke of the ‘grand conspiracy’ surrounding the attack⁵⁵, raising questions to the motives behind the attacks. Similar views were captured in the Parliamentary Select Committee report in 2019 which raised the following- *“The Easter Sunday attacks and subsequent communal violence in parts of Sri Lanka witnessed new levels of fear among the public and criticism towards the political leadership and security establishment. It was also a time when calls emanated for a change of regime. These cannot be taken as coincidental and must be investigated further. It is also paramount to question the role of some sections in the intelligence apparatus and their attempts to shape security, the electoral process, political landscape and the future of Sri Lanka.”*⁵⁶

The outrage following the Easter Sunday attacks witnessed several initiatives to inquire and investigate including a committee that was appointed by the then President, a Parliamentary Select Committee and a Presidential Commission of Inquiry. In addition, investigations also continued. Despite these efforts and more than two years having passed, there is yet no clarity as to the mastermind behind the attacks with truth and justice elusive to victims.

This also comes at a time when there is no appetite for criticism and opposition. The government’s handling of the pandemic saw some of their own supporters critical of the lapses but these were ignored or those critical ridiculed and admonished for their comments. Similar opposition during the passage of the 20th amendment and more recently the Port City Bill debate saw some rumblings from the government’s own MPs and supporters. The opposition,

⁵³ Tisarane Gunasekara, “Birth Pangs of the Rajapaksa Satrapy” 18 April 2021.

Groundviews; <https://groundviews.org/2021/04/18/birth-pangs-of-the-rajapaksa-satrapy/>

⁵⁴ Yohan Perera “Easter Sunday attacks a result of political extremism, not religious extremism – Cardinal” 19 April 2021. Daily Mirror; https://www.dailymirror.lk/front_page/Easter-Sunday-attacks-a-result-of-political-extremism-not-religious-extremism-Cardinal/238-210123

⁵⁵ “Sri Lanka Attorney General claims “grand conspiracy” behind Easter attack: report” 18 May 2021. economynext; <https://economynext.com/sri-lanka-attorney-general-claims-grand-conspiracy-behind-easter-attack-report-82074/#>

⁵⁶ “Report of the Select Committee of Parliament to look into and report to Parliament on the terrorist attacks that took place in different places in Sri Lanka on 21st April 2019” 21 April 2019. Sri Lanka Parliament; <https://www.parliament.lk/featured-on-the-sri-lanka-parliament/1715-sc-report-april-attacks>

critics, minorities and others who dare challenge face varying degrees of pushback. For example, Wijedasa Rajapaksa MP who criticised the President and the Port City Bill was reported to have received a scathing call from the President.⁵⁷ Others critical have faced either harassment, demotions or threats. The President has been clear with his message *“What we require today is the support of citizens with a positive vision, who love their country, who contribute to society, and who do not make unfair criticism but offers practical solutions to the issues we face”*⁵⁸

⁵⁷ “Wijeyadasa claims he received threatening phone call from president” 16 April 2021. [economynext; https://economynext.com/wijeyadasa-claims-he-received-threatening-phone-call-from-president-80824/](https://economynext.com/wijeyadasa-claims-he-received-threatening-phone-call-from-president-80824/)

⁵⁸ “Independence Day Speech 2021”. Available at; <https://www.president.gov.lk/independence-day-speech-2021/>

2. Militarization

One of the most significant and alarming de-democratizing trends that has taken place under the new Government has been the return to processes of militarization.

While this process was underway prior to the COVID-19 outbreak, the pandemic has provided a context for its acceleration, with justifications for militarization being put forward on the grounds of increased efficiency and a superior capability with regard to pandemic response implementation. This gives rise to a number of problems with regard to civilian oversight of the military, the maintenance of constitutional democracy, and given the context of Sri Lanka's recent past, issues of inter-ethnic discord.

There are a number of avenues through which militarization has taken place since the election of Gotabaya Rajapaksa in November 2019. Firstly, this has been through the appointment of both military and former military officials to positions of power within the state.

Military Appointments and Militarized Institutions

Military appointments have taken place in a range of leadership and administrative roles.⁵⁹ leadership positions⁵⁹ are currently held by military officials across various state bodies, ranging from as diverse areas as agriculture to the bribery commission. In addition to the installation of military figures in positions of power across various state organs, militarization has also been present in the organisational restructuring of the state apparatus. More specifically, the military's increasing control over the machinery of the state has been seen in the gazetting of 31 state institutions under the ministry of defence, including the police and the telecommunication regulatory authority.⁶⁰

Attempts at militarization have also extended to the education sector with the recent tabling of the General Sir John Kotelawala National Defence University (KNDU) Bill, which proposes the setting up of a parallel higher education structure outside the purview of the current Universities Act and the University Grants Commission.⁶¹ The Bill stipulates that the University will be governed by a board of nine of whom only a maximum of four may be civilian and that the KNDU may provide qualifications not only for the military, but any public officers in the country. It also grants the University the ability to recognize courses provided at other

⁵⁹ "Joint Press Release: From the Battlefield to the Boardroom – the militarisation of Sri Lanka." 19 January 2021. Journalist for Democracy in Sri Lanka (JDS); <https://itipsl.com/assets/press/ENGLISH-Battlefield-to-Boardroom-copy.pdf>

⁶⁰ Chandani Kirinde., "31 institutions including Police, SIS, TRC brought under Defence Ministry purview" 12 December 2019. Daily FT; <https://www.ft.lk/front-page/31-institutions-including-Police-SIS-TRC-brought-under-Defence-Ministry-purview/44-691465>

⁶¹ https://ceylontoday.lk/news/gen-sir-john-kotelawala-national-defence-university-bill-why-it-s-a-bad-idea?fbclid=IwAR2NB3ABxsEoNIXyUMouVx840QeSKTKUbyYWKRCjCdPciHD8tlmB9D_f_n-s

institutes established under the Act, thus allowing for the creation of a parallel military run education system in the country, with expanding influence over civilian affairs.

The military, as an institution whose political allegiances lie with President Gotabaya Rajapaksa in particular, now has a significant hold over the civilian administration and is poised to gain further control over civilian institutions. Their increased administrative power is therefore in many ways an extension of executive power as a result of this relationship. This growing power base in the bureaucracy, held by the President, thus also ties into the concurrent process of executive aggrandizement we have seen under this Government.

Militarization of the Pandemic Response

The militarization of the COVID-19 response has exacerbated the trends outlined above, with the military involved at all levels of the pandemic response.

Firstly, the military has been highly involved in pandemic response implementation, building and running quarantine centres, enforcing lockdowns and travel restrictions, carrying out contact tracing using military intelligence, building medical infrastructure and even running certain vaccine centres.⁶²

The military has not only been involved in pandemic policy implementation, but also in the decision-making process with regard to the public health measures being implemented. This was apparent in the choice to appoint General Shavendra Silva to head the NOCPCO.⁶³ 25 military and former military officials have also been selected for roles as 'chief coordinators' in charge of activities related to the pandemic response at the district level.⁶⁴

In these roles, these officials have been given authority over matters pertaining to the pandemic response in their respective districts. There is ambiguity as to how the authority of these officials plays into the already existing administrative and political hierarchies in place at the district level. Given that at the moment, COVID-19 is the primary matter of concern in the country, these chief co-ordinators thus have a far-reaching political mandate, with the ability to exert authority in any domain which could be relevant to the pandemic response.

⁶² Meera Srinivasan., "COVID-19 | Sri Lankan military is helping the country fight the pandemic" 15 April 2020. The Hindu; <https://www.thehindu.com/news/international/covid-19-sri-lankan-military-is-helping-the-country-fight-the-pandemic/article31350778.ece>

⁶³ Ibid

⁶⁴ "District Coordinators for COVID-19 Control Work Commence Their Work" 1 April 2021. Sri Lanka Army; <https://www.army.lk/news/district-coordinators-covid-19-control-work-commence-their-work>

This has resulted in military officials with a lack of expertise in domain specific areas taking charge of significant areas of the state machinery, in tandem with the side-lining of civil servants who do possess this required experience and expertise.

This situation also creates problems with regard to accountability and civilian oversight of the military. Increasing executive aggrandizement and a parliament in which a two thirds majority is held by the SLPP, means that oversight of the military is largely conducted by occupants of two branches of government with whom they have deep ties and common party-political interests.

Aside from the structural problems there are also issues with regard to the institutional character of the military itself. The military is set up to deal with a specific set of problems in the area of national defence. The various institutional features of the military have evolved to suit these purposes. Such characteristics are not those which are most appropriate to dealing with issues such as the pandemic, or many other areas of public policy more broadly, which require their own methods and bodies of expertise. The prominent role of the military in the pandemic response was accompanied by a reframing of the latter as a kind of security threat, and as such the kind of problem the military was suited to respond to.⁶⁵ This securitized conception of how the pandemic response ought to be implemented yielded several adverse outcomes.

This was demonstrated clearly in the military's handling of the quarantining of Free Trade Zone workers on the 15th of October 2020.⁶⁶ Workers were engaged with in a heavy handed and unnecessarily confrontational manner. They were given only five to ten minutes to collect their belongings before being rounded up into crowded buses to be sent to quarantine centres where conditions were poor. The workers were not told where they were being sent and no PCR tests were conducted nor masks provided, thus increasing the likelihood of contracting COVID-19 in these crowded conditions. Military personnel were also involved in a separate incident in which Muslim civilians were made to kneel on the ground as a punishment for violating travel restrictions.⁶⁷

These are not merely one-off examples, but are reflective of the ways in which the institutional character of the military leads to the favouring of certain means of problem-solving which may be unnecessarily combative or result in an inefficient use of administrative time and energy.

⁶⁵ "Military Response to COVID-19 Pandemic" 27 October 2020. Ministry of Defence; http://www.defence.lk/Article/view_article/2463?fbclid=IwAR2KZ0FHQt6VQnfWNUhebfq4dtxABatAlrNQ8tTaaRJTk5ZFlqRtETfGW5A

⁶⁶ Boram Jang., "Sri Lanka: Vulnerable groups pay the price for militarisation of COVID-19 response" 27 October 2020. Daily FT; <https://www.ft.lk/opinion/Sri-Lanka-Vulnerable-groups-pay-the-price-for-militarisation-of-COVID-19-response/14-708073>

⁶⁷ Meera Srinivasan., "Sri Lanka to probe 'army attack and humiliation' of Muslims" 20 June 2021. The Hindu; <https://www.thehindu.com/news/international/sri-lanka-to-probe-army-attack-and-humiliation-of-muslims/article34871262.ece>

For instance, the use of 'Army Quick Reaction Riders Team' to enforce quarantine regulations and apprehend those who do not comply, as well as the use of drones by the Air Force have been examples of these military initiatives.⁶⁸ Each of these activities takes a punitive approach and serve the purpose of apprehending violators of lockdown regulations. The allocation of resources to the military during the pandemic response, and the spending of administrative time and energy on military activities also creates an opportunity cost in terms of other areas and institutions to which attention and resources may be allocated. Indeed, it is significant that even during an unprecedented year for public health and shortages of Intensive Care Unit (ICU) beds and other medical resources, we have seen a recruitment drive for the military taking place.⁶⁹

Sri Lanka's recent history and allegations of war crimes against members of the armed forces means that the increased foothold of the military within the state structure has further implications for Sri Lankan politics. This history has brought us to a situation in which the interests of the military as an institution and proponents of accountability are directly opposed.

The increasing militarization of the state thus gives rise to an increasing identification of the state's interest with that of the interests of military personnel who have been accused of serious abuses, some of whom are now occupying high positions within both the military and administrative hierarchies. In the North and East, increased militarization means that governance and the carrying out of essential public health tasks are conducted by an institution that has been accused of committing crimes against the very communities they govern.⁷⁰

In addition to this, the involvement of the military in contact tracing has allowed for the justification and growth of the military's surveillance infrastructure. In a context in which human rights advocates, minorities and critics of the Government have been surveilled for purposes of intimidation, the normalization and justification of this surveillance represent a worrying trend.

