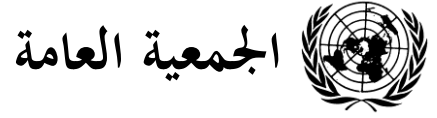


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## مجلس حقوق الإنسان

الدورة الرابعة والأربعون

15 حزيران/يونيه - 3 تموز/يوليه 2020

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## الزيارة إلى سري لانكا

### تقرير المقرر الخاص المعني بالحق في حرية التجمع السلمي وتكوين الجمعيات \*\* \*

موجز

تشرف الأمانة بأن تحيل إلى مجلس حقوق الإنسان تقرير المقرر الخاص المعني بالحق في حرية التجمع السلمي وتكوين الجمعيات، كليمان نياليتسوسي فول، عن زيارته القطرية إلى سري لانكا في الفترة من 18 إلى 26 تموز/يوليه 2019. ويقدم المقرر الخاص في هذا التقرير ملاحظاته بشأن التقدم المحرز والتحديات الرئيسية في ممارسة الحق في حرية التجمع السلمي وتكوين الجمعيات في البلد. ويقدم أيضاً توصيات للتغلب على هذه التحديات.

\* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمّم باللغة التي قُدّم بها فقط.

\*\* أُنق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي لظروف خارجة عن إرادة الجهة التي قدمته.



الرجاء إعادة الاستعمال

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## Annex

# Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his visit to Sri Lanka

## I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, visited Sri Lanka from 18 to 26 July 2019 at the invitation of the Government. The purpose of the visit was to assess the exercise, promotion and protection of the rights under his mandate, following a considerable opening of civic space from 2015 and in the wake of the devastating terrorist attacks, which took place on 21 April 2019.
2. He views the standing invitation extended by the Government to all special procedures mandate holders since 17 December 2015 as a testament to its renewed and sustained commitment to the protection of human rights for all and to engagement with United Nations human rights mechanisms. In this regard, it is his intention to present the findings and recommendations of his visit with a view to fostering a cooperative and open dialogue over the challenges and obstacles to this shared goal within the country with regards to his mandate.
3. He is very grateful to the Government for its excellent cooperation and support before, during and after the visit, especially given the great difficulties presented at the time of his visit, with the implementation of a state of emergency following the Easter Sunday bombings. During his time in the country, he had meetings and discussions with high-ranking Government officials, members of Parliament and members of the judiciary. He also met with a number of independent commissions, international organizations and diplomatic representatives. After examination, he incorporated, to the extent possible, the Government's comments on the draft report, which were received on 14 April 2020.
4. Beginning and ending his visit in Colombo, he also visited Jaffna, Keppapilavu and Trincomalee in the Northern and Eastern Provinces of the country, Negombo in the Western Province, and Galle and Matara in the Southern Province. During his visit, he met with the governors of the Northern and Southern Provinces. He also met with a wide range of civil society actors and human rights defenders working on land, environmental, educational, labour and women's rights, and on transitional justice, among others.
5. He also wishes to thank the United Nations Resident Coordinator, the country team and the Office of the High Commissioner for Human Rights for their excellent cooperation and vital contributions prior to, during and after his visit. He further expresses his thanks to all those who took the time to meet with him, especially given the atypical environment at the time. He understands that the country was in a situation of crisis following the recent attacks and reiterates his sincere condolences to all of the victims, their relatives and the country as a whole.
6. He views the rights to freedom of peaceful assembly and of association as essential to the full realization of democracy, and considers that his visit came at a crucial moment for the country. In the context of upcoming elections, he believes that his visit provided an opportunity to strengthen and bolster democratic gains made by the country, ensuring that these gains are sufficiently strong to weather any attempt to roll them back.
7. He took into great consideration the particular circumstances of Sri Lanka as a post-conflict and multi-ethnic society, including the views of the Government on the specific and distinct challenges the country faced. He also conducted his work guided by several international norms and standards, including the International Covenant on Civil and Political Rights, in particular articles 21 and 22; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human

Rights and Fundamental Freedoms; and other related United Nations resolutions and guidelines.

