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The Executive and the Shadow State in Sri Lanka

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Introduction

Executive presidentialism is the dominant feature of Sri Lanka's constitution as well as its political culture. The powerful executive created by the 1978 Constitution, and the absence of adequate checks and balances allows authoritarian and undemocratic acts of executive presidents, which have not only eroded the accountability and independence of the legislature and judiciary, but also the supremacy of the constitution itself.[1] Nearly six years after the end of armed conflict in May 2009, militarisation in Sri Lanka has become normalised and entrenched, and the military's extensive involvement in civilian affairs exceeds boundaries prescribed in a constitutional democracy.[2]

The aim of this chapter is to propose a conceptual framework to better understand the manner in which, in post-war Sri Lanka, the executive presidency, with few fetters and restrictions on its authority, has been used to enable and sustain militarisation through the securitisation of certain groups and identities. Securitisation is 'discourse that takes the form of presenting something as an existential threat to the referent object', which is then used to legitimise and justify extraordinary measures taken by the state that restrict rights.[3] Securitisation, and militarisation as the strategy used to deal with the securitised communities and identities, have led to the creation of unofficial structures and processes, which while existing alongside official and legal

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[1] In Sri Lanka, the executive has shown scant regard for the separation of powers. For instance, in January 2013 the President summoned the 43rd Chief Justice and judges of the Supreme Court prior to the court delivering an important decision on legislation that was the brainchild of Basil Rajapaksa, Minister of Economic Development and the brother of the President. The 44th Chief Justice, Mohan Peiris, who was appointed after the impeachment of the 43rd Chief Justice Shirani Bandaranayake despite Court of Appeal and Supreme Court rulings against it, has himself stated that the legislature, executive and judiciary are three different institutions only for "administrative purposes" and he believes the three institutions would be most public friendly if they function as a single mechanism.

[2] Although Mahinda Rajapaksa was defeated at the presidential elections held on 8 January 2015 as of February 2015 it is yet to be seen whether and to what extent the military complex will be dismantled.

[3] O. Waever, quoted in U. Abulof, *Deep Securitisation and Israel's "Demographic Demon"'* (2014) **International Political Sociology** 8:396.

institutions, laws and processes, usurp the latters' authority. The contours of this 'shadow state' will be sketched by drawing upon elements of three concepts: the 'deep state', the 'garrison state', and the 'dual state'.

This chapter will begin by setting the context and ways in which the executive created an environment conducive for securitisation and militarisation, mainly through the use of emergency powers which enabled the creation of unofficial rules and processes that remained even following the lapse of the state of emergency. Thereafter, the evolution of securitisation in post-war Sri Lanka, the use of militarisation as a strategy to deal with securitised identities and communities, and the utilisation of securitisation to justify militarisation will be examined. This section will also argue that the deification of the President who was portrayed as a paternal protector figure played a crucial role in securitisation and militarisation. The impact of the dual processes of securitisation and militarisation will be the focus of the following section, which will set out the deliberate strategy used to undermine and control political activism and activity in the conflict-affected areas. The final part of the chapter will use elements of the concepts of the deep state, the garrison state, and the dual state to illustrate the existence of a shadow state that came into being during the tenure of President Mahinda Rajapaksa.

The Presidency and the State of Exception: Creating a Conducive Environment for Securitisation and Militarisation

The President is the head of the armed forces and commander in chief.[4] He is also the Minister of Defence. Article 155 of the Constitution bestows upon the President the power to declare a state of emergency. The substantive powers brought into effect by the declaration of a state of emergency are found in the Public Security Ordinance No 25 of 1947 as amended (PSO). These wide-ranging powers, which include the power to promulgate emergency regulations and to call out the armed forces to maintain public order, place few fetters on the President. For

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[4] The Constitution of Sri Lanka (1978): Article 30 (1).

instance, Section 12 of the PSO, which gives the President the power to call out the armed forces if 'circumstances endangering public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate' to deal with the situation, confers powers of search and arrest upon the armed forces. The Order is valid for one month from the date of publication in the gazette, and has to be re-issued at the end of that period. Unlike the declaration of a state of emergency, which requires parliamentary approval, the Presidential Order has to be only communicated to Parliament.[5] Any failure to communicate to Parliament does not affect the validity or operation of the Order. Further, any act done in good faith under a state of emergency is not subject to judicial oversight or review and hence Parliament becomes the sole oversight mechanism.

Due to a number of reasons, including the proportional representation electoral system, a weak parliamentary committee system, and a weak opposition plagued by internal strife, a scholar's warning more than 30 years ago that it will be possible to 'reproduce in time a group of Parliamentary representatives who do not represent the people but only the President'[6] became a reality in Sri Lanka. In particular, during the periods when the UNP commanded a five-sixth majority between 1977 and 1989, and the United People's Freedom Alliance (UPFA) gained a two-thirds majority in 2010, Parliament functioned more as an organ that rubber-stamped the decisions of the President, rather than as an oversight mechanism. In response to *The Straits Times* reporter's statement during an interview with President Mahinda Rajapaksa that the 'parliament will do what you tell them to do', Rajapaksa's response 'I know…or I hope so (laughing)'[7] is illustrative of this.

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[5] Public Security Ordinance No. 25 of 1947: Section 21 (2) and 2 (3).

[6] G. Obeyesekera, '*Political Violence and the Future of Democracy in Sri Lanka*', the Committee for Rational Development (1984) **Sri Lanka: The Ethnic Conflict-Myths, Realities and Perspectives'** (New Delhi: Navrang): p.49.

[7] R. Velloor, 'President Rajapaksa wants to be remembered as a man who loved his country, his people and did his best to serve them', **Straits Times**, March 2010, available at
http://transcurrents.com/tc/2010/03/president_rajapaksa_says_he_di.html
(accessed on 15 February 2015).

Further, as Minister of Defence, the President is bestowed with considerable powers that curtail civil liberties through the Prevention of Terrorism Act (PTA). For instance, the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court,[8] and thereafter for up to 18 months on the basis of a detention order issued by the Minister of Defence.[9] The lawfulness of a detention order issued by the Minister of Defence cannot be challenged in a court of law. The Minister of Defence does not have the power to create new offences, which can only be done either through new legislation passed by Parliament or by way of a proclamation of a state of emergency under the PSO. However, following the lapse of the state of emergency in August 2011 the President used the PTA, specifically Section 27 of the Act, which empowers the Minister of Defence to make regulations under the Act for the purpose of carrying out or giving effect to the principles and provisions of the Act, to re-introduce lapsed Emergency Regulations into the statute books through the PTA.