⁶⁸ "SLA riders assists Police to contain virus spread" May 29, 2021. Ministry of Defence;

https://www.defence.lk/Article/view_article/3505

Zulfick Farzan "Drone Camera donated to the Army for Its COVID-19 Control Projects" 15 April 2020. News First;

<https://www.newsfirst.lk/2020/04/15/drone-camera-donated-to-the-army-for-its-covid-19-control-projects/>

⁶⁹ "Youth Recruitment Drive Begins: Join Us as Productive & Professional Army Soldiers" 24 January 2021. Sri Lanka Army;

<https://www.army.lk/news/youth-recruitment-drive-begins-join-us-productive-professional-army-soldiers>

⁷⁰ Adayaalam Centre for Policy Research (ACPR), "Sri Lanka's militarised response poses grave threats to human rights" 30 April 2020. Available at; Adayaalam Centre for Policy Research; <http://adayaalam.org/situation-brief-no-3-covid-19-sri-lankas-militarised-response-poses-grave-threats-to-human-rights/>

Ideological Justifications for Militarization

Justifications for militarization take two different but complementary paths under this Government. One is that which represents the military as an institution of 'the authentic people'. The second is that of the military as a kind of effective technocratic actor, bringing about efficiency to a lethargic and dysfunctional bureaucracy.

The military is seen as a more authentic representative of the people than established bureaucrats and politicians who are perceived as corrupt and out of touch. There is indeed a level of public trust placed in the military, at least with regard to the largely Sinhalese SLPP voting bloc, compared to other political institutions in the country. Polling conducted by social indicator in 2019 indicates that among the Sinhala community the military holds a higher approval rating than other key state actors such as, with trust in the military at 91.4% compared to 16.7% for political parties.⁷¹

There exists at least a partial economic basis to this perception of the military as a pro-people institution with the military providing as much as 23% of employment in the Eastern province. In key demographics where unemployment rates are high, the military serves as one of the primary sources of income. When one considers the section of the population who have 'completed secondary school, but have no further education, where unemployment levels are high, the military accounts for 17% of all employment'.⁷² When one considers the demographic of Sinhalese men aged 18-25, half of the men within this demographic fit the description given above.⁷³ In rural areas where private sector or civilian public sector jobs are difficult to come by, the military offers a secure and much needed source of income. With the concerted effort to recruit more minorities into the military, and the expansion of the civil defence force we may be seeing an attempt to create similar dynamics in minority communities as well.

The other main narrative supporting militarization is that of the military as an efficient institutional actor. The military have been painted as able to take a no-nonsense approach to administration and public policy implementation. This narrative has been particularly pronounced in the context of the COVID-19 response, with the military initially being lauded for their contribution to what was initially regarded as a successful pandemic response. The narrative of pandemic response success has proven to be completely unfounded as the public health crisis we are currently seeing unfolds.

There is much evidence to suggest, however, that this narrative of military efficiency is more generally unjustified. In fact, there are a number of ways in which the military has

⁷¹ Centre for Policy Alternatives- Social Indicator- Values & Attitudes Survey on 70 years of Independence in Sri Lanka- <https://www.cpalanka.org/wp-content/uploads/2019/02/70-Years-of-Independence-Survey-Report-Social-Indicator.pdf>

⁷² (Venugopal, 2018:113) 'Nationalism, Development and Ethnic Conflict in Sri Lanka'

⁷³ Ibid

demonstrated itself as being an inefficient institution. The 2019 Auditor General's report on the armed force, for instance casts doubt on this narrative of efficiency, revealing a number of instances of waste and mismanagement of public funds.⁷⁴ As these justifications for militarization on the basis of increased efficiency wear increasingly thin, we may see support for this political process wane.

Land and Militarization

To understand the process of militarization in the country we must also understand the role the military plays, particularly in the North and East, with regard to land ownership. Land occupation has been a key issue in the context of reconciliation, as will be explored further in the report and the military has been one of the main actors involved in contestation over the ownership of land.

Efforts at demilitarization and returning lands occupied by security forces to legal owners has been rolled back since November 2019 with heightened militarization in several areas of governance in Sri Lanka including the pandemic response, agriculture, development and reconciliation. The continuing occupation of large tracts of land by the security forces is not just continuing displacement, it is also exacerbating poverty. In several areas military run farms and tourism industries are used as income generating ventures for the military with legal owners of these lands being unable to earn a regular income. Recent months have also witnessed the establishment of new camps in the guise of 'national security' and 'deradicalization' attempts with fears that such camps will be used to further target minorities and critics.⁷⁵

The Tri Forces (Sri Lanka Army, Navy and Air Force) continue to occupy large tracts of both state and private lands in the North and East which are used for military camps. In several cases legal processes to acquire land have commenced with a few cases challenged in court. 2015-2019 witnessed some areas returned to legal owners as seen with some lands in Jaffna and Trincomalee but many others remain occupied by security forces with little to no prospect of legal owners being able to obtain access and control. Several sites of occupation also witnessed destruction of buildings including homes and religious sites but no comprehensive effort was introduced to provide reparations including compensation.

Much of the occupation revolves around the war years such as the high security area in Valikamam North but other areas saw occupation commence post-war. These include

⁷⁴ Sri Lanka Army- http://www.auditorgeneral.gov.lk/web/images/audit-reports/upload/2019/mindept_19/1-X/Head222SriLankaArmyE.pdf

⁷⁵ The emergence of new camps was mentioned by President Gotabaya Rajapaksa in his speech at the Hikkaduwa Divisional Secretariat on 13th March 2021.

occupation in Keppapilavu, Silavathurai, Mulikulam, Panama and several other areas. These sites have also seen years of agitation and challenges by the communities, with several protests, advocacy campaigns and in some instances legal challenges in court. All communities have been affected by the occupation but the Muslim and Tamil communities have been disproportionately affected.

Several sites have also included the involvement of multiple actors in the occupation of land. For example, in Panama, Ampara district, both the Air Force and Navy are involved as well as politicians on land issues that affect mostly Sinhala communities. Years of agitation resulted in some areas being released but locals still face challenges in using and accessing their lands. Similar trends of occupation and agitation by communities was seen in the North. Land occupation and protests in Keppapilvu in Mullaitivu District received attention in recent years⁷⁶ as did several cases in Mannar District. For example, in Silavathurai, the navy is occupying 42 acres of private lands belonging to Muslim land owners. This land belongs to Muslims families who were evicted in 1990 by the LTTE lived in displacement in Puttalam. Due to agitation by the community, some lands were returned to legal owners by the navy but the rest of the land is claimed by the navy as needed for security purposes. Mullikulam is another site in Mannar district where the navy has been occupation since 2007 with the North Western Navel Commanding Headquarters constructed with the navy justifying the need for the base due to security reasons. Around 400 families were previously in this area with the village occupying around 1500 acres. Again, due to agitation, some lands were released but the navy continues to occupy lands in this area.

In addition to large tracts of land being occupied for security force cantonments, smaller plots are also used in the North and East. There are also large areas taken for income generation activities such as operating agriculture farms, Thalsevena Hotel in Jaffna, the Panama Lagoon Cabana in Ampara and the Eagles Heritage Golf Course in Trincomalee. These commercial enterprises are operated by the military, while communities in the area are unable to use the land with questions raised to the accountability of the income generated from such enterprises.

The further diversification of the military into such sectors is also evident with new entities created such as the newly created Agriculture and Livestock Corps in 2021 under the Sri Lanka Army⁷⁷ and raising concerns of further militarization into other sectors such as agriculture. This has exacerbated fears of the military further encroaching into civilian tasks and is in a context when there is no effective oversight of the defence establishment (including accountability for military functions and income generation methods). There are also questions of competition and since local farmers have to compete with well-resourced military farms.

⁷⁶ "Our Land, Our Life, People's Land Commission Report 2019-2020

⁷⁷ "Sri Lanka Army sets up Agriculture and Livestock Corps" 8 January 2021. Daily News; <http://www.dailynews.lk/2021/01/08/local/238255/sri-lanka-army-sets-agriculture-and-livestock-corps>

Militarization in Sri Lanka justified the occupation of large tracts of lands with the post-war years seeing the military venture in to new areas beyond what was termed national security. The number of economic generating enterprises including agriculture and tourism demonstrate that the security forces are using land for not merely security reasons but income generation. These though have come at a cost for local communities who are deprived of their lands and livelihoods whilst the occupying forces have enjoyed the fruits of their lands. The limited information as to how the income generated from the lands also raise concerns with accountability and transparency. Further, the decades of military occupation and their economic generation activities has resulted in normalizing such practices. Lack of meaningful remedies for the local communities affected by such occupation has resulted in further marginalizing communities and fostering anger. In the absence of genuine efforts at reparations, these will be areas of potential conflict in the future.

3. Reconciliation

Ethno-Majoritarianism and New Frameworks

Ethno-majoritarian ideology has been the dominant political force in the country post-independence and the role it has played with regard to the repression of minority communities is of course, not a new development. However, with the return of the Rajapaksa Government we have seen a re-emboldening of the Sinhala nationalist political project and as such, further obstructions to processes of reconciliation and accountability. In particular, we have seen an intensification of attempts to change the nature and functioning of the Sri Lankan state to more closely adhere to the tenets of majoritarian ideology, after what was viewed by Sinhala nationalists as a temporary abatement of this project under the previous Government.

Both the 2019 and 2020 elections witnessed the government's Sinhala Buddhist constituency coming out in large numbers to vote. The 2019 election was framed as giving a mandate to a strong leader to govern against the backdrop of a devastating terrorist attack with the 2020 election held soon after successfully tackling the first wave of the pandemic and the massive victory a confirmation of the government's popularity. The messages and symbolism of these elections and subsequent ceremonies when taking office were held in key historical sites in Sinhala Buddhist culture- Anuradhapura and Kandy- leaving no doubt as to the direction the government was taking. Buddhist clergy played prominent roles in both campaigns and subsequent decision making, with several appointed to key leadership roles, task forces and councils. The message was clear. The government was given the mandate to reclaim what was lost and to reassert Sinhala Buddhist dominance in Sri Lanka.

This is likely to take place through new policy and legal initiatives and other practical measures. Debates around the 20th amendment to the Constitution in 2020 saw the government reasserting their claims of ushering in a new constitution which is meant to reframe the structure of the state by consolidating executive rule and centralising power. Basil Rajapaksa's comments reflect to this thinking: *"A Constitution needs pillars and frameworks. Unfortunately, in the current situation these have been changed from time to time. The first biggest blow was the 13th Amendment. Then the 16th, 18th, and 19th Amendments. Every Constitution is like the foundation of a nation. But now ours is like a building where the foundation was built for something else and lots of floors have been added later. One day that building will collapse and people will die"*.⁷⁸ Considering public statements and positioning of key actors in government, the new constitution will likely create a strong executive presidency and further shift from what was introduced through the 19th Amendment. Provincial Councils and the framework provided

⁷⁸ Uditha Jayasuriya- Upto the People to give us a two-thirds majority- Basil- <https://www.ft.lk/opinion/Up-to-the-people-to-give-us-a-two-thirdsmajority-Basil/14-703809>, 29 July

under the Thirteenth Amendment will also likely get scrapped or weakened to a point that power sharing will be mere tokenism.

The government's message is that a mandate for a new constitution was provided with its massive electoral victory in 2020 and thus a committee of experts was appointed to commence drafting. A public call for proposals was made by the committee with several making submissions and subsequently meeting with the committee. At the time of writing, limited information was available as to the status of this process. Considering the increasing unpopularity of this government and multiple challenges confronting it, it is unclear whether the government has the political will or capital to proceed with such a process.

While there are still uncertainties as to whether a new constitution can be passed considering the current political, health and economic challenges, there are real fears of legislative and policy initiatives that perpetuate Sinhala Buddhist majoritarianism as seen with proposed laws, task forces and other developments. It also cannot be ruled out that the government may introduce new initiatives including draft legislation as a form of distraction from the multiple challenges faced at present. Considering the secrecy and speed with which some have moved in the recent months, close attention will be required in this area.

Minority Rights in the Pandemic Period

The constitutional reforms outlined above are one part of a broader majoritarian project. Sinhala nationalist ideology, in addition to being the driving force behind this attempt to remould the state, also underpins and informs day to day administration and public policy in ways that are detrimental to minority communities in the country.

While Tamils have historically been the main target of state persecution in Sri Lanka, the targeting of Muslims has seen a resurgence since the end of the civil war, with incidents of mob violence accompanying state sanctioned discrimination particularly in the aftermath of the Easter Sunday attacks. COVID-19 has provided a new background against which Muslims have increasingly become scapegoats within ethno-majoritarian narratives.

