<u>Home</u> → <u>Country of Origin Information</u> → Responses to Information Requests

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19 April 2021

LKA200592.E

Sri Lanka: Political situation and Rajapaksa regime, including trends in political culture; situation and treatment of returnees, including failed asylum seekers (August 2019–April 2021) Research Directorate, Immigration and Refugee Board of Canada

1. Political Situation

For information on the 2017–August 2020 political situation and on political parties and alliances, see Response to Information Request LKA200300 of August 2020.

1.1 Overview

The January 2021 annual report by Human Rights Watch (HRW), covering the events of 2020, notes that, following the election of Gotabaya Rajapaksa as president in November 2019, "[f]undamental human rights protections in Sri Lanka came under serious jeopardy" (HRW 13 Jan. 2021, 625). The same source reports that "[h]uman rights defenders, victims of past abuses, lawyers, and journalist[s] faced intimidation and surveillance from government security forces. Muslims and Tamils faced discrimination and threats" (HRW 13 Jan. 2021,

625). An August 2020 article by Alan Keenan, a visiting fellow at the London School of Economics and Political Science (LSE) Centre for Women. Peace and Security and a senior consultant for International Crisis Group, states that "[t]he first nine months of Gotabaya's presidency halvel seen a concerted attack on the rule of law and the independence of the police and judiciary" (Keenan 12 Aug. 2020). A February 2021 Amnesty International report on the repression of dissent in Sri Lanka between November 2019 and January 2021, based on interviews with human rights defenders, lawyers and journalists as well as media reports and case files, states that in the year after the new government assumed power, it "escalated" a "crackdown on dissent" into a "full assault"; "a climate of fear and censorship has quickly expanded around the country, targeting key voices critical of the government and human rights defenders" (Amnesty International 17 Feb. 2021, 4). The Office of the UN High Commissioner for Human Rights (OHCHR) annual report on reconciliation, accountability, and human rights in Sri Lanka published in February 2021 notes that "developments over the past year have fundamentally changed the environment for advancing reconciliation, accountability and human rights in Sri Lanka, eroded democratic checks and balances and civic space, and permitted the resurfacing of a dangerous exclusionary and majoritarian discourse" (UN 9 Feb. 2021, 1).

1.2 Political Appointments

According to an August 2020 Reuters article, President Rajapaksa appointed five members of his family to cabinet and ministerial roles following his victory in the August 2020 parliamentary election (Reuters 13 Aug. 2020). An August 2020 Al Jazeera article reports that 4 of Sri Lanka's 26 cabinet members belong to the Rajapaksa family (Al Jazeera 12 Aug. 2020). A February 2021 article by Nira Wickramasinghe, a professor and chair of modern South Asian studies at Leiden University in the Netherlands, published in the journal Asian Survey [1], indicates that three Rajapaksa brothers and two of their sons have ministerial positions in the new government and that, in October 2020, another son became Mahinda Raiapaksa's chief of staff (Wickramasinghe 1 Feb. 2021, 5). Sources report that the President is in charge of the defence ministry and that Mahinda Rajapaksa, one of the President's brothers, is prime minister and in charge of the ministries of finance, urban development (Wickramasinghe 1 Feb. 2021, 1, 5; Al Jazeera 12 Aug. 2020), as well as Buddhist affairs (Al Jazeera 12 Aug. 2020) or cultural affairs (Wickramasinghe 1 Feb. 2021, 1, 5). According to Al Jazeera, Chamal Rajapaksa, another of the President's brothers, is the irrigation minister, and Namal Rajapaksa, the President's nephew, is the youth and sports minister (Al Jazeera 12 Aug. 2020). The Al Jazeera article also indicates that one of the Rajapaksa brothers' nephews, Shasheendra Rajapaksa, while not in the cabinet, has become a state agriculture minister, and that President Rajapaksa has appointed his lawyer as justice minister (Al Jazeera 12 Aug. 2020).