In Sri Lanka, national security considerations have been always given precedence in official rhetoric and action, which placed it above 'democratic values and policy decisions'.[10] Due to national security considerations, throughout the war certain populations and geographical areas were securitised. The executive's extended use of emergency powers to legislate during difficult times and bypassing elected representatives for an extended period, led to the state of exception remaining even after the state of emergency ceased to exist. The normalisation of the exception took place in stages with each precedent setting the bar higher for the next, thereby with the scope and nature of the powers being inflated after each successive emergency. This resulted in the government using 'the extraordinary powers and authority granted and exercised during previous emergencies' as the point of reference during the next emergency rather than 'normalcy'.[11] As Fionnuala Ni Aolain states, 'to recognise an emergency we must,

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[8] Section 7 Prevention of Terrorism Act.
[9] Section 9 Prevention of Terrorism Act.
[10] A. Welikala (2008) *A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka* (Colombo: Centre for Policy Alternatives): p. 20.
[11] Welikala (2008): p.102.

therefore, have the background of normalcy'.[12] Even after the lapse of the state of emergency, the regime used the legacy of the Emergency Regulations and the PTA as a template to implement its dual pronged project of securitisation and militarisation through unofficial rules and practices 'as well as a vocabulary of danger'.[13] Militarisation as a strategy was thereby justified as the only means to counter threats posed by the securitised areas and populations, which were deemed to continue to exist in post-war Sri Lanka. For instance, Tamil diaspora groups and the Tamil population in the conflict-affected areas, particularly young Tamil men, were presented as potential threats to the state as they were seen as groups that could revive the LTTE, thereby legitimating securitisation which could be dealt with only through militarisation.

The state of emergency enabled the creation of a number of unofficial rules and processes, which had/have no basis in law but have become the norm, if not at the macro level, most certainly at the micro level. These are rules and processes the military followed in the conflict-affected areas and which were known to the local populations, but most often not to those living outside. Although they are not in the statue books, they attained the status of formal rules, and were applied by those exercising power as formal rules at the expense of proper laws, regulations, and circulars. For example, following the end of the war in 2009, those deemed former LTTE members and sent to government-run rehabilitation centres were subjected to the process of signing-in at army camps and military-run 'civil affairs offices' following their release. This process, which has no legal basis, assumed the position of a formal process with Gotabhaya Rajapaksa often informing diplomats and visiting dignitaries that the process is in place due to the government's need to monitor the released former cadres. [14] Queries made to the Attorney-General's

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[12] F.Ni Aolain, '*Situating Women in Counter-Terrorism Discourses: Undulating Masculinities and Luminal Femininities'* (2013) **Boston University Law Review** 93: 172.

[13] E.M. Montano (2012) **Citizenship in Times of Exception: The Turn to Security and the Politics of Human Rights in Valle del Cauca, Colombia** (University of Massachusetts, Amherst) Dissertation. p. 43

[14] Gotabhaya Rajapaksa, President Mahinda Rajapaksa's brother and Secretary, Ministry of Defence, has played a key role in the process of militarization. The

Department by various diplomats and international organisations regarding the legal basis of this process elicited no response. While the creation and application of informal rules and processes are not particular to the Rajapaksa regime, it is during the Rajapaksa era that these informal rules and processes began to attain a formal status to the point where a context was created in which it was made clear that challenging them would lead to reprisals and punitive action by the state.

Is Militarisation Imperative to Deal with Securitised Groups or is Securitisation Employed to Justify Militarisation?

Militarisation is the primary strategy used to deal with securitised communities and identities, whereby the population, particularly in the conflict-affected areas, was 'subject to permanent managing and ordering' through multiple means.[15] One such process was regular registration, i.e., undertaking unofficial censuses of the population in the north, which was not implemented in all parts of the north nor was uniform procedure used in every area. Dissenters, human rights defenders, community leaders and political activists from opposition parties were amongst those who were 'constantly framed as actual or potential terrorists (or their collaborators)…'[16] and subject to military surveillance. For instance, the report of the army on the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC)[17] points out that for security reasons it is imperative to monitor the

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fact the President is the Minister of Defence enables Gotabhaya to assume a far broader role with more powers than an average secretary to a ministry. Although technically a government official he has functioned more as a politician or a parliamentary representative and exercised powers far exceeding his mandate and duties.

[15] Montano (2012): p. 100.

[16] D. Ojeda, '*War and Terrorism: The Banal Geographies of Security in Colombia's "Retaking"* (2013) *Geopolitics* 18 (4): p. 762.

[17] On 15 May 2010, in response to the Secretary-General and the President Rajapaksa's joint statement of commitment made in May 2009, the President appointed a Lessons Learnt and Reconciliation Commission (LLRC) to 'ascertain circumstances that led to failure of the ceasefire agreement of 22 February 2002, and the sequence of events that followed thereafter until 19 May 2009'.

activities of NGOs. While stating that there are no restrictions whatsoever on the activities of *bona fide* organisations, it recommends that screening and control of all international organisations, international non-governmental organisations, and non-governmental organisations be done under the supervision of the Ministry of Defence to ensure undesirable elements will not jeopardise national security.[18] This securitisation move was put into practice through numerous unofficial rules, including subjecting any gathering of more than a handful of people in the north and demanding civil society organisations provide prior notification to the army of any meeting or workshop.

Even though militarisation has been a feature of daily life in Sri Lanka, given the 30 year armed conflict and youth insurrections in the south, a distinction should be made between the process and form of militarisation that existed pre-May 2009, and militarisation that has become an entrenched and normalised part of life post-May 2009. Cynthia Enloe defines militarisation as a 'step-by-step process by which something becomes controlled by, dependent on, or derives its value from the military as an institution or militaristic criteria'. [19] Her warning that 'militarisation is such a pervasive process, and thus so hard to uproot, precisely because in its everyday form it scarcely looks life threatening', provides a useful framework that enables us to identify and understand strategies used to entrench militarisation by looking beyond the visible and most obvious to understand the insidious and rapid militarisation that has taken place since the end of the armed conflict, particularly in the north.[20] Prior to the end of the war, the military was not embedded in all aspects of civil administration and civilian life, as it is six years following the end of the war. Further, during the war, the impact of militarisation was felt mainly in the north and east where military action and (unofficial) rules shaped and dictated daily civilian life.

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[18] ***Full Report of the Army Board on LLRC Observations Released,*** April 2013, available at http://www.army.lk/docimages/image/LLRC_2013.pdf (accessed on 2 January 2015).
[19] C. Enloe (2000) ***Maneuvers: The International Politics of Militarizing Women's Lives*** (Berkeley, Los Angeles, London: University of California Press): p. 291.
[20] Ibid.

Following the end of the war systematic militarisation has been taking place throughout the country.