Forced Cremation

One of the most significant issues in the pandemic period was that of forced cremations, where despite WHO guidelines⁷⁹ (which Ministry of Health guidelines were initially in accordance with) indicating that burials could be carried out safely, the Government imposed a ban on the burial of bodies of those who had died as a result of COVID-19.

⁷⁹ https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf

The stalling of the Government with regard to overturning this decision in the face of mounting pressure was notable, with the Government initially refusing to do so even after a report from a Ministry of Health appointed committee of virologists and microbiologists stated that burials could be carried out safely.⁸⁰ These actions indicate not the actions of a government basing its decisions on the relevant medical expertise, but one that instrumentalises the category of expertise in line with pre-existing agendas, attempting to give them a veneer of rationality and scientific authority.

Backtracking and confusion over the final decision were rife in the lead up to the first burials actually taking place. Even after an announcement was made by Prime Minister Mahinda Rajapaksa,⁸¹ members of Government maintained that the ban on burials would continue.⁸² In addition to being an indication of the ability of rival power blocs within the Government to undermine the Prime Minister on matters of public policy, the very fact that they were willing to put forth an image of indecisiveness and disunity to do so is notable. Maintenance of the ban on burials was a matter of great political importance to a government whose political mandate was at least partially derived from their willingness to be 'tough' on the Muslim community.

Indeed, it was Imran Khan's visit to Sri Lanka which eventually proved to be a turning point, with a decision to allow burials being made on the 25th of February, days after his visit.⁸³ This change in policy came in the lead up to the resolution on Sri Lanka being debated at the UNHRC, where Sri Lanka required Pakistan's support. It is significant that both local and international expert opinion were ignored until doing so was diplomatically untenable. Given that this was the case, it seems unlikely that if it were not for pressure from countries such as Pakistan in the lead up to the debate of the UNHRC resolution, a change in policy would not have been forthcoming.

⁸⁰ "Sri Lanka will continue to cremate all Covid dead – Minister" January 7 2021. *economynext*;
<https://economynext.com/sri-lanka-will-continue-to-cremate-all-covid-dead-minister-77648/>

⁸¹ Zulfick Farzan., "PM gives green light in parliament for Covid burials" 10 February 2021. *News First*
<https://www.newsfirst.lk/2021/02/10/pm-gives-green-light-in-parliament-for-covid-burials/>

⁸² Hiranyada Dewasiri., "Nothing more from PM on burial comment" 12 February 2021. *The Morning*;
<https://www.themorning.lk/nothing-more-from-pm-on-burial-comment/>

⁸³ "Sri Lanka finally lifts ban on burial of COVID victims" 26 February 2021. *Aljazeera*;
<https://www.aljazeera.com/news/2021/2/26/sri-lanka-finally-lifts-ban-on-burial-of-covid-victims>

Forced Cremations: A Timeline⁸⁴

March 27th 2020	<ul style="list-style-type: none"> • WHO declares burials safe, Ministry of Health guidelines set in accordance with WHO recommendations allowing burials.
March 30th 2020	<ul style="list-style-type: none"> • The second COVID-19 death, the first Muslim victim of the virus was cremated, contradicting Ministry of Health and WHO guidelines.
April 11th 2020	<ul style="list-style-type: none"> • The Government issues a gazette mandating burial as the only way of disposing the bodies of those have died of COVID-19.
November 6th 2020	<ul style="list-style-type: none"> • Independent Permanent Human Rights Commission of Organization of Islamic Cooperation notes 'deep concern' with regard to burial policy
December 1st 2020	<ul style="list-style-type: none"> • The Supreme Court refuses leave to proceed on all fundamental rights petitions calling for an end to forced cremations.
December 8th 2020	<ul style="list-style-type: none"> • Forced cremation of the body of a two-week-old baby
December 16th 2020	<ul style="list-style-type: none"> • Protests at the Borella cemetery
December 30th 2020	<ul style="list-style-type: none"> • The Muslim Council of Britain challenges forced cremations
January 4th 2021	<ul style="list-style-type: none"> • Expert panel appointed by the Ministry of Health revises guidelines to allow burials
January 7th 2021	<ul style="list-style-type: none"> • Pavithra Wanniarachchi states that Government is waiting for decision from 'main committee' to decide on burial issue.
February 10th 2021	<ul style="list-style-type: none"> • Mahinda Rajapaksa states in parliament that burial will be allowed
February 16th 2021	<ul style="list-style-type: none"> • Cabinet spokesperson Udaya Gammanpila states that Mahinda Rajapaksa was merely stating personal opinion when claiming that burials of COVID-19 victims would be permitted.
February 23rd 2021	<ul style="list-style-type: none"> • Pakistani Prime Minister Imran Khan arrives in Sri Lanka
February 25th 2021	<ul style="list-style-type: none"> • Government lifts ban on burial of COVID deceased.
March 1st 2021	<ul style="list-style-type: none"> • Burial site in Iranathivu approved
March 3rd 2021	<ul style="list-style-type: none"> • Protests against choosing Iranathivu as a burial site
March 9th 2021	<ul style="list-style-type: none"> • Burial site moved from Iranathivu to Ottamawadi Sudupaththinassenai area

⁸⁴ 'Denying Burial Rights to the Sri Lankan Muslims – Contradicts WHO Guidelines and Self Defeating' – People's Rights Group <https://www.prgsrilanka.org/covid19sl/>

Arrests and the Use of Legislation Targeting Minorities

One of the most damaging mechanisms by which minorities have been targeted has been the weaponization of specific pieces of legislation to detain and silence individuals. Two pieces of legislation that have been particularly problematic are the International Covenant on Civil and Political Rights (ICCPR) Act and the Prevention of Terrorism Act (PTA). This is also in the context of increasing reports of torture and custodial deaths at the hands of law enforcement officials with recent reports indicating that all communities were at the brunt of such violence. In the absence of accountability for perpetrators of such action, impunity prevails.

While these pieces of legislation have been used to target minorities under successive governments, new developments have meant that the space for dissent has shrunk even further since 2019. This has happened in different forms but one of the most alarming was the introduction of regulations titled “De-radicalization from holding violent extremist religious ideology” under the PTA by President Gotabaya Rajapaksa on March 12th. These regulations are aimed to rehabilitate those who cause or intends to cause “acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups”.⁸⁵

In line with these regulations, we have also seen the gazetting of the Counter Terrorism Investigation unit as a new detention centre under the PTA.⁸⁶ Several challenged these regulations and the matter is now before the Supreme Court with concerns around how such arbitrary and vague regulations could lead to targeting of individuals who are critics and minorities as it could target individuals for holding a view contrary to the government.⁸⁷ There is also a concern as the regulations are silent on important terms such as what is meant by ‘rehabilitation’ and remove judicial oversight and safeguards. If the Attorney General’s Department believes the person is suitable for rehabilitation that person may be detained for a year (with possible extension for another year) with approval by a magistrate as the sole form of judicial scrutiny. The overbroad and vague language and opportunities for abuse in the absence of robust oversight can lead to not merely targeting sections of society and silencing dissent. In addition to these, there are also concerns of other methods used to curtail dissent including reports of various new laws that are likely to be introduced.

Since 2019 we have seen a number of examples of the use of the PTA, ICCPR act and other pieces of legislation to silence dissent, with members of minority communities being disproportionately targeted under these laws. The arrest of Heejaz Hizbullah was one of the

⁸⁵ Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act, CPA Statement, 18 March 2021

⁸⁶ Easwaran Rutnam, ‘New Detention Centre Gazetted’ (June 2021), Daily Mirror http://www.dailymirror.lk/front_page/New-detention-facility-gazetted/238-213669

⁸⁷ “The black box by Capt. Vasabha” – ‘D-day for Port City and Govt. Coalition tomorrow’ (April 2021), The Morning <https://www.themorning.lk/d-day-for-port-city-and-govt-coalition-tomorrow>

most prominent and egregious recent examples of this. His arrest in connection to the 2019 Easter Sunday attacks, has not met even the minimal standards set out by the PTA.⁸⁸ Emerging information regarding attempts to manipulate the eyewitness identification process, and demands that others who have been detained under the PTA make incriminating statements against him in return for their release, indicate a disturbing lack of regard for due process.

Heejaz's case was just one of several such instances with the arrests of Ramzy Razeek and the poet Ahnaf Jazeem, also paradigmatic of the Government's increased scapegoating and targeting of Muslims.⁸⁹ Each of these incidents demonstrates why reforms of the ICCPR act and PTA are necessary in order to prevent their use as tools of repression against minorities.

However, the very weaponization of these tools also points towards deeper problems of increasing ethno majoritarianism, the place of the Muslim community as new scapegoats within the Sinhala nationalist imagination and the effects of these political trends going forward. The ending of the targeting of minorities and arbitrary arrests thus requires ideological interventions opposing majoritarianism as much as it does legal ones.

Beyond the intrinsic injustice of such arrests, such incidents and an inability to oppose repressive trends heighten the sense among marginalised youth that peaceful democratic change is unlikely, pushing them further into the hands of extremists. In this way, the targeting and arbitrary detention of members of the Muslim community may threaten the very natural security interests that authorities purport to be aiming to protect.

Burqa Ban

Further targeting of the Muslim community was witnessed in the cabinet's decision to approve a proposed bill on the banning of face cover including the niqab and burqa.⁹⁰ Even though many such cabinet decisions have been made with little media coverage, there was a significant amount of attention drawn towards this particular decision, with members of the Government themselves publicising it. This suggests a desire on the part of the Government to use this announcement as a distraction from failures to manage the pandemic, turning public attention and scrutiny away from failures of governance. In doing so, the Government is able to both create a scapegoat to attract public ire and bolster its ethno-majoritarian credentials

⁸⁸ Thyagi Ruwanpathirana, 'On Hejaaz Hisbullah : The latest victim of Sri Lanka's draconian Prevention of Terrorism Act' (July 2020), Amnesty International <https://www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/>

⁸⁹ Z. L. Mohamed, 'Ramzy Razeek: An extraordinary struggle for an ordinary life of service upended by a police arrest' (May 2020), Daily FT [Ramzy Razeek, 'An extraordinary struggle for an ordinary life of service upended by a Police arrest' \(May 2020\), Daily FT https://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917](https://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917)
Nethmi Rajawasam, 'The Arrest of a Poet' (April 2020), The Morning <https://www.themorning.lk/the-arrest-of-a-poet/>

⁹⁰ 'Sri Lanka to ban burka and other face coverings' (March 2021), BBC <https://www.bbc.com/news/world-asia-56386426>

through the punishment of these scapegoats. However, even though the mere publicising of this decision serves the Government in its efforts to distract from failures of governance, it is likely that this ban may in fact be implemented.

Sarath Weerasekara statement arguing that burqas are a 'sign of religious extremism'⁹¹ and are thus a national security issue, has stigmatized the women who wear them and condemned them in the public eye as extremists. As a result, even though the ban hasn't been passed into law yet, the publicising of the cabinet decision may result in targeting of Muslim women who wear the burqa or niqab.

The ban on face covers has been used as an expression of a hardened stance towards the Muslim community since the Easter Sunday attacks after which they were also banned.⁹² This ban was put in place even though none of the attackers used this method of concealment. As such, state action in the wake of the attacks seemed to be driven more by the desire to play to the gallery by clamping down on the community who were deemed at fault than to reduce any real terror threat.

In much the same way, the targeting of the Muslim community by the current Government represents a means by which it has been able to assert its ethno-majoritarian credentials rather than a means of ensuring national security. This is rendered even more salient by studies on the subject which suggest the opposite, with the available evidence indicating that burqa bans actually increase the likelihood of terror attacks.⁹³

The banning of the burqa and niqab represent an infringement of Muslim women's right to manifest their freedom of religion and belief, having the effect of forcing many out of public spaces. Particularly in this context where this measure is merely one in a series targeting the Muslim community, this infringement of religious freedom will create further polarisation and tensions between majority and minority communities.

Memorialisation

Though we have seen a transformation in the kind of targeting taking place in the case of the Muslim community, the drivers of conflict we have consistently seen in the Tamil community since the end of the war have also undergone a process of intensification since the inauguration of this Government.