## **II. Context**

### **A. Background**

8. Sri Lanka is an island country in the Indian Ocean. It has nine provinces, which are administratively divided into 25 districts, and further divided into 256 divisions.

9. The country gained its independence from the United Kingdom of Great Britain and Northern Ireland in 1948. A system of administration through provincial councils was introduced in 1987. Legislative power is exercised by Parliament, elected by universal franchise on a proportional representation basis. Executive power, including defence, is exercised by the President, who is also elected by the people.

10. Under British rule, tensions grew between Tamil and Sinhalese communities. These tensions worsened after independence, owing to the predominantly Sinhala governance structures, leading eventually to the outbreak of an armed conflict between the Government and the secessionist Liberation Tigers of Tamil Eelam in 1983.

11. The protracted armed conflict continued for 26 years, despite a ceasefire, which was largely held between 2002 and 2006, with the Government claiming victory in 2009 over the Liberation Tigers of Tamil Eelam. During the conflict, hundreds of thousands were displaced and tens of thousands killed or disappeared.<sup>1</sup>

12. In 2015, President Maithripala Sirisena was elected to a five-year term, and parliamentary elections led to a coalition government between two of the main political parties. The new Government was marked by the implementation of a number of political and social reforms, favouring the opening of civic space, transitional justice, accountability and post-conflict reconciliation, including through the co-sponsoring and acceptance of obligations under Human Rights Council resolution 30/1.

13. While the Government was successful in implementing some of those reforms, progress came at a slow pace and certain promises were not delivered upon. Given the expectations that were created following the 2015 elections, a sentiment of dissatisfaction among the people and distrust of the Government came to the fore. That dissatisfaction was exacerbated by a perceived inability of the coalition Government to work effectively together. The situation came to a head during a political crisis in October 2018, when the President removed Prime Minister Ranil Wickremesinghe, replacing him instead with former President Rajapaksa. Following a Supreme Court ruling in December, however, that decision was reversed.

14. On 21 April 2019, a series of bombings targeting churches and a number of luxury hotels in Colombo were carried out, allegedly by individuals related to National Thowheeth Jama'ath, a Sri Lankan militant Islamist group with suspected ties to foreign terrorist organizations. Over 250 people were killed and many more injured in the bombings. In response, a number of social media platforms were blocked and, on 23 April, a state of emergency was declared by the President. Those regulations were renewed each month, in accordance with the Constitution, with the measures lasting until 22 August 2019. While being clearly tragic in their own right, the bombings also stirred up tensions against the Muslim minority community.

15. Following the presidential elections held on 16 November 2019, Gotabaya Rajapaksa was inaugurated as President on 18 November.

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<sup>1</sup> See A/HRC/30/CRP.2.

## B. Democratic advances

16. Despite a lack of progress in implementing some of the commitments in Council resolution 30/1, some key achievements with regard to democratization, good governance, post-conflict reconciliation and transitional justice must be acknowledged and safeguarded. Among those achievements was the entering into force of the Nineteenth Amendment to the Constitution, which was passed on 15 May 2015.

17. The Amendment provided for a number of reforms, including placing limitations on the Executive Presidency. Article 3 of the Amendment reduced the presidential term, while article 4 reintroduced the two-term limit, which had been abolished under former President Mahinda Rajapaksa. According to article 9, the President can no longer remove the Prime Minister at his own discretion, and must act on the Prime Minister's advice when appointing or removing any Cabinet Minister, non-Cabinet Minister or Deputy Minister. Furthermore, article 17 places limits on the President's ability to dissolve Parliament.

18. The Amendment also established a number of independent commissions, and reintroduced the Constitutional Council, which had been abolished by the Eighteenth Amendment in 2010. The Constitutional Council has a number of important powers, especially with regard to the appointment or removal of members of a number of important independent commissions that carry out vital work, including the Election Commission, the National Police Commission and the Human Rights Commission, which was accredited with "A" status in 2018 under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The members and Chairpersons of these commissions can only be appointed by the President upon the recommendation of the Council.