Like in Colombia where President Uribe introduced the concept of 'Democratic Security' which expected the participation of all citizens as agents of the state whereby security became a 'collective effort of all citizens',[21] in Sri Lanka too, particularly in the former conflict-affected areas, citizens were expected to function as informants which 'increases mistrust among communities and lowers the possibility of solidarity and political organisation'.[22] Civil security committees constituted of civilians and established by the police also function as surveillance bodies for the security agencies. These groups, that have been issued identity cards signed by the officer-in-charge (OIC) of the local police station, are asked to report on anything of significance that takes place in the village – whether a new visitor or an event held by civil society organisations. Including the general public in 'the projects and imperatives of the state' blurs the lines between the military and non-military sectors of society whereby the public become an active participant in the militarisation process.[23]

Former LTTE combatants in particular are securitised, which in turn is used to justify the monitoring and surveillance to which they are subjected. The surveillance and monitoring in turn creates suspicion within the community, which views them as potential threats not due to their previous (perceived or actual) involvement with the LTTE, but because they are constantly monitored and their movements restricted by the security forces. This constant interaction with the armed forces results in the general population viewing these persons as military informants. Hence, while the general population is led to believe the hyper-securitisation of former combatants creates a secure environment for the public, it results in creating insecurity for the combatants and within their communities.

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[21] C. Rojas, '*Securing the State and Developing Social Insecurities: The Securitisation and Citizenship in Contemporary Colombia* (2009) **Third World Quarterly** 30 (1): p. 232.
[22] Rojas (2009): p. 233.
[23] H. Lasswell quoted in R. M. Bernazzoli & C. Flint, *'Power, Place and Militarism: Toward a Comparative Geographic Analysis of Militarization'* (2010) **Geography Compass** 3(1): p. 160.

The 'militarisation of the social…assumes a pseudo-civilian form through the so-called civil-military relations'[24] which has been used as a means to minimise criticism of military involvement in civilian affairs, as well as the discomfort of the local population regarding military presence. Paradoxically, in Sri Lanka this has taken the form of the army's encroachment into civilian space to exercise further control over the population, particularly children and youth, illustrated by its involvement in the education sector in the north by engaging in philanthropic initiatives, ranging from providing scholarships and distributing books to students. The military has provided military training for civilians by enlisting school principals and state employees as volunteers in the forces, provided leadership training programmes for those about to enter tertiary education,[25] and organised educational tours in the south for northern school children.[26] In 2013, in Kilinochchi and Mullaitivu the Civil Security Department (CSD) even began managing pre-schools and recruiting teachers, who were then deployed to pre-schools as employees of the CSD.[27] Following the end of the war, the military became involved in civil administration and governance as well. Since 2009, the Ministry of Defence expanded considerably and became the institution that oversaw many activities and institutions that were previously within the purview of civilian authorities. The government also appointed numerous former military officers to positions in the administrative and foreign services. Until the change of government in January 2015, the Governors of the Northern and Eastern Provinces for instance were both former military personnel, as is the Government Agent of Trincomalee.

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[24] Montana (2012): p.110.

[25] '*Tamil leaders in the making at Kilinochchi'*, **Asian Tribune,** 29 January 2014, available at: http://www.asiantribune.com/news/2012/01/28/tamil-leaders-making-kilinochchi (accessed on 2 January 2015).

[26] '*Jaffna Students Make a Four Day Tour to Colombo', **Ministry of Defence Website***, 11 March 2011, available at: http://www.defence.lk/new.asp?fname=20111103_06 (accessed on 2 January 2015).

[27] '*Navy Enlists 02 Females from Mullikulam as Teachers', **Ministry of Defence Website,*** 15 January 2013, available at: http://www.defence.lk/new.asp?fname=Navy_enlists_02_Females_from_Mullikulum_as_Teachers_20130115_04 (accessed on 2 January 2015).

The role of the President in enabling and sustaining securitisation and militarisation was crucial. While depicting these processes as integral to safeguard the population, a paternalistic view was adopted whereby the country was portrayed as 'a big family living a fraternal co-existence under the care of "the father rather than the politician"'.[28] The analytical construct of the 'Asokan Persona' enables a better understanding of the non-rational core of the nation and the cult of personality that supports the creation of a paternalistic state. This is similar to other paradigms, such as in Colombia, where the state becomes the 'punitive father who has to protect his children while denying them the possibility to determine the terms of such protection'.[29] The Asokan Persona is 'a cultural paradigm which encapsulates a relationship between a superior and a subordinate; and which describes a superior who is regarded as a righteous exemplary, one who is expected to function as a source of benevolent largesse, an apical fountainhead of status and pontifical authority and, in effect, as a central and pivotal force'.[30] Michael Roberts states that 'Buddhism was constructed into a legitimating force and invested the Sinhala kings with immense authority...they were also constitutive acts of world renewal, in which the king-elect was transformed into a god or re-renewed as a god.'[31]

Parallels can be drawn between this description and President Rajapaksa's attempts to transform himself into a god-like figure with the help of poetry and songs which hailed him as the re-incarnation of a victorious historical king, and lavish ceremonies that sought to glorify him.[32] This god-king-father thence appealed to the loyalty of citizens to legitimise militarisation, which was deemed imperative due to the existence of the securitised communities. President Rajapaksa who constructed himself as such a figure also dispensed favours by 'helping' individuals and

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[28] Rojas (2009): p. 232.
[29] Montana (2012): p. 128.
[30] M. Roberts, '*Asokan Persona as a Cultural Disposition'* (1994) **Exploring Confrontation- Sri Lanka: Politics, Culture and History** (Chur: Harwood Academic Publishers): p.70. See also chapters by Roberts in this book.
[31] Roberts (1994): p. 68.
[32] At a musical show held in 2010 and organised and telecasted by the state run television station ITN, a boy sang 'Mahinda is our king…King Rajapaksa's name will be written in history in letters of gold…We owe Rajapaksa.'

groups seek redress from the repressive effects of militarisation in a show of benevolence and power that led to a loss of confidence 'in the institutions of the constitutional state and the associated representative and aggregative agencies of political society'.[33] Examples include the President ordering the immediate release of the leader of the Muslim-Tamil National Alliance (MTNA), Azath Salley, who was detained by the Criminal Investigation Department (CID) on suspicion of having committed offences under the Penal Code and the Prevention of Terrorism Act.[34] Sometimes this act of benevolence involved the recipient of the favour publicly repenting their errors, as if to a deity, and expressing gratitude to the executive. The students from Jaffna University who were arrested in December 2012 by the army and sent to a rehabilitation centre for allegedly celebrating LTTE heroes' day were released on the instructions of the President following personal appeals by the families to the President. One of the released students expressed his gratitude thus: "My mother met the honourable president. We wanted to be released. We are happy now. We will do our studies very well. We wish to thank the Honourable President.[35]

Political Cleansing: The Outcome of Securitisation and Militarisation?