1.3 Constitutional Changes

Sources note that, on 22 October 2020, the 20th Amendment to the Constitution was passed with 156 of 225 legislators voting in favour of it (AP 22 Oct. 2020; ICJ 27 Oct. 2020; Wickramasinghe 1 Feb. 2021, 5). Sources report that the 20th Amendment rolls back the 19th amendment, adopted in 2015, which limited the powers of the president and strengthened the role of parliament (Al Jazeera 22 Sept. 2020; The Hindu 22 Oct. 2020; PTI 22 Oct. 2020). Similarly, the February 2021 OHCHR report notes that, in April 2015, Sri Lanka adopted the 19th Constitutional Amendment "which strengthened the independence of key institutions and the system of checks and balances on executive power" (UN 9 Feb. 2021, para. 17). Sources report that the 20th Amendment gives the president the power to hold ministries, dismiss [and appoint (AP 22 Oct. 2020)] ministers, and dissolve parliament halfway through a five-year term (AP 22 Oct. 2020; The Guardian 23 Oct. 2020). An October 2020 Guardian article indicates that the 20th Amendment also gives President Rajapaksa "authority over formerly independent commissions that oversee elections, police, human rights and anti-corruption efforts" (The Guardian 23 Oct. 2020). Sources note that the 20th Amendment "undermines" (Amnesty International 17 Feb. 2021, 6) or "erode[s]" (UN 9 Feb. 2021, para. 24) the independence of the judiciary and institutions (Amnesty International 17 Feb. 2021, 6; UN 9 Feb. 2021, para. 24). The February 2021 Amnesty International report indicates that, under the 20th Amendment, the appointments of the Attorney General and police chief as well as appointments to the senior judiciary and independent commissions such as the Human Rights Commission "are effectively presidential appointments, undermining their independence" (Amnesty International 17 Feb. 2021, 6). The February 2021 OHCHR report states that the 20th Amendment "abolishes the Constitutional Council, which recommended appointments to the President, and re-establishes the Parliamentary Council, which is composed exclusively of politicians and may only make observations" (UN 9 Feb. 2021, para. 24). Wickramasinghe indicates that the 20th Amendment "will subordinate the prime minister and the Cabinet to the president, weaken the parliament's autonomy from the executive, remove all checks and balances on the executive, and render independent oversight and accountability frameworks ineffective" (Wickramasinghe 1 Feb. 2021, 5-6). However, the same source notes that "key constraints" remain, including term limits and a five-year term (Wickramasinghe 1 Feb. 2021, 6).

Sources report that the government appointed an expert committee to draft Sri Lanka's new Constitution in September 2020 (*The Hindu* 3 Sept. 2020; UN 9 Feb. 2021, para. 25). A January 2021 article by the *Island*, a daily English-language newspaper in Sri Lanka, reports that the education minister stated that a draft of the new Constitution would be presented to Parliament by the end of 2021 (*The Island* 18 Jan. 2021). A March 2021 article by the *Daily Mirror*, an English-language newspaper in Sri Lanka, notes that the chairman of the ruling Sri

Lanka Podujana Peramuna (SLPP) party stated that "the Government would incorporate provisions in the proposed new Constitution to give legal protection for war heroes" (*Daily Mirror* 23 Mar. 2021).

1.4 Accountability and Justice

Sources report that, in March 2020, President Rajapaksa pardoned a soldier who was sentenced in 2015 for killing eight [Tamil (*The Hindu* 27 Mar. 2020; *The New York Times* 28 Mar. 2020)] civilians, including children (*The Hindu* 27 Mar. 2020; HRW 27 Mar. 2020; *The New York Times* 28 Mar. 2020). A March 2020 *New York Times* article notes that "[t]he pardon reverses one of the very few convictions from the 26-year civil war, during which dozens of militants and military officers were accused of war crimes" (*The New York Times* 28 Mar. 2020). Similarly, a March 2020 HRW article indicates that the soldier's case was one of "the very few cases of security force personnel being criminally punished for civil war-era atrocities, despite the huge number of credible and extremely serious allegations" (HRW 27 Mar. 2020). A March 2020 press briefing note on Sri Lanka by the Spokesperson for the OHCHR states that "[p]ardoning one of the sole convicted perpetrators of atrocities committed during the Sri Lankan conflict further undermines the limited progress the country has made towards ending impunity for mass human rights abuse" (UN 27 Mar. 2020).