The inability to memorialize loved ones who have been lost, for instance, has been a significant grievance for the Tamil community since the end of the war. This prevention of

⁹¹ Ibid

⁹² 'Sri Lankan attacks: Face coverings banned after Easter bloodshed' (April 2019), BBC
<https://www.bbc.com/news/world-asia-48088834>

⁹³ Manchanda & Saiya (2017) 'Do burqa bans make us safer? Veil prohibitions and terrorism in Europe'

memorialization has been intensified against a backdrop in which triumphalist monuments, celebrating the victory of the Sri Lankan armed forces, are present in the very areas where memorialisation has been banned. Of course, this is a systemic and deeply rooted ideological issue that predates the current Government, with such incidents also taking place under the Yahapalanaya Government. Nevertheless, there have been a number of particularly problematic recent incidents since the inauguration of this Government which serve to illustrate the form that tensions between the state and members of the Tamil community take in the north and east.

The demolition of the Mullivaikkal memorial on the 8th of January at Jaffna University was one such incident, with university authorities bulldozing a monument erected in 2019 to honour civilians killed in the final phases of the war.⁹⁴ The decision to do so came on the back of instructions to University Vice-Chancellor S. Srisatkunarajah from 'higher authorities', specifically from 'Defence, intelligence (and the) Education Ministry.'⁹⁵

The consistent prevention of memorialisation in the North and East is particularly concerning given the fact that many of those in the Sinhala community have, rightly, been allowed to commemorate loved ones who were members of the Janatha Vimukthi Peramuna (JVP)⁹⁶ during the armed insurrections of the late eighties, a group who were at that time, also considered a terrorist organization by the Government.

These discrepancies challenge the notion that the prevention of memorialisation is merely an outcome of a reasonable and fairly applied principle which disallows the commemoration of terrorists. The same right to memorialisation afforded to the Sinhala community has not been afforded to members of the Tamil community, indicating that this decision cannot be separated from questions of inter-ethnic politics and the majoritarian ideological commitments brought to bear by the state when answering such questions.

In addressing this issue, it is also important to note that the conflation of the right to memorialisation with a supposed glorification of the LTTE takes place within both the Sinhala nationalist and pro-LTTE Tamil nationalist camps. However, a distinction must be drawn between the LTTE as a group and the individual cadres being memorialized by their families,

⁹⁴ Meera Srinivasan, 'Removal of war victims' memorial at Jaffna University sparks tension' (Jan 2021), The Hindu <https://www.thehindu.com/news/international/tense-situation-at-jaffna-university-after-authorities-remove-war-memorial/article33535428.ece>

⁹⁵ There was a sudden reversal of this decision when on the morning of the 11th of January, it was announced that the monument would be rebuilt. The reversal of this decision was influenced by the Indian Government, following a meeting between Mahinda Rajapaksa and Indian High Commissioner to Sri Lanka Gopal Baglay. Meera Srinivasan, 'India "intervened" on Jaffna University memorial issue' (Jan 2021), The Hindu <https://www.thehindu.com/news/international/india-intervened-on-jaffna-varsity-memorial-issue/article33594886.ece>

⁹⁶ '30th commemoration of fallen JVP heroes' (Nov 2019), Daily Mirror <https://www.dailymirror.lk/news/30th-commemoration-of-fallen-JVP-heroes/239-177805>

many of whom did not join out of choice. The issue of memorialisation is in this way one of many situations in which aspects of the Sinhala and Tamil nationalist worldviews are shared. These shared commitments are both caused by and are a result of an ever-escalating antagonism as each group continually confirms its suspicions of the other, perpetuating a cycle of suspicion and conflict.

Language issues

The issue of language continues to influence the trajectory of Sri Lankan politics with recent backlash to a number of notable instances in which the official language policy of the country has been violated. Specifically, these incidents have involved the setting up of signs and boards in which Tamil has been excluded, in violation of regulations which mandate that all the official languages of the country be present on public signs. Recent prominent examples of the exclusion of Tamil have been accompanied by the inclusion of mandarin instead⁹⁷. Though this inclusion is not by itself problematic, that this was done at the expense of a national language, especially a language whose exclusion by the state has been a key driver of conflict in the past, is a worrying development. The geopolitical aspect of these latest incidents has resulted in them garnering a great deal of attention and bringing these issues to the fore. However, these are merely the most visible examples of a more general callousness from the state with regard to the linguistic rights of the Tamil community. This has been evident in such cases as the Government's opposition to the singing of the national anthem in Tamil,⁹⁸ to problematic statements about language rights made by Prime Minister Mahinda Rajapaksa.⁹⁹

During the pandemic period as well, there has been a lack of Tamil language translations of official government and police announcements, with notices on travel restrictions and pandemic guidelines often only being released in Sinhala.

Repeated failures to adhere to and take seriously the national language policy are symptoms of the dominance of a majoritarian conception of the state as a representative, first and foremost, of the Sinhala community while minority communities are to be conditionally accommodated. The continued dominance of this worldview and its manifestations in policy implementation has and will continue to alienate Tamil speaking minorities, further hindering an already weakened reconciliation process.

⁹⁷ Meera Srinivasan, 'Amid twitter spat, move to replace Mandarin board in Sri Lanka' (May 2021), The Hindu <https://www.thehindu.com/news/international/amid-twitter-spat-move-to-replace-mandarin-board-in-sri-lanka/article34622663.ece>

⁹⁸ 'Sri Lanka scraps Tamil national anthem at Independence Day' (Feb 2020), Aljazeera <https://www.aljazeera.com/news/2020/2/4/sri-lanka-scraps-tamil-national-anthem-at-independence-day>

⁹⁹ 'Constitutional reforms amidst chaos in country: MR' (Dec 2016), Daily Mirror <https://www.dailymirror.lk/article/Constitutional-reforms-amidst-chaos-in-country-MR--120218.html>

International accountability processes and implications

Sri Lanka's efforts with regard to human rights, accountability and reconciliation are currently before the UNHRC with the recently passed Resolution adopted in March 2021 establishing the most far-reaching action taken at the council in terms of evidence gathering and accountability.¹⁰⁰ Most recently the European Parliament (EU) Parliament adopted a strong resolution on the deteriorating human rights situation in Sri Lanka with implications for the Generalised Scheme of Preferences (GSP+) concessions.¹⁰¹ Agitation for accountability with Sri Lanka's past abuses has also been evidenced in different capitals with these international initiatives informed by voices from within Sri Lanka (victim-survivor groups, civil society and political entities) and those outside (UN mechanisms and special procedures, international organisations and diaspora).

With the attention on past and ongoing violations, much of these discussions have revolved around allegations and counter allegations of violations from the government side, the Liberation Tigers of Tamil Eelam (LTTE) and others. The often contested and divisive nature of such discussions have highlighted deeply entrenched positions among different groups and exposed the messy and complicated dimensions to accountability and reconciliation in Sri Lanka. It has also seen extremist positions from both the Sinhala and Tamil nationalist camps attempting to appropriate spaces and the creation of victim hierarchies that have seen fissures within and among groups who have previously stood together on the call for accountability.

With the space opening up with the peaceful transfer of power in January 2015, the diverging interests of many became more pronounced. Several who supported the adoption of Resolution 30/1 in 2015 saw this as an opportunity to usher in reforms in Sri Lanka to address root causes of the conflict and impunity in Sri Lanka. For others, including Tamil nationalist groups in Sri Lanka and extremist voices in the diaspora, pledges made in Resolution 30/1 were insufficient. The constitutional reform process and transitional justice process that commenced soon after were heavily critiqued, with some actively opposing attempts to implement some of the pledges as seen with the protests against the creation and operation of the Office for Missing Persons (OMP). These developments resulted in divisions within victim groups and civil society and exposing the fragility of these movements. There was also the added dimension of the influence and dependency by some on external forces which added a new layer of complications.

The escalation in authoritarian and military governance since 2019 has resulted in several groups coming together, yet again, to call for more robust international engagement and action. This was evidenced with several initiatives in the lead up to the UNHRC session in March

¹⁰⁰ Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, Resolution 46/1, 23 March 2021

¹⁰¹ European Parliament Resolution on the Situation in Sri Lanka, in Particular the Arrests Under the Prevention of Terrorism Act, 10 June 2021

2021 including a joint letter sent by Tamil political groups and others in February 2021¹⁰² but such initiatives are unlikely to fully address existing divisions and where extreme positions taken by some often attempt to overshadow the more moderate voices. Efforts to push for accountability and reconciliation in such a context where the politics of victimhood and identity are so deeply entrenched is daunting. Considering the multiple challenges, it is unlikely a lasting solution that addresses all concerns will be found in the present context in Sri Lanka.

The adoption of a strong resolution at the UNHRC, subsequent resolution at the EU Parliament as well as the passage of the Tamil Genocide Education Week Act at the Ontario Legislative Assembly in Canada all speak to recent disasters in the realm of foreign policy of the present government. The passionate statements made in defence of Sri Lanka's sovereignty have rarely gone beyond the rhetoric, with most aimed at domestic audiences than being seen as a foreign policy exercise. Further, several instances indicated the lack of planning and preparation that were required in the lead up to key events, with concerns raised as to who and what was driving foreign policy in Sri Lanka.

Another dimension is the engagement of the international community in Sri Lanka. The inability to take a strong principled position and lack of preparedness for the humanitarian crisis during the last stage of the war resulted in initiatives such as the Petrie Report that highlighted failures of the United Nations.¹⁰³ Similar sentiments are now shared as to whether some within the international community are resorting to a pragmatic and development oriented approach, opting to stay engaged with the government rather than take on sensitive issues related to human rights, justice and reconciliation. Such an approach will not only legitimize and strengthen problematic programmes initiated by the government but also facilitate in shrinking the limited space available for victims, civil society, media and others.

Opposition & Activism

The numerous missteps in governance and deepening health and economic crisis in Sri Lanka provides an opportune moment for an opposition to galvanize and build momentum. The failures to maximise these opportunities speaks to a fragmented opposition lacking a clear vision and leadership. Recent months have witnessed a spate of criticism against the Opposition Leader and the main opposition party, the SJB, linked to their inability to effectively counter the growing list of blunders from the government and expose corruption, discrimination and violence.

¹⁰² 'Tamil parties unitedly escalate demands at UN in Geneva' (Jan 2021), Daily FT

<https://www.ft.lk/columns/Tamil-parties-unitedly-escalate-demands-at-UN-in-Geneva/4-712182>

¹⁰³ 'Statement on the Internal Review Panel Report on Sri Lanka' (Nov 2012), United Nations Secretary General <https://www.un.org/sg/en/content/sg/speeches/2012-11-14/statement-internal-review-panel-report-sri-lanka>

The 2020 Parliamentary Elections resulted in major shifts among opposition groups with the SJB emerging with the highest number of seats followed by the Tamil National Alliance (TNA) and the National People's Power (NPP). Despite the NPP connecting with young and moderate voters in the south on their positions on governance and opposition to authoritarianism, they failed to retain their number of seats and returned to Parliament with only 3 MPs. Similarly, the TNA failed to retain their 16 seats in Parliament and instead returned with only 10 seats. Their lacklustre performance is a telling indicator that Tamil voters were disappointed with the TNA's lack of tangible progress with a political solution and inability to address economic hardships. This saw the Tamil National People's Front (TNPF) and Thamizhi Makkal Tesiya Kootani (TMTK) enter Parliament.

Further, recent years have witnessed the weakening of several political parties in Sri Lanka. The Sri Lanka Freedom Party's (SLFP) only victory was its big win in Jaffna which saw its candidate receive the highest preference and top the list in the district. The promise of the SLFP to support livelihoods and development in the region saw traction among many and exposed the lived realities in the area. Moreover, the United National Party's (UNP) dismal track record in recent years was rewarded with the worst electoral performance with it only managing to scrape through with a national list seat. Its inability to fill this seat for nearly 10 months with the seat finally being filled by its leader Ranil Wickramasinghe speaks to the lack of imagination to find new leadership in the face of several electoral setbacks.

The supermajority of the Government has ensured their ability to dictate parliamentary proceedings and business. This has been evidenced with several measures including changes made to standing orders and decisions on allocating time for debates, as seen most recently with the Port City Bill. In this instance, despite the calls by the opposition to delay the debate in light of the third wave, the government was able to push forward with their decision of a two day debate. The few opposition MPs who have received traction for their speeches have seen an immediate attack with some arrested and detained and others facing other forms of harassment and name calling including new levels of racist rhetoric.