The overt and insidious means through which securitisation and militarisation have taken place, with particular attention being paid to ensuring people could not gather together, preventing political parties from functioning freely and targeting activists who engage in social mobilisation, point to attempts to stifle, if not altogether prevent, political activity, particularly in the conflict-affected areas. Post-war, militarisation in the north and the east

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[33] R. Sakwa, '*The Dual State in Russia*' (2010) **Post-Soviet Affairs** 26(3): p. 200.

[34] Shamindra Ferdinando and Lal Gunasekera, '*President Rajapaksa Orders release of Azath Salley Before Departing on Official Visit to Uganda*', **The Island,** 10 May 2013.

[35] '*Two Jaffna Students Released after Parents Make Request to President*', **Centre for Human Rights & Research,** 16 February 2013, available at http://www.chrsrilanka.com/_Two_Jaffna_University_students_released_after_parents_make_request_to_President-5-1821.html (accessed on 2 January 2015).

became progressively heavier, and as a result civic activism and social mobilisation became near-impossible with civil society organisations becoming reluctant to work on human rights issues as it would attract excessive monitoring by the security forces. In December 2014 in Kilinochchi even a Christmas staff party held by a civil society organisation at a co-op hall was visited by the military.

In Colombia, this form of 'political cleansing' was used with similar intent and 'once a region was considered "clean of politics"' paramilitary cadres were brought in to 'protect the population against guerrilla influence'. [36] Former LTTE combatants who were released from government-run rehabilitation centres reported that during the rehabilitation period they were instructed numerous times not to participate in politics or become involved with political parties following their release. These instructions clearly only referred to involvement with opposition parties, given that former cadres have been used by the military in the service of the ruling party to support their campaigns during the provincial and presidential elections.[37] At times opposition political parties have accused the government of using former cadres to disrupt or attack their political meetings. For example, in March 2013, a meeting held by the Tamil National Alliance (TNA) in Kilinochchi was attacked by a group of persons reportedly comprising former LTTE members employed in the Civil Defence Force, members attached to the Kilinochchi office of the Sri Lanka Freedom party (SLFP), and members of military and police intelligence in civilian clothing.[38]

While former cadres are being employed by the state to monitor dissenters, and even perpetrate violence and intimidate rights

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[36] Rojas (2009): p.228.

[37] D.B.S. Jeyaraj, '*Gotabhaya Rajapaksa Discussed Northern Provincial Poll with Ex-LTTE Media Chief "Daya Master" on 23 Others at 52 Division Headquarters in Varani', **dbsjeyraj.com,*** 23 April 2013, available at: http://dbsjeyraj.com/dbsj/archives/20522 (accessed on 2 January 2015).

[38] D.B.S. Jeyaraj, *'"State Terrorists" Carrying Lion Flags Launch Stone Attack On TNA Meeting in Kilinochchi', **Transcurrents,*** available at: http://dbsjeyraj.com/dbsj/archives/19246 (accessed on 2 January 2015).

activists, at the same time the 'undead tiger'[39] – the ever-present LTTE threat – is resurrected regularly to justify crackdowns on legitimate political activity, which is portrayed as action that is aimed at renewing conflict in the conflict-affected areas. Constant surveillance, intimidation, and harassment by the military has resulted in self-censorship by the population who in order to avoid reprisals 'adopt silence or codes that protect them in this uncertain terrain'.[40] Militarisation has created the belief that an extensive and deep-seated surveillance mechanism exists in the north which would take punitive measures against those who are perceived to contravene the *diktats* of the military. This has enabled the military to control the behaviour of the population even in the absence of a visible physical uniformed military presence. Hence, 'the mobilization of fear' became 'fundamental to the state's security provision'.[41]

Fear was created very successfully amongst civil society and is ever-present everywhere in the north and east. During the Rajapaksa regime, activists feared their organisations would be either taken over by the state or closed down. They feared for the lives of their staff members and their families. They feared for the safety of the communities and individuals they supported, and those with whom they collaborated.

Social activism on human rights issues was most affected. For instance, a number of organisations reduced their field visits, which in turn limited their ability to build strong relationships with the community, without which documentation of human rights violations became impossible, in a repressive context in which, without trust, people do not share information. The deepening lack of trust within communities in the north and east was also caused by the presence of military informants within communities. Colombian President Uribe's statement that 'in order to support our armed forces the weapons we need as

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[39] The phrase used by Tisaranee Gunasekera in *'Re-defining patriotism as unquestioning loyalty to the ruling Rajapakse family, **Transcurrent**s,* 12 March 2011 available at:
http://transcurrents.com/tc/2011/03/redefining_patriotism_as_unque.html (accessed on 2 January 2015).
[40] Montan (2012): p.106.
[41] Ojeda (2013): p. 769

citizens are love, trust and a cell phone' describes the situation in the north in particular, where the common strategy used by military informants was to dial the number of their handler and leave the phone line open to enable the person at the other end to listen to the proceedings. The reluctance of many local groups to work on issues considered controversial or likely to attract the attention of the security forces, for instance discussions on issues such as devolution of power, has led to the 'de-politicisation' of issues, most of the time adopted as a conscious survival strategy.

In this context, citizens, particularly those belonging to minority communities, became 'less inclined to claim his or her rights politically and more prone to "voluntary obedience" in return for protection'.[42] For instance, in Keppapulavu in Mullaitivu in the north, where private land was acquired by the military, it was a challenge to find owners to undertake legal action against the military. Although ultimately five women came forward, coercion, intimidation and provision of incentives by the military has resulted in only one petitioner still attending court regularly. Further, the communitarian view adopted by the President, 'eradicates politics by rejecting the existence of political antagonisms; the only antagonism is located outside the community: terrorism'. [43] In addition to the military, a number of other entities, both state and non-state, supported the military's surveillance architecture, including hotels and government officials, such as the *Grama Sevaka*. In the north and east, a number of hotels are known to inform the military of events held by civil society organisations and provide them with details of guests who are thought to be staff of non-governmental organisations. Organisations narrated several incidents in Vavuniya and Trincomalee where meetings that were held were reported to the CID leading to their arrival at the venue to interrogate event organisers.

Despite these factors, civic activists have found ways to continue their work, albeit sometimes in a limited way given the numerous challenges and obstacles. Following the victory of Maithripala Sirisena at the presidential election of 8th January 2015, the fear

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[42] Rojas (2009): p. 229.
[43] Rojas (2009): p. 232.

factor has somewhat lifted and activists stated they feel they are able to hold meetings and gatherings without fear and re-start their engagement and work with communities. Even if they encounter military interference they now feel able to challenge it because to some extent the rhetoric and promises of the new President and his government have given them the belief that there is space to counter and challenge attempts to stifle their activities. This paradoxically underscores the centrality of the presidential institution, in that a mere change in the occupant of the office can lead to such a noticeable change in perceptions about securitisation and militarisation. Yet, the highly problematic environment created during the Rajapaksa regime (ultimately traceable to the executive presidency), described above, brought into being a 'shadow state' in which unofficial structures and processes began to be adopted as official, and even supersede, official legal structures. The contours of the shadow state are set out in the remainder of the chapter by drawing upon elements of three concepts: the 'garrison state', the 'deep state' and the 'dual state'.