According to a February 2020 Amnesty International article, in 2015 Sri Lanka's government co-sponsored HRC's resolution 30/1, "making commitments to promote reconciliation, accountability and human rights in Sri Lanka" (Amnesty International 27 Feb. 2020). The same source notes that Sri Lanka renewed these commitments with additional HRC resolutions in 2017 and 2019 (Amnesty International 27 Feb. 2020). The February 2021 OHCHR report notes that resolution 30/1 "provided a comprehensive road map of measures to ensure justice, provide redress to victims, achieve reconciliation and undertake important legal and institutional reforms to prevent the recurrence of violations" (UN 9 Feb. 2021, para. 15). In February 2020, Sri Lanka's Minister of Foreign Relations, Skills Development, Employment and Labour Relations announced Sri Lanka's decision to withdraw from co-sponsorship of HRC Resolution 40/1 on "[p]romoting reconciliation, accountability and human rights in Sri Lanka''' and earlier resolutions 34/1 and 30/1 (Sri Lanka 26 Feb. 2020, 7). The Minister noted that Sri Lanka will pursue a "domestically designed and executed reconciliation and accountability process" and will appoint a Commission of Inquiry (COI), led by a Supreme Court justice, to "review the reports of previous Sri Lankan COIs which investigated alleged violations of [h]uman [r]ights and [i]nternational [h]umanitarian [l]aw" (Sri Lanka 26 Feb. 2020, 8). The February 2021 OHCHR report observes that, while previous reports on the implementation of resolution 30/1 indicate that "developments related to transitional justice had been inconsistent and subject to considerable delays," the previous government "made

some progress on human rights issues" and "Sri Lanka seemed to be on a new path towards advancing reconciliation, accountability and human rights" (UN 9 Feb. 2021, para. 16). The same source states that "developments since November 2019, however, have reversed that trend" (UN 9 Feb. 2021, para. 16).

According to sources, in March 2021, the HRC adopted Resolution 46/1 which establishes a new accountability process to "collect, analyze, and preserve evidence of international crimes committed in Sri Lanka for use in future prosecutions" (Ochab 1 Apr. 2021; HRW 25 Mar. 2021). In its resolution 46/1, the HRC also states that trends in the past year point to

a deteriorating situation of human rights in Sri Lanka, including the accelerating militarization of civilian government functions; the erosion of the independence of the judiciary and key institutions responsible for the promotion and protection of human rights; ongoing impunity and political obstruction of accountability for crimes and human rights violations in "emblematic cases"; policies that adversely affect the right to freedom of religion or belief; increased marginalization of persons belonging to the Tamil and Muslim communities; surveillance and intimidation of civil society; restrictions on media freedom, and shrinking democratic space; restrictions on public memorialization of victims of war, including the destruction of a memorial; arbitrary detentions; alleged torture and other cruel, inhuman degrading treatment or punishment, and sexual and gender-based violence; and that these trends threaten to reverse the limited but important gains made in recent years ... (UN 16 Mar. 2021, para. 7)

According to sources, the resolution was passed with 22 votes in favour, 11 votes against, and 14 abstentions (BBC 23 Mar. 2021; HRW 25 Mar. 2021; Reuters 24 Mar. 2021). Sources report that Sri Lanka's government opposed the resolution (HRW 25 Mar. 2021; Ochab 1 Apr. 2021; Reuters 24 Mar. 2021).

1.5 Militarization

The January 2021 HRW report notes that "President Rajapaksa transferred responsibility for large areas of civil administration to the Ministry of Defense, including the government's response to the Covid-19 pandemic" (HRW 13 Jan. 2021, 625). The February 2021 OHCHR report notes that "the past year has seen a deepening and accelerating militarization of civilian government functions" (UN 9 Feb. 2021, para. 20). Similarly, an August 2020 article published in the *Diplomat*, a current affairs magazine covering the Asia-Pacific region (*The Diplomat* n.d.), reports that under President Rajapaksa, "the militarization of civilian institutions is mounting" (*The Diplomat* 7 Aug. 2020). A July 2020 article by Laxmanan Sanjeev, "a legal advisor and human rights activist from Sri Lanka," published in *Foreign Policy (FP)*, states that "Rajapaksa has embarked on rapidly militarizing the state administration" and "has appointed a number of retired military officers to key positions in the

civil administration" (Sanjeev 17 July 2020). Sources report that more than 30 agencies have been placed under the authority of the Ministry of Defence (Sanjeev 17 July 2020; HRW 13 Jan. 2021, 629). The February 2021 OHCHR report indicates that, on 29 December 2019, Sri Lanka's government brought 31 entities under the control of the Ministry of Defence, including the police, the National Secretariat for Non-Governmental Organizations, the National Media Centre, the Telecommunications Regulatory Commission, the Information and Communication Technology Agency, the National Dangerous Drugs Control Board, the Disaster Management Centre, and the Department of Immigration and Emigration (UN 9 Feb. 2021, para. 21). The same source notes that, on 20 November 2020, the President placed the police under the new Ministry of Public Security, which is led by a former navy admiral (UN 9 Feb. 2021, para. 21). The January 2021 HRW report notes that "retired and serving military officers were appointed to numerous key posts previously held by civilians" (HRW 13 Jan. 2021, 629). The OHCHR report also states that, "[s]ince the beginning of 2020, the President has appointed at least 28 serving or former military and intelligence personnel to key administrative posts" (UN 9 Feb. 2021, para. 22).