The inability of the opposition to be united during an unprecedented health and economic crisis speaks to the political landscape. This can also be partially attributed to a lack of vision and political acumen. Many perceive the SJB more ideologically in line with the SLPP, espousing majoritarian policies and potentially alienating minorities. This can result in significant voter apathy and potentially low voter turnout in future elections.

In this, one would need to remember the successful campaigns in the past that advocated for a political solution and pro-democracy reforms. Such campaigns always had the support of the minorities. Alienating this significant vote base will bring with it major electoral setbacks and further strengthen Sinhala nationalist forces.

The test though will be whether opposition groups including minorities can come together on a common platform of identified issues that can have an impact on national politics and elections. The mismanagement of the pandemic response, environment destruction, economic crisis and several other setbacks provide many examples where governance has been weak. It provides opportunities for the opposition to galvanize but this has yet to come to fruition in a sustained manner that goes beyond a particular issue. With mounting challenges, it is to be seen whether varied political entities are able to come together, as done in the past, to form a diverse democratic force to counter the real threats faced at present and the immediate future.

The weak opposition can be contrasted by some bursts of energy from different quarters. The opposition to both the 20th amendment and Port City Bill saw diverse groups coming together and uniting to challenge proposed legislation, including from the government's own coalition. The fact that challenges have come from within government, opposition, civil society and others speak to the diverse agendas and different ideological bases.

Repressive government action has been met with resistance from affected communities. The Pottuvil to Polikandy (P2P) march was a particularly politically significant example of this. 10 demands were made by the protestors, namely:

1. To end land grabs in majority Tamil areas
2. To end the militarization of Tamil areas and the intentional Sinhalisation of the North.
3. To end the targeting journalists who bring to light human rights abuses and civil society activists who protest human rights abuses.
4. To stop the occupation of grazing areas and the killing of cows belong to Tamil cattle farmers.
5. To allow the memorialization of the war dead and cease the destruction of memorial monuments.
6. To end the ban on burial of COVID-19 deaths.
7. To stop the use of the Prevention of Terrorism Act to target minority youths.
8. To end the detention of Tamil political prisoners who are still imprisoned without trial.
9. To provide answers to the families of the disappeared
10. A pay raise to 1000 rupees a day for up country Tamils working on the plantations.¹⁰⁴

Significantly, this march saw the coming together of both Tamil and Muslim politicians and activists. The march was an indicator of the resilience of affected communities and a capacity for coalition formation between affected groups to an extent that has not been seen in the

¹⁰⁴ 'STF security for Sumanthiran withdrawn after P2P protest' (Feb 2021), Daily FT
<https://www.ft.lk/columns/STF-security-for-Sumanthiran-withdrawn-after-P2P-protest/4-712954>

recent past. Despite court orders seeking to prevent a number of politicians from attending the march, many played a key role in organizing the protest and galvanizing the public. The inclusion of Muslim and up-country Tamil issues marked a notable shift from previous protests in the North and East focussing largely on issues specific to war-affected Tamils in the North and East. The march laid the foundations for the possibility of a united front against state repression between communities that have, in the recent past had a fractious relationship of their own.

Though the formation of these coalitions and the resistance to repressive state activities was encouraging, the march was not a panacea with regard to the issue of Tamil-Muslim relations. Tamil nationalist pronouncements at the end of the march in Polikandy at best, complicates the possibility of this solidarity and at worst risks reducing the inclusion of Muslim issues in the march to tokenism. The use of nationalist ideology as the foundation of opposition to the state comes at the expense of alliance building with the Muslim community, particularly given the history of Muslim expulsions from the North by the LTTE and the broader ideological implications of Tamil Nationalism with regard to questions of territoriality.¹⁰⁵

The impending discussion of the resolution on Sri Lanka at the UNHRC created tactical complications with regard to the Government's response at the time. The response had to be careful while at the same time able to vilify the protestors, appease its ultra-nationalist elements within its voter base and consolidate public opinion against the march. Individuals involved in the march were, unsurprisingly, met with a punitive response from the state. In a television interview, Minister of Public Security Sarath Weerasekara stated that participants could be arrested, noting that *'Since we had obtained court orders, we have their photos and we have their vehicle numbers, we know who these individuals are. We can sue them and confiscate all their vehicles and put them in prison.'*¹⁰⁶ Following this declaration, a number of cases were filed against participants in the protest. This was followed by Weerasekara's removal of TNA MP Abraham Sumanthiran's Special Task Force protection, despite credible threats against the latter's life.¹⁰⁷ Along with the previously mentioned arrests under the PTA and ICCPR acts, Weerasekara's use of his position here to target and punish critics represents part of a wider push from the state to silence dissenting voices.

¹⁰⁵ Mahendran Thiruvarangan, 'The P2P march and beyond, re-imagining resistance amidst ethnic polarisation' (Feb 2021), The Morning <https://www.themorning.lk/the-p2p-march-and-beyond-re-imagining-resistance-amidst-ethnic-polarisation/>

¹⁰⁶ Interview on Hiru TV February 8th 2021 <https://www.youtube.com/watch?v=7aXyseptLrw&t=3797s>

¹⁰⁷ D.B.S Jeyaraj, 'STF security for Sumanthiran withdrawn after P2P protest' (Feb 2021), Daily FT <https://www.ft.lk/columns/STF-security-for-Sumanthiran-withdrawn-after-P2P-protest/4-712954>

Land Conflicts and Implications for Reconciliation

Each of the issues discussed in the section above have been, quite correctly, discussed and examined at length in research literature and public political discussion since the arrival of the new government in 2019. However, a source of conflict which has not been as prominent in these debates, which requires careful scrutiny if we are to understand the trajectory of inter-ethnic relations in Sri Lanka, is the issue of land.

Land as a conflict driver is not a new phenomenon in Sri Lanka, with cases spanning decades demonstrating the complexity and entrenched nature of such conflicts. These have revolved around land alienation schemes linked to development, irrigation and agriculture purposes, national security and contested religious sites, to name a few. The political and economic nature of such projects have compounded some of these cases. Such initiatives have been viewed for years with suspicion by minority communities as they are linked to dispossessing and displacing communities from their land with the goal of changing ethnic demographics and erasing the history and culture of minority communities.

An added dimension was the role of non-state actors including the LTTE and other militant groups who had power over land in their respective geographic areas of control and alienated lands which has also had a bearing on land ownership, control, use and access. Thus, land has been a site of contestation for decades, with some conflicts being long drawn out with many of the drivers present in the post-war context in Sri Lanka.

Other dimensions have also contributed the milieu of problems.¹⁰⁸ The role of central government in land issues was and continues to be a problem as is the heightened militarization, as discussed in this paper. These and others have contributed to a complex web of land conflicts in post-war years and been a setback on reconciliation efforts. Contributing to the existing matters are political and religious interests and new dimensions of economic projects that have serious implications on co-existence, security and the environment.

These developments are also in the context of having no functioning elected provincial councils in Sri Lanka with central government entities playing an increasingly active role in land matters. For example, as discussed with several cases below, line ministries and departments in Colombo are playing a prominent role in demarcating land and deciding on access, control and use. The centralization of power is at a new level, with the security apparatus and civilian administrators working with Buddhist clergy and new entities such as task forces and

¹⁰⁸ The contestation of ownership and control of both private and state land increased during the war and post war years due to a range of issues from lack of documentation to prove ownership, use of fraudulent documentation, displacement of original owners, coercion used to sell land and administrative complications.

committees¹⁰⁹, exacerbating fear, apprehension and deep suspicion among communities and continuously test a fragile peace.

National Heritage and Archaeology

The use of protecting national heritage or antiquities is not new but recent years have witnessed a resurgence of its use to impact land ownership and use in parts of Sri Lanka, with particular interest in the North and East where recent efforts have seen an escalation in attempts to identify sites and demarcate areas as national heritage. Such initiatives, mostly shrouded in secrecy, create apprehension among affected communities with a fear that such initiatives are likely to displace minorities from their lands, introduce new settlements that facilitates demographic changes with serious implications for electoral politics and reconciliation.

In this narrative, one must critique what is termed ‘national heritage’ and its use to further the Sinhala Buddhist majoritarian policies of the Rajapaksa government. President Gotabaya Rajapaksa has on several occasions indicated his preference to protecting Buddhist heritage and prioritizing Buddhism. His policy statement “Vistas of Prosperity and Splendour” indicated that it is his duty to protect all Buddhist heritage sites and preserve the historical heritage. He also appointed the Buddhist Advisory Council who meets monthly.¹¹⁰

The Archaeology Task Force for the Eastern Province¹¹¹ (Task Force) was established in June 2020 to examine issues of archaeology in a province comprising of the three communities but the Task Force composed of only Sinhala members including several Buddhist clergy. Further, Ven. Ellawala Medhananda Thero, a member of the Task Force, has stated that the Task Force examined and identified 2,000 sites as Buddhist heritage in the Eastern province.¹¹² Despite this claim, there is no publicly available information to indicate on what basis the 2000 sites were identified but the statement and the other measures is indicative of a not so subtle shift of protecting the dominant religion and prioritising it over others.

Further, protecting national heritage is also closely linked with militarization. The Task Force is headed by the Defence Secretary, a former military official with the military used to provide support for reconstruction work of Buddhist sites and protection in contested sites.

¹⁰⁹ The Eastern Province Governor appointed a ‘Committee of Experts on Social Injustice’ which commenced sittings in the areas in January 2021.

¹¹⁰ The carefully crafted aligning with Buddhist religious leaders and sites was evident during his presidential campaign which officially commenced from a temple in Colombo and his campaign robustly championed by the Buddhist clergy.

¹¹¹ Established by [Gazette Extraordinary no. 2178/17](#)), 2nd June 2020

¹¹² ‘Antiquities excavation in North, East: Work commences on 10 sites’ (Jan 2021), The Morning <https://www.themorning.lk/antiquities-excavation-in-north-east-work-commences-on-10-sites/>

The work of the Task Force is shrouded in secrecy with only limited information available at the local level. Considering some of the individuals in the Task Force and their links to the government, there are credible fears that it will set in motion initiatives that will significantly impact the ownership and control of lands in the Eastern Province with minorities likely to face the brunt of such initiatives. The President's reference recently to the weakening of intelligence services, forcible occupation of places of worship and the destruction of archaeological sites also points to the thinking of using a militarized and pan-Sinhala entity to further the agenda of the ultra-nationalist elements that support the present government.¹¹³

Media reports and those in the areas have also alluded to the increasing role played by the Department of Archaeology of Sri Lanka¹¹⁴ in recent years to control land in particular areas some of which are discussed below. In the face of secrecy and lack of due process, many feared that the Task Force and other central government actors were attempting to take over land belonging to minority communities and with several instances reported where Buddhist clergy were also involved.

One particular site of contention is the Muhudu Maha Vihara, Ampara District. This site was visited in 2020 by the Defence Secretary, who is also the head of the Archaeology Task Force, when he had requested for the temple to be provided maximum security.¹¹⁵ The recent attention and security presence is making locals fear of losing their rights over lands occupied and used for decades and they claim that the Buddhist monk from the temple is working with the Department of Archaeology to take land presently occupied by them. This case is an example where a contested site due to a combination of reasons can result in continued tensions with recent initiatives compounding fears held among minorities of being dispossessed of their lands.

Ampara District has several other sites of contention. Another well-known site is the Deeghvaapiya Temple complex with competing claims as to the extent of land that falls within the temple premises.¹¹⁶ Many from the majority community claim that the area around the temple has monuments of historic and religious significance and more lands need to be gazetted as sacred lands. In February 2021, the Deeghvaapiya Trust Fund was created so that the public can donate to assist in reconstructing the Buddhist statues in the area.¹¹⁷ According to media reports the restoration will be done with the assistance of the military and the Civil

¹¹³ President Gotabaya Rajapaksa speech, 25 June 2021

¹¹⁴ Several laws that are relevant include the Antiquities Ordinance No. 09 of 1940 and amendments; Antiquities (Amendment) Act 1998. The Minister in charge has broad powers to gazette archaeological monuments which many fear will be used to identify sites in areas predominantly composed of minorities.