Sri Lanka: The Convergence of the Garrison State, Deep State[44] and Dual State[45]?

The Blurring of Boundaries: Civilian or Military?

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[44] A deep state comes into being when the military enjoys high autonomy and/or is under undemocratic civilian control. The deep state is produced through the interaction between formal and informal institutions. Informal institutions are not set out in writing but obtain their authority from being publicly known and being accepted socially. Informal institutions create 'known and accepted behavioural structures which furthermore cannot be changed by any individual'. Individuals abide by them even if they do not so wish because 'in accordance with rational calculation; the costs involved in rejecting them can only be offset when real behavioural alternatives are available'.

[45] A dual state is one where two political systems operate in parallel- the system of open politics, 'with all of the relevant institutions described in the constitution and conducted with pedantic regulation in formal terms. At this level parties are formed, elections fought and parliamentary politics conducted. However, at another level a second para-political world exists based on informal groups, factions and operating within the framework of the inner court of the presidency'.

In Sri Lanka, while securitisation and militarisation took place due to a number of conditions that came into being as a result of executive action, this process also led to the 'specialists on violence' becoming 'the most powerful group in society' with primacy given to ensuring the state was in constant readiness for war/to face a threat.[46] Harold Lasswell's description of a garrison state as one where 'society's institutions and military, economic and political leaders are completely inter-dependent with complementary goals and interests',[47] describes the Sri Lankan context under the Rajapaksa regime well. In such a context there is excessive involvement of the military in civilian affairs, greater cooperation between civilians, business, politicians, and the military, resulting in the breakdown of the traditional boundary between civilian and military authority.[48]

During the Rajapaksa regime, the tentacles of the army extended to involvement in development and commercial activities[49] and philanthropic initiatives.[50] In July 2013, the Army Commander at the time, Jagath Jayasuriya, stated that the army was awaiting Cabinet approval to form an entity to undertake profit-making ventures, including bidding for government tenders.[51] The military also became engaged in activities that fall within the purview of civilian authorities. In March 2014, the Security Forces Headquarters in Kilinochchi invited non-governmental organisations to a meeting to discuss 'progression of development activities and to strengthen ties between this Headquarters and civil agencies'. In January 2013, a committee in the north that

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[46] H.D. Lasswell, '*The Garrison State*' (1941) **American Journal of Sociology** 46 (4): p.455.

[47] M.J. Morgan, '*The Garrison State Revisited: Civil-Military Implications of Terrorism and Security*' (2004) **Contemporary Politics** 10 (1): p. 7.

[48] Morgan (2004): p.7.

[49] '*Army's Most Modern Eco-Friendly 'Laya Safari' at Yala Joins Thriving Tourist Industry*', **Ministry of Defence Website,** 12 October 2012, available at: http://www.defence.lk/new.asp?fname=Armys_Most_Modern_Eco_Friendly_La ya_Safari_at_20121210_03 (accessed on 2 January 2015).

[50] '*Army Distributes Hearing Aids for Jaffna Mass*', **Ministry of Defence Website,** 16 June 2014, available at: http://www.defence.lk/new.asp?fname=Army_DistributesHearing_Aids_for_Jaf fna_Mass_20140616_02 (accessed on 2 January 2015).

[51] Supun Dias, 'We are investigating into the summary executions of captured LTTE cadres as alleged by Channel 4 TV says outgoing army chief Gen. Jagath Jayasuriya,

came together to prepare development plans for 2013 was convened at the Headquarters of the 55th Division in Vettilaikerny, Jaffna, and was chaired by the commanding officer of the Division.[52] Instead of being viewed as interference, the militarisation of civil administration has been internalised by government officials, the public, the judiciary, and even Parliament. For instance, in May 2014, the District Judge of Mullaitivu in a letter of appreciation sent to the Secretary to the Ministry of Defence (with copy to the Security Forces Commander for Mullaitivu) commended the military for clearing land on which a new court complex was to be built. The Parliamentary Committee on Public Enterprises stated that Rakna Arakshana Lanka Ltd, a government-owned company established by Gotabhaya Rajapaksa, could invest funds without obtaining Treasury approval.[53] In November 2012, following the police and army breaking up a gathering of students who were protesting against the military entering the premises of Jaffna University and the men's and women's hostels and assaulting students − the Vice Chancellor of the University met with the Jaffna Army Commander to request the withdrawal of the army from the vicinity of the premises. Although it was claimed the army was called in to assist the police, it was the army commander who made the decision regarding withdrawal rather than the police.

In other parts of the country, in partnership with the business community the army has ventured into commercial activities, from arranging whale-watching tours, to opening a chain of hotels and hairdressing salons. The army also issued public statements on political, social and legal issues that are clearly not within its purview. Although Gotabhaya Rajapaksa held an administrative position within the public sector, he played a vocal and active role

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[52] *'Development committee convenes at Vettilaikerny',* **Ministry of Defence Website,** 29 January 2013, available at:
http://www.defence.lk/new.asp?fname=Development_committee_convenes_at_Veththilaikerny_20130129_04 (accessed on 2 January 2015).
[53] '*Gota's Ex-Security Personnel's Company Can Invest Funds Without Treasury Approval-COPE',* **Colombo Telegraph,** 27 November 2013, available at: https://www.colombotelegraph.com/index.php/gotas-ex-security-personnels-company-can-invest-funds-without-treasury-approval-cope/ (accessed on 2 January 2015).

in political decision-making and even judicial decisions that far exceeded his official powers and mandate. He has made pronouncements on a range of issues, including calling for the repeal of the Thirteenth Amendment to the Constitution which devolved power to the provinces as part of the Indo-Lanka Accord signed in 1987,[54] informing a visiting delegation of Indian MPs that a separate system of governance for the Northern and Eastern Provinces would never be a reality,[55] dismissing the proposal to sing the national anthem in Tamil as a 'ridiculous idea',[56] publicly expressing his deep disappointment with India for voting for the resolution on Sri Lanka at the Human Rights Council in March 2013,[57] blaming India for Sri Lanka's internal armed conflict,[58] and publicly criticising an elected TNA MP for calling for the reduction of the presence of the military in the north.[59] Similarly, in August 2013, the Chief of Defence Staff, General Jagath Jayasuriya, made a public statement criticising a number of academics and TNA MPs who had attended a conference organised by the Transnational Government of Tamil Eelam (TGTE), following which the academics were harassed by the military.[60] In another instance, in an email sent to local journalists and international correspondents on 30th August 2013, the military spokesperson urged them to exercise their freedom of expression and attend the visiting High Commissioner for Human Rights' press conference and report the 'true facts' to the public.[61]

The army has interfered in election processes by campaigning on behalf of candidates of the then ruling party. They have also

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[54] S. Fernando, '*Defence Secretary repeats call for abolition of 13-A*', **The Island**, 21 Oct 2012.