The February 2021 Amnesty International report notes that "many members of the armed forces, including some who were involved in the last phase of the war where the Sri Lankan forces are accused of committing serious [international humanitarian law] and [international human rights law] violations, have been promoted within military ranks or appointed to positions in the new government" (Amnesty International 17 Feb. 2021, 23). The February 2021 OHCHR report notes that "these appointments include senior military officials who have been alleged in United Nations reports to be implicated in alleged war crimes and crimes against humanity during the final years of the conflict," including Lieutenant General Shavendra Silva, who was appointed as Army Chief in August 2019, and Major General (retired) Kamal Gunaratne, who was appointed as Secretary to the Ministry of Defence in November 2019 (UN 9 Feb. 2021, para. 23).

1.6 Government's Response to COVID-19

Wickramasinghe notes that Sri Lanka has taken "strong measures" to manage the COVID-19 pandemic and that starting on 20 March 2020, Sri Lanka entered "a police-managed lockdown with severe restrictions on civilian movements and zero tolerance of social gatherings" (Wickramasinghe 1 Feb. 2021, 2). The same source states that the military "is shouldering the responsibility for the national response—from overseeing quarantine centers to contact tracing" and that "[t]he [COVID-19] pandemic has created the space for a normalization of the military['s] presence in the civilian sphere" (Wickramasinghe 1 Feb. 2021, 3). The February 2021 Amnesty International report notes that the appointment of an army commander to lead the National Operation Centre for the Prevention of COVID-19 Outbreak

"has set the tone for a militarized approach to the COVID-19 response" (Amnesty International 17 Feb. 2021, 24). An April 2020 situation brief on Sri Lanka's response to COVID-19 by the Adayaalam Centre for Policy Research (ACPR), a Jaffna-based "not-for-profit research think-tank that works on public policy issues in Sri Lanka with a special focus on issues affecting the Tamil polity" (ACPR n.d.), states that Sri Lanka's response to COVID-19 has been "heavily militarised" and that "[u]nlike other countries where the response is lead by public health officials who utilise the military as necessary, in Sri Lanka the military is squarely in charge of all aspects of the response" (ACPR 30 Apr. 2020, 5). The same source indicates that the military is also in charge of running quarantine centres (ACPR 30 Apr. 2020, 6).

The February 2021 Amnesty International report states that the "COVID-19 pandemic presented further opportunities for imposing sweeping measures to restrict the rights to freedom of movement and expression" (Amnesty International 17 Feb. 2021, 23). According to the same source, "[i]n April 2020, the police announced that legal action would be taken against those criticizing the government's COVID-19 response" and that, in the first month of the lockdown, 17 people were arrested for sharing "'fake news" (Amnesty International 17 Feb. 2021, 6). A February 2021 HRW report on accountability for human rights abuses in Sri Lanka reports that in "a little over two months" authorities arrested "over 66,000 people for allegedly violating curfew restrictions" (HRW Feb. 2021, 17). The same source notes that " [t]he presence of security forces at checkpoints was particularly severe in the predominantly Tamil Northern Province" (HRW Feb. 2021, 17).

2. Situation of Returnees

For information on the treatment by authorities of returnees to Sri Lanka, including failed refugee claimants, from 2017 to August 2020, see Response to Information Request LKA200301 of August 2020.

Information on the situation and treatment of returnees since August 2020 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1 Situation of Failed Asylum Seekers

Information on the situation and treatment of failed asylum seekers since August 2020 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection.

Please find below the list of sources consulted in researching this Information Request.

Note

[1] Asian Survey is an academic journal by the University of California Press (UC Press) that publishes articles on a range of topics, including diplomacy, disarmament, defence, military, modernization, ethnicity, ethnic violence, economic nationalism, elections, and global capitalism, with a focus on South, Southeast, and East Asian nations (Asian Survey n.d.).

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