¹¹⁵ PARL Statement, 20 May 2020

¹¹⁶ For more information refer to- Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Relations, Secretariat for Muslims, 2015

¹¹⁷ 'Fund to be set up to renovate Deegawapiya' (Aug 2020), Daily News
<http://www.dailynews.lk/2020/08/31/local/227403/fund-be-set-renovate-deegawapiya>

Defence Force (CDF) under the leadership of the Defence Secretary and head of the Archaeology Task Force.

Similar fears of land grabs in the guise of national heritage and protection of archaeology were evident in other parts of the Eastern Province. Reports from locals indicated to several areas in Kuchchaveli DS, Trincomalee District where the department was attempting to gazette both private and state land to bring under its purview. These attempts to gazette lands resulted in several cases filed in the High Court in Trincomalee with interim orders granted to prevent officials from entering the land and restraining them from proceeding with action of granting lands to religious temples.

In another case in Muttur area both Tamil and Muslim communities who have been residing in the area for decades and using land for paddy cultivation maybe affected due to claims made by a Buddhist temple- the Muttur Kottiyarama Mullamahar Vihara- that was created in 2018. Several attempts to survey lands were stopped due to the agitation by the affected communities with a case now filed in the Muttur Magistrates Court.

In addition to the existing sites of contention, attempts were also ongoing to gazette other areas to bring them under the purview of the Archaeology department. Locals in the North and East confirmed that they were aware of lists identifying sites in the different districts in the area which are to be gazetted though no information was publicly available as to how these sites were identified and criteria used.¹¹⁸

Recent months have also witnessed attempts by the Department of Archaeology to survey land and put markers in the area with the intention of demarcating them as sites coming under the institution. In May, media reports indicated to the Department of Archaeology uncovering a site with artefacts in the Mannakulam Forest Reserve in Nedunkeni, Vavuniya.¹¹⁹ According to media reports, the information of the site was given to the Department by the 16th Sinha Regiment of the Sri Lanka Army. In January officials from the department had tried to measure a patch of land in Kandharodai in Jaffna district but this was brought to the notice of a local Member of Parliament who had gone to the area to stop the activity. Similar activity was seen at the Kusalana Malai Kumaran Temple in Batticaloa in November 2020. Locals claim that the Hindu temple is centuries old and that the residents have been using it for many decades. In 2020 the department had visited the rock and commenced putting stones. Locals claim there was no prior information given and also that that a nearby inscription was destroyed. Similarly,

¹¹⁸ For example, a list in Batticaloa district showed names of over 600 sites which had been identified to be gazetted, the highest number so far seen from any district in the North and East. Locals in Ampara also confirmed the existence of such a list for the Ampara district. Information obtained through a Right to Information application also indicated to 26 sites in Mannar, 53 sites in Mullaitivu and 43 sites in Vavuniya districts had been identified to be gazetted and brought within the purview of the Archaeology department. Field visits February and March 2021

¹¹⁹ "Archaeological site discovered inside Vavuniya forest reserve", Sunday Times, 18 May 2021

in Thiriyayi village, Trincomalee, the department had placed stones for around 950 acres of land that was previously cultivated by Tamil farmers for over a century. Similar practices were also seen in Thenmaravady and Iranaikerni in Trincomalee. The farmers are unable to farm due to restrictions and have no access to their lands as a result.

The above are only some indicators in how the term 'national heritage' is informed by a Sinhala Buddhist majoritarianism that prioritises and protects some site and, in the process, marginalise minorities and their claims over land. The blatant use of central government entities and security forces to push this agenda merely reinforces fears of Tamil and Muslim communities in the areas and perpetuate apprehension and tension.

Post-war years have seen several sites across Sri Lanka where there has been competing land with a religious dimension including areas in the North and East, Dambulla, Kurugala and others.¹²⁰ In several of these instances, Buddhist clergy with the support of the state have been able to assert control over land and prevent access and/or use for minorities. Several instances also speak to the destruction of religious buildings or historical sites with significance to minorities with other instances where religious buildings located in lands occupied by security forces have been destroyed.

The Kurunthumalai Temple in the Mullaitivu district has been in the news recently with reports indicating that a Trident was destroyed and in its place a Buddha statue placed by State Minister Vidura Wickramanayaka.¹²¹ Post-war years saw increased military presence in the area and in 2020 locals informed of surveying that took place in the area with a survey report dated 14 December 2020 mentioning a 'Kurundhi Vihara'. Recent media reports indicate to the Archaeology Department attempting to take over large tracts of land in this area amounting to around 81 acres of land which was confirmed by locals in the area.¹²² Further, locals indicated that this area comes within the purview of the Forest Department with a gazette dating to 1921 but regardless, there is work being done in the site. Locals fear that the Archaeology department and military will destroy the historic Hindu site and replace it with a Buddhist temple. A case is now before the Supreme Court on this matter.

Another dimension is how land alienation is used to support the majority religion with fears of minorities losing ownership of lands. For example, a gazette¹²³ issued in 2020 by the Department of Buddhist Affairs alienated what is claimed as state lands to seven Buddhist sites

¹²⁰ For more information refer to- Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Relations, Secretariat for Muslims, 2015

¹²¹ 'Sri Lanka minister leads Buddhist land grab of Tamil Temple' (Jan 2021), Tamil Guardian <https://www.tamilguardian.com/content/sri-lankan-minister-leads-buddhist-landgrab-tamil-temple>

¹²² 'Antiquities excavation in North, East: Work commences on 10 sites' (Jan 2021), The Morning Field visit February 2021; <https://www.themorning.lk/antiquities-excavation-in-north-east-work-commences-on-10-sites/>

¹²³ Gazette No 2196 issued on 2 October 2020

in Kuchchaveli DS that amounted to 137.73 hectares (340.33 acres). Despite official claims of this being state land, locals in the areas claimed the land belonging to minority communities who possessed documents to prove ownership.¹²⁴ Fears are compounded by the fact that the establishment of temples will result in new settlements comprising of the majority community and with it changing demographics in the area.

In several cases, locals claimed there were no Buddhist temples prior to the war and that these new sites are being created with the support of the central government and military.

Land conflict has also been witnessed within different religious sites and communities which can have wide implications. Several such sites are seen in the North and East. For example, the land dispute between Thirukesawaran Temple and the Catholic Church in Manner was due to attempts to build an arch at the junction leading to the Thirukesawaran Temple. The Church objected to the arch and the matter escalated into a legal dispute which is now before court.

Places of religious worship have become sites of conflict on several occasions over the last few decades. Whilst some of these conflicts arose in the aftermath of the war, some can be traced back to during the war. Documentation¹²⁵ in recent years has indicated an increase in attacks on religious sites associated with religious minorities with limited action taken against perpetrators. This is also against the backdrop of heightened incidents of incitement targeting religious minorities with alarming levels of state backed violence.¹²⁶ Violence seen with events in Aluthgama, Digana and the post Easter Sunday attacks saw targeted and systematic attacks against the Muslim community, their properties and religious sites. Despite evidence showing the involvement of extreme Sinhala Buddhist groups and in some instances the complicity of Buddhist clergy, no prosecutions have taken place to hold perpetrators to account. In such a climate of impunity, perceived by many minorities as the state protecting perpetrators and providing a breeding ground for Sinhala Buddhist majoritarianism, there are increased fears and apprehensions as to the creation of new fault lines and sustaining existing conflicts.

Land, Irrigation and Development Schemes

Linked to promoting agriculture and food production, the government introduced the 'Wari Saubhagya' programme in 2020 with the authorities instructed to rehabilitate 5000 tanks across Sri Lanka with the involvement of the CDF.¹²⁷ With the pandemic having a devastating impact on livelihoods and food security in 2020, attention was on economic revival and promoting food production with a Presidential Task Force appointed on economic revival and

¹²⁴ Field visits February and March 2021

¹²⁵ Prejudice & Patronage: An Analysis of Incidents of Violence Against Christians, Muslims & Hindus, NCEASL 2021

¹²⁶ 'Fact – finding report on the Anti – Muslim violence in the Kandy District – March 2018' (2021), Law and Society Trust Ibid; <https://www.lstlanka.org/publications/reports/fact-finding-report-on-the-anti-muslim-violence-in-the-kandy-district-march-2018>

¹²⁷ 'President instructs to rehabilitate 5000 tanks immediately' (Sept 2020), Lanka Business Online <https://www.lankabusinessonline.com/president-instructs-to-rehabilitate-5000-tanks-immediately/>

poverty eradication headed by Basil Rajapaksa. The rehabilitation of tanks and ensuring water supply for farmers were several initiatives undertaken under this but such initiatives also involve practical challenges and political implications.

Irrigation schemes have in the past been used as forms of state colonization programmes. The Mahaweli Development Scheme is one such programme whilst addressing irrigation needs has also involved conflicts.¹²⁸ In several instances, local officials in the North and East were unaware of details of some programmes as decision making was largely based in Colombo. Two such schemes worthy of attention is the Mahaweli L Scheme used to alienate land since 1988 with reports of favouring the majority community.¹²⁹ Local officials in the North and East spoke of how the L Scheme was systematically used to bring in the majority community to areas previously used by Tamils. There was also evidence of names of some villages that had Tamil names to Sinhala names.¹³⁰

The Mahaweli B Scheme applies to Polonnaruwa and Batticaloa districts with recent attempts made to alienate lands in the Batticaloa district for maize cultivation with allegations that the land is being given to Sinhala farmers outside the area. A conflict is now evidenced in the Mahaweli B System- Mathuru Oya right bank where cattle grazing by Tamil farmers is affected by Sinhalese farmers from Polonnaruwa and Ampara districts. It is alleged that the Sinhala farmers are supported by the Eastern Province Governor and other officials with increasing reports of violence being used against cattle grazers and the destruction of property. According to reports from the area, around 200,000 cattle are affected who use the area in question during the paddy cultivation season.¹³¹ Since April 2020, farmers belonging to the majority community have encroached into the area with the support of the Mahaweli Authority. As a result of this, cattle grazing is affected and thus impacting the milk supply in the province and can also impact the national supply. This matter is now before the Court of Appeal and courts in Batticaloa.

Natural Resources and New Conflicts

An added dimension to land is environmental degradation which has seen an unfortunate escalation in recent years with the potential for new conflicts. Despite official pledges of conservation being a priority, several recent events expose the alarming trends of destruction that are likely to have long term implications on land, water, livelihoods and the environment.

¹²⁸ The Minister in charge of Mahaweli Authority has broad powers to create special areas, acquire and alienate land for agriculture and development purposes. Such powers have in the past been used to initiate projects that introduced new colonies and with it fears of changes to demographics.

¹²⁹ More information on the ethnic and political dimension of this issue can be found here- Bhavani Fonseka and Dharsha Jegadeswaran, "Politics, Policies and Practices with Land Acquisition and Related Issues in the North and East of Sri Lanka," Centre for Policy Alternatives, 19 November 2013

¹³⁰ For example, previously places such as Mundihekulam, Padakalukulam, Pumadakandal are now called Janakapura, Samuduwewa, Nelumwewa. Field interview February 2021

¹³¹ Field interview February 2021

The technocratic and militarized governance model that has prioritised economic revival has also meant the disregard for procedures that have protected natural resources, wildlife and the environment. As seen with the most recent fire with the X Press Pearl that has so far had devastating implications for marine life, livelihoods and the environment, the lack of due diligence and questions with process are evident coupled with decisions that are heavily influenced by political and economic incentives.

The post-war years witnessed an increased focus to protect the environment and wildlife. One area in the Vistas of Prosperity and Splendour is “Achieving sustainable development through balanced social, economic and environmental practices” with specific focus on regulations. The government’s thinking of environment protection includes ‘urban beautification, urban development and the creation of walking paths and urban parks’¹³² but its impact on the protection of natural resources is troubling. Despite the President claiming that he has always loved and respected the environment, it is under his watch that some of the largest environmental destruction is taking place.¹³³ This includes steps taken by the government to remove or relax existing frameworks that provide some forms of protection of the environment, natural resources and wildlife.