[55] S. Fernando, '*Separate system of governance for N&E won't be a reality*', **The Island**, 13 April 2013.

[56] '*Singing national anthem in Tamil a ridiculous idea: Gotabaya*', **Lankasri News**, 2 April 2012

[57] S. Fernando, '*Gotabhaya deeply disappointed with India's stand*', **The Island**, 21 March 2013.

[58] M. Srinivasan, '*India response ble for 30-year war: Gotabaya Rajapaksa*', **The Hindu**, 22 May 2013.

[59] S. Fernando, '*GR lashes out at TNA*', **The Island**, 12 Sept 2013.

[60] '*Academics Harassed: FUTA*', **Sunday Leader**, 8 Sept 2013.

[61] '*Sri Lankan Military Does PR For Pillay*', **Colombo Telegraph**, 30 Aug 2013 available at: https://www.colombotelegraph.com/index.php/sri-lankan-military-does-pr-for-pillay/ (accessed on 30 Sept 2013).

engaged in acts that directly contravene government regulations. For instance, although the Land Circular on Regularising Land Management Activities in the Northern and Eastern Provinces issued in January 2013 prohibits the distribution of lands until existing land issues are resolved in the Northern Province, the website of the Ministry of Defence reported that on 30th August 2013, the army organised a land distribution programme and distributed land to 106 families.[62] It is not known under which legislation, circular or regulation the army derived power to engage in an activity not only beyond its purview, but also clearly encroached upon and usurped the authority of civilian officials.

A Personal Army or Autonomous Entity, or Both?

The centralisation of power meant that along with the President who was Minister of Defence, his brother Gotabhaya Rajapaksa's appointment as Secretary to the Ministry of Defence effectively created a political-military partnership: a partnership that remained firmly within the control of the Rajapaksa family away from parliamentary oversight. The description in Gotabhaya's authorised biography of the manner in which he was appointed reveals the importance not only of kinship/familial ties that bound the executive and the defence sector, but also the lack of oversight of and checks on the President's decisions.[63] Following his victory in the presidential election of 2005, according to this account, Mahinda Rajapaksa walked out of the operations room after hearing the news and 'saw Gota standing in the corridor…And the next thing he told Gota was, *You must take over as secretary defence*'.[64] Unlike in Turkey where the military enjoys a high level of autonomy and functions as a separate entity, in Sri Lanka, the executive and the military were not separate, which made the

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[62] '*More lands for Tamils in the North'*, **Ministry of Defence Website,** 2 September 2013, available at: http://www.defence.lk/new.asp?fname=More_lands_for_Tamils_in_North_2013 0902_03 (accessed on 2 January 2015).

[63] Following the defeat of Mahindra Rajapaksa at the Presidential elections on 8 January 2015, a narrative is being constructed that Gotabaya Rajapaksa exerted too much influence and while Mahinda did not always agree with him acquiesced as he felt he could not displease him.

[64] C.A. Chandraprema (2012) **Gota's War: The Crushing of Tamil Tiger Terrorism in Sri Lanka** (Colombo: Ranjan Wijeratne Foundation): p.290.

combination a very potent and dangerous force. For instance, prior to the presidential elections of 8th January 2015, the opposition released a document in which President Rajapaksa requested Gotabhaya Rajapaksa to use trusted retired military officers to coordinate ground operations related to his election campaign.[65] To-date, details of what the coordination constituted remains unknown. The defence establishment hence came to be viewed, and used by the executive as an instrument of the Rajapaksa family, which was expected to be loyal and accountable only to them.

As David Pion-Berlin explains, the military's political autonomy is indicated through its aversion to 'or even defiance of civilian control', with the military functioning as though it is above the constitutional authority of the government.[66] The military becomes very protective of its gains as it accumulates powers and will more vigorously resist the shifting of control to democratic authority, when their interests are very valuable and entrenched.[67] As noted above, although Gotabhaya Rajapaksa had no formal power to issue instructions to other government institutions, his informal influence extended well beyond his officially mandated powers. In the north where the military exercised 'veto powers' it overrode decisions made by elected civilians. For instance, on 16th June 2011, a meeting of the TNA held in Jaffna was attacked by a group of army officers. In response to reports of the attack, Gotabhaya Rajapaksa stated that he had received a letter from the leader of the TNA seeking assistance for his party to engage in political activity in the Northern and Eastern Provinces. While he was in the process of making the necessary arrangements to meet the TNA's request, according to him, a group of TNA MPs who sought to undermine the TNA leader's agreement with the

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[65] *'Gota Picks Jayasuriya for Dirty Work at Election'*, **Colombo Telegraph,** 8 January 2015, available at:
https://www.colombotelegraph.com/index.php/exclusive-gota-picks-jagath-jayasuriya-for-dirty-work-at-election/ (accessed on 10 January 2015).
[66] D. Pion-Berlin, *'Military Autonomy and Emerging Democracies in South America'* (1992) **Comparative Politics** 25(1): p. 4
[67] Ibid.

government held an 'unauthorised' meeting in Jaffna with the aim of derailing the national reconciliation process.[68]

A politicised military is also characterised by a new professionalism, 'which gathers public approval for its unrestricted scope of professional action in its reserved domains…'.[69] Former Army Commander Jagath Jayasuriya while he was still in office declared that 'the Army has the resources available with technical expertise. We can perform on a competitive basis because we are effective and efficient, so we can provide a good service. The Army is involved in almost all the services and professions that one can offer'.[70] In Sri Lanka, following the end of the armed conflict the rhetoric of the regime, particularly of Gotabhaya Rajapaksa, has focused on the efficiency and ability of the armed forces to undertake and implement tasks. A number of members of the regime, such as the then Advisor to the President on Reconciliation, Rajiva Wijesinha,[71] the then Chief Justice Mohan Peiris,[72] and the then Senior Minister for International Monetary Cooperation and Deputy Minister of Finance and Planning, Minister Sarath Amunugama,[73] have praised the armed forces for their efficiency. For instance, it was reported that due to the failure of the Colombo Municipal Council to manage Viharamahadevi Park in the centre of the city, the Urban Development Authority, which was then within the purview of the Ministry of Defence, had placed the park under the supervision of

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[68] S. Ferdinando, '*GR alleges TNA split over Sampanthan's reconciliation move*', ***The Island,*** 20 June 2011.

[69] M. Soyler, '*Informal Institutions, Forms of State and Democracy: The Turkish Deep State* (2013) **Democratization** 20 (2): p.313.

[70] S. Dias, '*Army to Start Profit Making Ventures: Outgoing Commander Tells How Wartime Force is Being Turned into a Peacetime Force, **Daily Mirror,*** 23 July 2013, available at: http://www.dailymirror.lk/32744/army-to-start-profit-making-ventures--outgoing-commander-tells-how-wartime-force-is-being-turned-into-a-peacetime-force- (accessed on 2 January 2015).

[71] R. Wijesinha, '*The Role of the Armed Forces in Reconciliation', **Rajiva Wijesinha,*** 29 February 2012, available at: https://rajivawijesinha.wordpress.com/2012/02/29/the-role-of-the-armed-forces-in-reconciliation/ (accessed on 2 January 2015).

[72] N. Wijedasa, '*Armed Forces must be thanked for doing civilian work for free: Mohan Peiris, outgoing AG*', **Lakbima News,** 3 Sept 2011.

[73] '*Govt's decision to deploy security forces in development commended', **Sunday Observer,*** 10 Feb 2013.

the Navy. [74] Hence, instead of strengthening civil administration and dealing with allegations of corruption in the public service, the government uses allegations of corruption and a weak administrative service to justify the military's involvement.

Democratic civilian control and oversight of the military is therefore lacking and there exist networks of patronage 'steered by the executive branch…whose continuity depends on effective deterrence and compromise of the coercive state apparatus'.[75] The Sri Lankan defence budget for 2014 was US$ 1.94 billion, which is two per cent of the country's GDP. Despite the large budget and size of the military, there is little parliamentary oversight, public debate on national security policies, or transparency in procurement. A report by Transparency International found there is 'little or no transparency on purchases, pre-bid standards for companies to meet or on a strategy to guide procurement'.[76] Following Rajapaksa's defeat on 8th January 2015, it has emerged that the security company Rakna Arakshana, which was founded by Gotabaya Rajapaksa, had imported weapons that were stored at several armouries, including an unauthorised one, and transferred them to third parties without proper end-user certificates.[77] With regard to the defence budget, the Transparency International report states that the breakdown of the defence budget was made available mainly through the President's speech in Parliament, where it was presented as a line item in the overall budget, with the breakdown of procurement expenditure between the three forces also unclear.[78] According to the report, although the Auditor-General is independent and tasked with auditing the accounts of all government departments, certain parts of the defence budget are

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[74] J. de Silva, *'Now Navy moves to supervise Viharamahadevi Park'*, **The Island,** 8 May 2011.

[75] Soyler (2013): p. 311.

[76] '*Sri Lanka', Government Defence Anti-Corruption Index,* Transparency International, July 2012, available at:
http://government.defenceindex.org/results/countries/sri-lanka (accessed on 2 January 2015).

[77] *'Shocking Revelations of Deep Security State within the State', **Sunday Times,*** 25 January 2015, available at:
http://www.sundaytimes.lk/150125/columns/shocking-revelations-of-deep-security-state-within-the-state-131923.html (accessed on 26 January 2015).

[78] Transparency International (2012).

not audited and parliamentary oversight is not provided in this regard.[79]

In Sri Lanka the military was also used as a means of dispensing patronage, particularly in the conflict-affected areas, and bolstering the position of the ruling United People's Freedom Alliance (UPFA) in those areas. Institutions within the military complex, such as the CSD, which manages agricultural farms, have become, sometimes, the only form of steady employment for many persons in the conflict-affected areas. In early 2013 around 3000 persons were recruited to work in the CSD-run farms including former LTTE cadres, while Tamil women from the conflict-affected Vanni region who were recruited into the army were provided a permanent house, livestock, and means to begin home gardening.

The Outcome of Securitisation and Militarisation: The Rise of the Shadow State?

In a state where the military gains 'increased centrality in society'[80] the political elite of the state are said to make certain changes to the 'fundamental practices of the state', which turn out to be 'dictatorial than democratic, and institutional practices long connected with modern democracy…disappear'. [81] In Sri Lanka there existed autocratic cliques/client groups, which gathered political support, exerted direct political influence through hierarchical ties,[82] and were loyal to a person not an institution, resulting in the erosion of trust in institutions and the subordination of formal procedures to a clientelist logic.[83] Mehtap Söyler describes these groups as constituting of leaders of the security community and organised crime, but in the case of Sri Lanka these groups also consisted of friends, relatives, state officials and even elected representatives. The administrative

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[79] Ibid.
[80] J. Stanley, '*Harold Lasswell and the Idea of the Garrison State*' (1996) *Society* 33 (6): p. 48.
[81] Lasswell (1941): p. 461.
[82] Soyler (2009): p. 312.
[83] H-J. Lauth, '*Informal Institutions and Democracy*' (2000) *Democratization* 7(4): p.14.

structure was centralised and at every level authority was integrated in a few hands,[84] which in the Rajapaksa regime consisted of client groups of a range of persons, such as astrologer and member of the Board of the National Savings Bank, Sumanadasa Abeygunawardena, Lakshman Hulugalle, the Director of the Media Centre for National Security and the Head of the NGO Secretariat who was convicted for his role in a timber scam, Dhammika Perera, owner of casinos and Secretary to the Ministry of Transport, Nishantha Wickremasinghe, former planter, brother in-law of the President and Chairperson of Sri Lankan Airlines, and Mervyn Silva, reported drug dealer, local Mafioso and Minister of Public Relations. These groups exerted political influence, were loyal only to the Rajapaksa family, and functioned as gatekeepers not only to access to services and entitlements, but also redress for grievances that should be legally/technically provided by state institutions.