One area that received significant attention and raised an outcry was the cancelling of circulars that removed residual forests from the purview of the Department of Forest Conservation and handing over of large tracts of forest lands to divisional secretaries which have raised concerns of further destruction to these lands.¹³⁴

Further, Cabinet approved a proposal that cancelled the need for permits for the transportation of sand and other material. This in effect opened up mining with no requirement of approval which was challenged in court. This step of removing permits, if allowed to be implemented, would have resulted in unrestricted mining with severe environmental consequences. Several reports also allude to illegal sand mining in exchange for significant profit but carrying devastating impacts to the environment. Areas such as Valachchenai and Chenkalady in Batticaloa and Thalaimannar and Pesalai in Mannar and other areas have witnessed sand mining with potential long-term implications.¹³⁵

¹³² ‘Independence Day Speech’ (Feb 2021), Official Website of the President of the Democratic Socialist Republic of Sri Lanka <https://www.president.gov.lk/independence-day-speech-2021/>

¹³³ Minoli De Soysa, ‘Committing Ecocide: The Desecration of a Green and Pleasant Land’ (Feb 2021), Ground views <https://groundviews.org/2021/02/13/committing-ecocide-the-desecration-of-a-green-and-pleasant-land/>

¹³⁴ Dinarzarde Raheem, ‘Other State Forests and the Conservation of Sri Lanka’s Rainforest Biota’ (Nov 2020), Ground Views <https://groundviews.org/2020/11/23/other-state-forests-and-the-conservation-of-sri-lankas-rainforest-biota/>

¹³⁵ Field trips January, February and March 2021

A further concern are the methods used in the name of protecting forest lands that create new conflicts. Several cases in the North and East highlighted how officials are using the pretext of protecting forests to prevent access to communities who have traditionally lived and used the lands. In addition, a disturbing trend has been present for several years where locals who have used lands to cultivate or rear livestock for decades are now prevented from accessing the land or facing restrictions. In the Batticaloa district, cattle grazers who claim to have used state land for centuries for grazing purposes are now prevented from entering the land by the Forest Department and the CDF. Similar restrictions were evident in other areas in the North and East where the Forest Department was preventing locals from accessing and using lands they have used for years, raising fears that yet another central government entity was using existing frameworks to deprive minorities from using lands and potentially dispossessing them from their lands.

4. The Development Drive & Its Implications

Economic revival, efficiency and stability were billed as key aspects for the success of this government and necessary for the uplifting of the people. This was evident in both election campaigns in 2019 and 2020 and key policy statements made by President Gotabaya Rajapaksa and the unveiling of new development initiatives that were meant to boost investment and job opportunities. Yet, as evidenced in recent developments, the promises have not been fully realised with several events highlighting grave concerns the chosen policy direction of the government will have on governance, economy, constitutional democracy and geopolitics. This section briefly examines several key issues in the context of the prioritisation of development, impact so far and the potential areas of concern that can create and exacerbate existing conflicts.

The Port City Project

A key legislative victory for the government came with the enactment of the Colombo Port City Economic Commission Act which provides for the legal framework of a powerful commission and administrative framework of the Port City. Whilst these are early days in the implementation of the project, several concerns have emerged from the process so far, implications for governance, constitutional democracy and geopolitics. Whilst many other developments speak to these concerns, the Port City project hailed as the panacea to Sri Lanka being the next regional economic hub, captures multiple issues around prioritizing development and economic revival to the exclusion of other areas and the murkiness surrounding the process and impact of such large projects.

Concerns with Process & Implementation: Multiple issues were raised with the enactment stage of the Bill which saw the government rush through a Bill with limited public debate. The speed with which it moved witnessed the tabling of the Bill just prior to the Sinhala and Tamil New Year and a spate of public holidays which nearly resulted in closing the window of challenging the constitutionality of the Bill. Despite this, 19 petitions and several others intervened to challenge the Bill which saw the Supreme Court hold sittings during the April court vacation period. Many aspects of the Bill were challenged including the composition and powers of the commission, undermining Parliament and regulatory authorities, providing incentives that could undermine competition in mainland Sri Lanka, and issues of transparency and accountability, to name a few.

Notable among the petitioners were some of the government's fiercest supporters whose public statements critiquing the Bill highlighted concerns with the proposed project and its impact on Sri Lanka's sovereignty. Amongst the concerns raised was how the Port City was

providing China with a greater handle on domestic matters and creating an overreliance on one international actor which could have long term geopolitical and national implications.

Attempts to have an all-powerful commission with broad powers with no effective oversight faced a setback with the Supreme Court in its determination indicating the need for several amendments. It is notable that the Supreme Court suggested amendments to 25 of the 72 clauses of the Bill with several being determined as requiring to be passed by a majority of 2/3 in Parliament and a Referendum.¹³⁶

The two days allocated for debate, amidst the third wave of the pandemic, raised many questions as to whether this was a priority considering the health and economic crisis ranging in the country and why there was such a rush to proceed when many were still unaware of what was being proposed and implications. Despite calls by the opposition to postpone the debate, the debate continued. This was despite a Member of Parliament testing positive during this period.

The process of enactment of this key law also highlighted several issues related to law making and governance in Sri Lanka. The law-making process in Sri Lanka has over the years and under successive governments involved key government officials in the drafting and defence of the Bill but this has seen an increasing divergence in recent years with lawyers from the private bar playing a more active role. This was evident when the Bill's constitutionality was challenged in the Supreme Court. While the Attorney General's Department defended the Bill, we also had two senior President's Counsel's appearing for the Secretary to the President and Secretary to the Treasury respectively with each proposing amendments to the Bill in the course of the hearing prompting the Bench and counsel appearing for petitioners questioning as to who was leading the process of defending the Bill.¹³⁷ This also exposed an increasingly worrying practice of political actors and other vested interests interfering with the law making process which not only raises questions of the integrity of the process but also increasing politicization.

The Bill also witnessed a spate of committee stage amendments proposed to address concerns raised in the Supreme Court determination. The practice of bringing in committee stage amendments is not new, with successive governments having used this to serve their own political interests and with it sometimes introducing significant amendments. This was most recently witnessed with the 20th amendment to the Constitution where amendments not previously publicly shared were introduced at committee stage and thus shutting the door to citizens to engage with what was being proposed. Such a practice is of extreme concern as it shuts out public scrutiny and the court's purview, and as seen in the past, used and abused by successive governments. These practices that completely undermine the law making process

¹³⁶ 'Port City tilts balance toward China, as India watches on' (May 2021), The Morning <https://www.themorning.lk/port-city-tilts-balance-toward-china-as-india-watches-on/>

¹³⁷ CPA Commentary on the Port City Bill- <https://www.cpalanka.org/cpa-commentary-on-the-port-city-bill/>

is of serious concern and requires urgent attention, the absence of this attention is likely to lead to further entrenching politicized practices.

The tabling of the Bill a few days prior to a spate of public holidays also begged the question whether the government was deliberately preventing citizens from engaging in a process provided by the Constitution in challenging the constitutionality of a Bill. The fact that the government also attempted to hold a one day debate even prior to the court's determination being known also raises concerns as to the speed with which the government wanted to move with this particular law.

With the enactment of the Bill, it is to be seen how the Port City functions. The Commission's composition and powers were tweaked as a result of the Supreme Court determination with the importance of Parliamentary oversight confirmed. Despite amendments to the initial Bill which introduced key safeguards, other problematic areas still require attention including accountability and transparency, labour standards, zoning and environment standards, among many others. The process so far involving the Port City project, despite its massive impact on Sri Lanka, is still shrouded with opaqueness. While initiatives to generate economic prosperity for Sri Lanka is essential, the present exercise raises key concerns with process and substance and as to who is likely to most benefit from such a project.

At the time of writing, the implementation of the Act was in its initial stages with appointments made to the commission but no information yet on the regulations that will be required for the operations within the Port City area. As such, this is a project that will require careful scrutiny in the coming months.

Issues with Geopolitics: The government has maintained that it will occupy a neutral stance with regard to the geopolitical battles being carried out by the great powers. However, the actions and practices of the Government have demonstrated an increased alignment with China. The relationship between the current Sri Lankan government and the CCP is not limited to pragmatic diplomatic ties alone. Basil Rajapaksa's statement that he hopes the SLPP may emulate the CCP and BJP suggests further alignment with a more authoritarian governance model.¹³⁸

The President's meeting with China's Minister of National Defence Wei Fenghe gives us further clues as to the extent of Sri Lanka's move towards China in its foreign policy. Xinhua News, the state's official news agency stated that during this meeting the President noted that *'Sri Lanka had prioritized developing the relations with China and firmly supported China's positions on*

¹³⁸ Uditha Jayasinghe, 'BR invites private sector to join "decade of development"' (July 2020), Daily FT <https://www.ft.lk/top-story/BR-invites-private-sector-to-join-decade-of-development/26-703841>

*issues concerning its core interests.'*¹³⁹ Though of course it is entirely possible that this is an exaggeration by state run media with the intention of giving the impression that the geopolitical battle with India is being won, the statement remains a notable one.

The Port City is a key example of this, a project which could prove to be one of the most politically significant in Sri Lanka's recent history. This project is one of immense geopolitical value to China as part of its Belt and Road Initiative. The Port City is located in a key area, a foothold here would allow for a secure trade route to energy suppliers in Africa and the Middle East.

This involvement and control in a port in close proximity to India has further geopolitical implications in the context of regional competition and security. The Port City has been seen by China's geopolitical opponents as a component of a posited¹⁴⁰ 'string of pearls' strategy, in which maritime infrastructure projects are built and connected via maritime routes in order to expand China's naval presence in the region.

There are issues with regard to how much control China will exert in matters regarding the Port City and the effects that this will have on governance locally. Public concerns have been mounting with regard to the threat to sovereignty posed by the Port City.

Other Initiatives on Development and Concerns

Media reports allude to several other development projects that are in the pipeline that require attention. A recent spate of decisions on highway construction projects raises not only questions of prioritisation but also other implications. For example, the decision in June to construct five new flyovers and four lane elevated expressway at a time when the government is allegedly cash strapped with numerous other more immediate concern that require attention.¹⁴¹ Initiatives to develop and revive properties in Colombo and potential implications for heritage sites has also received attention in recent times with questions posed on Selendiva Investments (Pvt) Ltd, issues around process and accountability and whether this is the latest attempt to cede further control to external forces.¹⁴² Further concern is raised with the proposal to 'beautify 100 cities' and urban regeneration initiatives which fail to address poverty

¹³⁹ 'Sri Lanka, China vow to enhance pragmatic cooperation in all sectors'(April 2021), Xinhua Net http://www.xinhuanet.com/english/asiapacific/2021-04/29/c_139913168.htm

¹⁴⁰ The Chinese Government itself rejects the String of Pearls hypothesis, arguing that it is defamatory.

¹⁴¹ Work begins on five new flyovers, four lane elevated expressway today, Daily News, 7th June 2021

¹⁴² Namini Wijedasa, S'pore style PPP ventures kick off next week for prime Colombo locations, Sunday Times, 6 June 2021

and lived realities of many with implications on low income housing, displacement and livelihoods.¹⁴³

All these and other initiatives falling within the purview of 'Vistas of Prosperity and Splendour' are billed as initiatives needed for development and economic revival but serious concerns remain on multiple fronts. As with the Port City project, questions remain with process and whether decisions to award large contracts have undergone due diligence standards. There are also question around governance, rights and environment, among others and whether due attention will be given to people affected by such development initiatives. Past efforts at 'beautification', an initiative commenced during President Mahinda Rajapaksa's presidency, was fraught with numerous legal and rights issues.¹⁴⁴ Further, with the expansion of China's role in Sri Lanka, attention is also required in the area of geopolitics and issues around sovereignty and security.

While public opposition is rising to the growing Chinese footprint in the country and the agreements and projects being undertaken, Government acquiescence to this opposition has not been as forthcoming as with Indian or American projects such as that of the ECT agreement or the Millennium Challenge Corporation (MCC) agreement respectively. The suspension of the Japanese light rail project was another example of a development project, seen as an example of a reduced dependence on China, which was halted. Although the Japanese project was to be funded by a \$1.8 billion concessional loan at 0.1% interest with a 12-year grace period and maturity in 40 years, it was cancelled on the grounds that it would not be cost-effective.¹⁴⁵

Though the events which transpired in the lead up to pulling out of the ECT and MCC in particular indicated a reluctance on the part of the Government, their responsiveness to public pressure in these instances and not the port city issue may be reflective of China's increased sway with key decision makers. With regard to these infrastructure projects, decision-making on the part of the Government has indeed had the effect of furthering China's core interests in the region.

China will be keen to ensure that the Sri Lankan economy does not fail. Sri Lanka's place as part of the narrative of debt trap diplomacy will mean that the country's economic failure will reflect badly on the Chinese Government. China also plays a useful role for the Sri Lankan Government as well, in their role as a counter weight to the kind of pressures placed upon

¹⁴³ Ishara Mudugamuwa, Govt. approves proposal to beautify 100 cities across Sri Lanka, Daily News, 8 June 2021; Forced Evictions in Colombo: The Ugly Price of Beautification, CPA 2014.

¹⁴⁴ Forced Evictions in Colombo: The Ugly Price of Beautification, CPA 2014

¹⁴⁵ Marwaan Macan Markar, 'Sri Lanka to scrap Japan – funded infrastructure projects' (Dec 2020), Nikkei Asia <https://asia.nikkei.com/Politics/International-relations/Sri-Lanka-to-scrap-Japan-funded-infrastructure-projects>

them by the US, India and Europe on such issues as accountability and human rights in the country.

However, this does not mean that Sri Lanka's future is secure. Aligning too closely with one of the great powers could make Sri Lanka vulnerable, standing to be disadvantaged by the strategic responses of other powers.

Impact on Devolution, Reconciliation and Implications with Geopolitics

The Government's single-minded focus on development has resulted in many other issues being side-lined. Official statements and policy direction of the government has highlighted how issues such as human rights, reconciliation and devolution are side-lined in the name of economic prosperity. China's lack of interest in these areas has also meant that the government has been able to proceed with its priorities with other international actors not having much impact on the need for more recognition on political and other rights. In particular, finding a lasting solution to the ethnic question in Sri Lanka has been a persistent call from India who has historically been a key driver of the country's political trajectory. This remains the case today, with the influence of India bearing upon a number of key issues in the country but the lack of tangible progress and the fear of rolling back on some issues supported by India such as the 13th amendment to the Constitution also highlights the present dilemma faced by some sections of the international community.

India's decision to abstain from voting for the resolution on Sri Lanka at the UNHRC indicates a hesitance to lose ground to China. India remains firm in calling for Sri Lanka to implement the 13th amendment and devolve powers at the provincial level. Indeed, references to the 13th amendment have been a fixture in statements concerning Sri Lanka from top officials.

However, India's abstention at the UNHRC also displays an unwillingness to support the Sri Lankan Government even in spite of geostrategic considerations requiring them to ensure that the balance in Sri Lanka is not tipped in favour of China. Voting against the resolution was simply not feasible given the electoral backlash that support for this Government would receive from voters in Tamil Nadu in particular.

It is not only issues surrounding devolution and the 13th amendment which have been diplomatically salient under the new Government. There has been a degree of friction surrounding certain investment agreements between the two countries, specifically those involving the sale of shares of national assets to Indian companies.

The most recent and perhaps most salient of these agreements was that concerning the Eastern Container Terminal (ECT) in the Colombo Port. A memorandum of co-operation regarding the ECT was signed with India and Japan under the previous Government in May of

2019. According to this memorandum, India and Japan would hold a 49% stake in the operations of the terminal while the Sri Lanka Ports Authority (SLPA) would hold 51%. This agreement was subsequently approved by the new cabinet in December of 2019, only to renege on the agreement in January of 2021.¹⁴⁶

The decision of the Sri Lankan Government to unilaterally pull out of this deal comes in the wake of significant public protests against the selling of national assets. SLPA trade unions have played a key role in this process, however pressure on this issue came from a far broader range of actors with nationalist politicians such as Wimal Weerawansa and members of the clergy participating making public statements and participating in demonstrations opposing the agreement. The selling of a stake in the ECT, it was argued, represented an unpatriotic relinquishing of the country's assets.

India and Japan have instead been offered a higher stake in the West Container Terminal (WCT).¹⁴⁷ There has been significantly less opposition to an Indian stake in the WCT compared to the ECT, the reasons for which may be inferred from the initial arguments put forth by SLPA unions against the ECT agreement. One reason for this is that the SLPA had already invested funds in the ECT and did not wish to see their share of the dividends being diminished once operations commenced. A further reason for greater unwillingness to give up a stake in the ECT is its location, adjacent to the South Asia Gateway Terminal which would allow the two to be combined to form a 'box terminal' serving both small and large ships, allowing for increased efficiency and profitability.

This indicates that despite the political discourse surrounding such deals being dominated by a narrative that opposes foreign ownership in Sri Lankan assets per se, the most salient issues in terms of political decision making were the specific contextual considerations for the stakeholders with interests tied up in the assets at hand. Public discourse which focuses solely on an ideologically fuelled unwillingness to let go of national assets distracts from this reality. There have been further diplomatic strains on the back of contradictory claims about bilateral agreements between Sri Lanka and India coming from either side. In February 2021 Minister Udaya Gammanpila claimed that oil tankers in Trincomalee which had been leased out to an Indian Oil Corporation subsidiary in 2003 had been returned to Sri Lanka.¹⁴⁸ This claim was

¹⁴⁶ Charumini de Silva, 'SL snubs India, with 'domestic deal' for ECT' (Feb 2021), Daily FT <https://www.ft.lk/top-story/SL-snubs-India-Japan-with-domestic-deal-for-ECT/26-712480>

¹⁴⁷ Meera Srinivasan, 'India, Japan back in another Sri Lanka port project' (March 2021), The Hindu <https://www.thehindu.com/news/international/sri-lanka-now-clears-indian-investment-at-another-colombo-port-terminal/article33969407.ece>

¹⁴⁸ Meera Srinivasan, 'Sri Lanka to 're – acquire' Trincomalee oil tanks' (Feb 2021), The Hindu <https://www.thehindu.com/news/international/sri-lanka-to-re-acquire-trincomalee-port-oil-tanks/article33862319.ece>

subsequently denied by the Indian Government who maintained that the facility was being operated 'in accordance with existing bilateral agreements.'¹⁴⁹

Opposition to the selling of stakes in national assets to India and the subsequent reneging of deals are given further salience by the opposite process taking place with regard to similar agreements with China. While narratives surrounding sovereignty and the ownership of Sri Lankan assets and national territory have similarly been the subject of public political discourse, these narratives seem to have less sway on Government policy in the case of projects funded and coordinated by China, most significantly, that of the Port City. For India, this is not simply a matter of economic competition. In the context of China's series of investment projects encircling India, in Pakistan, Bangladesh and the Maldives, the port city is one component of a broader national security issue.

Exacerbating Inequalities

Though there has been a rhetorical focus on development above all else, this focus has not extended to the needs of those who provide the labour required for this development. Workers have undergone significant hardships and have suffered due to policy failures and inadequate assistance during this time. This is in contrast to the record earnings of Sri Lanka's listed companies during the pandemic period.¹⁵⁰ Already severe inequalities¹⁵¹ faced by workers have been exacerbated and exposed due to the pandemic. Despite the documentation of difficulties faced by several groups including migrant workers, Free Trade Zone (FTZ) workers and others, there have been little to no steps taken at a policy level to address these issues. This serves to demonstrate the inequitable nature of the government's development policy and the priority given to the demands of loyalists in the business community over the rights of a significant section of society.

FTZ workers as well as plantation workers¹⁵² have been required to work during lockdowns, with instances reported of insufficient precautions taken at the workplace, putting them at risk

¹⁴⁹ Meera Srinivasan, 'Pact with Sri Lanka on Trincomalee oil farm stands, says India' (Feb 2021), The Hindu <https://www.thehindu.com/news/international/pact-with-sri-lanka-on-trincomalee-oil-farm-stands-says-india/article33876858.ece>

¹⁵⁰ 'Records tumble as listed firms' earnings top 100b milestone' (June 2021), Daily FT <https://www.ft.lk/front-page/Records-tumble-as-listed-firms-earnings-top-Rs-100-b-milestone/44-719204>

¹⁵¹ Wimal Nanayakkara, 'A balancing Act; Can Sri Lanka Overcome Regional Income Inequalities?' (Dec 2018), Talking Economics <https://www.ips.lk/talkingeconomics/2018/12/27/a-balancing-act-can-sri-lanka-overcome-regional-income-inequalities/>
'Sri Lanka Socio Economic Data 2020' by The Central Bank of Sri Lanka https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/publications/otherpub/publication_sri_lanka_socio_economic_data_folder_2020_e.pdf

¹⁵² Yasmin Gunaratnam, 'Soap and solace scarce as Sri Lanka's tea pickers toil amid lockdown' (April 2020), The Guardian <https://www.theguardian.com/global-development/2020/apr/24/soap-and-solace-scarce-as-sri-lankas-tea-pickers-toil-on-amid-lockdown>

of contracting the virus¹⁵³. Further, many FTZ workers who test positive for COVID-19 or who are quarantined have been required to take no-pay leave, leaving them with no source of income due to the fact that most have not received the 5000rs allowance that was promised them. In addition to this, FTZ workers have not been prioritized for inoculation, with many unable even to get their first dose of the vaccine. This has increased their risk of catching the virus even further, leaving them in an impossible situation of having to choose between their health and their livelihoods. As a result, workers have become one of the most at-risk groups with regard to the contraction of COVID-19. These are also other concerns which were most recently highlighted in the Resolution adopted in the EU Parliament which may have implications for GSP+, compounding fears of further setbacks in the economic dimension.¹⁵⁴

Migrant workers have also faced significant problems during the pandemic, with many left stranded outside the country with no source of income. Repatriation policy has been inconsistent, and particularly during the initial stages of the COVID-19 response, priority was given to those who were able to pay for flights, whilst economically marginalized migrants were left to fend for themselves, often relying on private donations in order to get back to the country.¹⁵⁵

The failure to address their needs and ensure their safety speaks to a larger phenomenon of workers being taken for granted. Whilst the Government and its corporate backers reap the benefits of worker's contribution to domestic production and foreign currency earnings, it is the workers themselves that have had to bear the costs of the Government's developmentalist vision.

As seen with some of the issues raised in this section, the prioritization of the development drive over other issues brings with it multiple implications. Several existing and new initiatives demonstrate how the narrative of development is pushed through at the cost of governance, environment and labour standards. There is also the concern that major development projects will potentially provide opportunities for money laundering and corruption with efforts to roll back existing safeguards, potentially facilitating a kleptocracy in Sri Lanka. Against such a backdrop, robust monitoring of the chosen development model and resulting implications is critical.

S. Kandipan, M. Thevarajah, 'Sri Lankan workers protest against higher workloads and wage cuts' (May 2021), World Socialist Web Site <https://www.wsws.org/en/articles/2021/05/15/sril-m15.html>

¹⁵³ 'Sri Lankan Union Demand Respect for Workers Rights from Brandix and World Bank on Six Month Anniversary of Covid – 19 Outbreak' <https://asia.floorwage.org/wp-content/uploads/2021/04/Sri-Lanka-Press-statement-08.04.2021.pdf>

¹⁵⁴ 'EU Parliament Resolution throws down the gauntlet on GSP+' (June 2020), Daily FT <https://www.ft.lk/news/EU-Parliament-Resolution-throws-down-the-gauntlet-on-GSP/56-719095>

¹⁵⁵ Mihi Perera, 'Protesters urge early repatriation of migrant workers' (Jan 2021), The Morning <https://www.themorning.lk/protesters-urge-early-repatriation-of-migrant-workers/>

Conclusion

The study highlights the multiple challenges presently confronting Sri Lanka in the areas of governance, militarization, reconciliation and development, with increasing economic and health challenges and ethno nationalist rhetoric exacerbating and creating new fears and inequalities. Despite the ambitious promises in 2019 and 2020, the present reality is a far cry from the promised 'Vistas of Prosperity and Splendour'.

The bleak outlook is compounded amidst fissures within government and potential leadership battles into the future. It is also when the opposition parties in Parliament are unlikely to be able to make any effective counter. The need of the hour is for strong political leadership, policy coherence and clear and legal measures that recognise and address lived realities and provide people confidence of democratic processes. Sri Lanka's own recent past is a reminder as to how terror attacks, state sponsored violence and campaigns of fear and hate can consume many and influence choices at elections. Thus, close attention is required on leadership battles, political formations and policy initiatives with robust and peaceful action needed to safeguard Sri Lanka's constitutional democracy.

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