These factors point to Sri Lanka being a state that is 'inadequately constrained by the constitutional state from above and lacks effective accountability to the institutions of mass representation from below (parliament, political parties, and civil society generally)'.[85] In such a context there emerges a condition where two systems come into existence – the normative state which is 'endowed with elaborate powers for safeguarding the legal order as expressed in statutes' and the prerogative or administrative state which 'exercises unlimited arbitrariness and violence unchecked by any legal guarantees'. [86] There is therefore the danger that 'despite the normative value and safeguards of certain legal mechanisms in terms of checks and balances, the entire legal system can become or de facto function as an instrument at the disposal of the political authorities', in this case the executive. [87]

The penetration by the military of the judicial system also takes place by influencing the judiciary or through military courts. For instance, Gotabhaya Rajapaksa's biography says that following the decision of the Supreme Court in 2007 that required the

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[84] Lasswell (1941): p. 463
[85] Sakwa (2010): p. 186.
[86] Sakwa (2010): p. 187.
[87] Koops and Amsterdam in Sakwa (2010): p.190.

dismantling of all permanent road blocks and checkpoints as they were found to violate the freedom of movement enshrined in the fundamental rights chapter of the constitution, Gotabhaya explained to the Secretary to the Ministry of Justice the necessity of the checkpoints. The Secretary to the Ministry of Justice then arranged a meeting between the Chief Justice and Gotabhaya in the former's chambers. At the meeting 'Gota explained matters to him and certain compromises were worked out, such as shifting of some road blocks, and not having permanent barriers and so on'.[88] Following the end of the war, instead of trying to influence the judiciary, the military began disregarding decisions of civilian authorities and judicial decisions, even those of the Supreme Court. In a fundamental rights petition challenging the registration of civilians by the military, although the Attorney-General gave an undertaking to the Supreme Court on 3rd March 2011 that the military registration of persons in Jaffna and Kilinochchi districts would be stopped forthwith, people in the north continue to be registered by the military even in 2014. A report published by UNHCR in June 2013 states that 100% of respondents in Mannar, 99% in Kilinochchi, 95% in Mullaitivu 90% in Vavuniya said that the military (army, navy, air force) had registered their families.[89]

As has been pointed out several times in this chapter, in such a context political and military actors create new rules 'bypassing the formal constitutional order'.[90] For instance, during the period when the A9 highway from the south to the north of the country was closed, the local population in the government-controlled Jaffna peninsula was subjected to a number of militarised unofficial processes. They had to register their motorbikes and even mobile phones with the military as part of the military's surveillance of the population. Another example of a process that has been used since the late 1990s well into the post-war period is the process of 'signing-in'. In the late 1990s and from 2006-2009, the military would confiscate the National Identity Card (NIC) of individuals and then order them to report to the military camp to

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[88] Chandraprema (2012): p.377.
[89] *A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating* (2013) (Colombo: UNHCR).
[90] Sakwa (2010): p. 192.

sign-in, weekly, fortnightly, or monthly as determined by the local commanding officer. As a population that could not easily leave the peninsula and was subject to the *diktats* of a military that consisted mainly of members of another community that did not speak a language they understood and viewed them as potential LTTE suspects, civilians had no option but to abide by the unwritten rules put in place by the military, as there were no viable alternatives.

Like in the deep state, in Sri Lanka a symbiotic relationship existed between organised crime and politicians and even Ministers who were known to be engaged in organised crime, or whose staff were known to be engaged in organised crime with some having prior convictions for such offences.[91] The blurring of the official/personal boundary fostered impunity as politicians were able to deny any responsibility or knowledge of crimes committed by these persons on their instructions by claiming they are not staff members. Minister Mervyn Silva was accused by members of his own party of being involved in prostitution, drug peddling, and even the murder of another member of his party who was a local councillor, while in 2011, one of his co-ordinating secretaries was arrested for his alleged involvement in extortion activities. Former Deputy Inspector General of Police Vass Gunawardena is being prosecuted for his involvement in several cases involving extortion and murders. Since the defeat of Mahinda Rajapaksa in January 2015, evidence of the involvement in the drug trade of parliamentarian, Duminda Silva, has begun emerging, including reportedly receiving Rs. 2.5 million per month from drug lord 'Wele Sudha' in return for providing protection to his drug business. Duminda Silva was the Monitoring MP for the Ministry of Defence and was known to be close to Gotabhaya Rajapaksa. This state of affairs is echoed by the 2012 Transparency International report which states that 'the police-military-politicians-drug dealers, is a nexus that is difficult to separate. There have been cases where the Defence Ministry has protected and defended his [Silva's] identity although several

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[91] The boundaries are blurred as there are no formal or transparent methods of appointment and state funds are commonly used to financially compensate even unofficial staff members.

reports have alleged his involvement with drug dealers, and organised crime groups'.[92]

One of the most important and illuminating examples of the informal structure taking precedence over the formal, and functioning in an open and brazen manner, is the Presidential Task Force (PTF). The PTF a 19-member Presidential Task Force for Resettlement, Development and Security in the Northern Province was appointed by the President in May 2009. The PTF has no Tamil member, but it includes the Secretary to the Ministry of Defence, the Chief of Defence Staff, Commanders of the Army, Navy and Air Force, and the Inspector General of Police. The press release marking the occasion states the PTF was appointed by the President according to Article 33 (f) of the Constitution, which is a catch-all provision that contains the residual powers of the President. Along with specific tasks such as presiding at ceremonial sittings of Parliament, declaring war and peace, and receiving and appointing ambassadors and high commissioners, the provision gives the President the power 'to do all such acts and things, that are not inconsistent with the Constitution or written law'. Hence, the extent of the powers of the PTF and their legal basis were unknown. The PTF was mandated to prepare strategic plans, programmes and projects to resettle internally displaced persons, rehabilitate and develop economic and social infrastructure of the Northern Province. Although the PTF was supposed to report back in one year, giving an indication it was a temporary institution, the PTF evolved into a seemingly permanent structure that controlled and monitored the work of the non-governmental sector in the Northern Province until May 2014. Its working methods and regulations were not public and non-governmental organisations that had to submit their work-plans and projects to the PTF for approval had to often do so blindly, without any knowledge whether they were submitting the required documents. Organisations were often denied approval or given approval for very short periods, i.e., approval is given for a period less than the lifetime of the project forcing them to approach the PTF for renewal of the approval.

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[92] Transparency International (2012).

The PTF functioned like the civilian vetting organisation of the Ministry of Defence and projects submitted to the PTF were approved only subject to approval by the Ministry. There have also been recorded instances in which the Ministry of Defence has requested local organisations that sought PTF approval to re-submit applications without the inclusion of the names of certain individuals within the organisation since those persons were noted by the Ministry to have engaged in activities adverse to national security.

Conclusion

Following the end of the armed conflict in May 2009, the securitisation of the certain communities and identities took place, with militarisation being depicted as the only means of staving off the threat posed by these groups. However, while militarisation was portrayed as the best strategy to deal with securitised communities, in reality securitisation was used to justify and legitimise militarisation. The executive presidency, with few fetters and restrictions on its authority, played a key role in these processes which led to the creation of unofficial structures and processes, which while existing alongside official and legal institutions, laws and processes, usurped their authority. The executive created an environment conducive for securitisation and militarisation, mainly through the use of emergency powers, which enabled the emergence of unofficial rules and processes that remained even following the lapse of the state of emergency. The dual processes of securitisation and militarisation had an adverse impact on particularly the conflict-affected communities, as they deliberately undermined and controlled political activism and activity in these areas. In this context, a shadow state, that functioned in parallel to the official, normative state came into being, thereby further eroding democratic principles and practices, and centralising power within the executive.