19. Another significant element of the Nineteenth Amendment was the specific inclusion, in its article 2, of the right of access to information, as provided for by law, which was incorporated into article 14 (a) of the Constitution. This right was supplemented by the Right to Information Act No. 12 of 2016, which also established the Right to Information Commission. Since its introduction, this law has been hailed as one of the best examples of right to information laws globally and has made a significant impact with regard to the transparency, democracy and accountability of institutions. Laws such as this provide civil society actors with access to valuable information that they can use for a number of purposes, including advocacy, accountability and human rights education. Indeed, during his visit, a large number of relevant interlocutors mentioned their satisfaction with the Act; however, concerns were raised on a number of occasions, with regard to the understanding of this right by right-to-information officers on provincial councils.

20. The Office on Missing Persons was established in 2016 in accordance with the Constitution and in line with the country's commitments under Council resolution 30/1. The Office has the objective of tracing and finding missing people, and documenting the circumstances of their disappearance. At the time of the visit, the Office had three regional offices, with one more yet to be opened. While the Office has the potential to make a difference, and although some members of the Office have strong human rights backgrounds, it suffers from a lack of trust from victim communities. Among other challenges, the Special Rapporteur has heard repeatedly that victims in the north and east of the country are distrustful of the Office, which they see as being Government-aligned. At the same time, victims in the south feel that the Office is only concentrating its efforts on the north and east.

21. The Office for Reparations was established by Office for Reparations Act No. 34 of 2018, passed in Parliament on 10 October 2018, with members being appointed on 1 April 2019. The Office's first action was to compensate the victims of the Easter Sunday bombings, which it completed at the end of July 2019. While the Special Rapporteur acknowledges the swift action of this Office to compensate these victims, he recalls that compensation to the victims of the armed conflict, in line with the country's transitional justice obligations, is still overdue.

22. In spite of these positive gains, the delay in operationalization of the two Offices, along with the continued occupation of large areas of land by the military, places caveats on the progress achieved. Meanwhile, in spite of two follow-up resolutions to Human Rights Council resolution 30/1 – specifically, Council resolutions 34/1 in 2017 and 40/1 in 2019 – governmental support for the commitments contained in the resolutions is reportedly wavering. In particular, the establishment of an accountability mechanism has been stymied, inter alia, by disagreements regarding the involvement of international judges on any such tribunal, a requirement that is considered essential to assert the legitimacy of such a mechanism in the eyes of the public.<sup>2</sup> Indeed, at this point, no progress has been made domestically in addressing impunity for past human rights violations committed during the conflict.

23. During his discussions with relevant interlocutors, the Special Rapporteur heard numerous and repeated concerns about the possibility of rollbacks on the above-mentioned democratic gains. The Acts establishing both the Office on Missing Persons and the Office for Reparations can be repealed with a simple majority vote, and their Commissioners can be removed in the same way. Moreover, the back and forth between the Eighteenth and Nineteenth Amendments regarding the role of the President and the Constitutional Council demonstrates the fragility of the democratic gains made over the last five years. A new amendment abolishing the Constitutional Council and the limits on executive power could undo the progress made thus far, compromising the independence of institutions or abolishing them completely.

24. The Special Rapporteur considers, as mentioned in his end of mission statement,<sup>3</sup> that a concerted effort must be put into the continued safeguarding and promotion of these institutions, ensuring that they are sufficiently robust to maintain independence and functionality throughout all democratic transitions. From his discussions with the Government and all sectors of society, the leitmotif of a desire for public freedoms, rule of law, peace and democracy was clearly visible throughout.

### C. Normative and institutional framework

25. Sri Lanka is a party to all international human rights treaties, with the exception of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It has also accepted the individual complaints procedures under the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. However, in a Supreme Court judgment known as the *Singarasa* case, the Court declared the accession to the first Optional Protocol to the Covenant to be unconstitutional, owing in part to the extension of judicial powers to the Human Rights Committee, leading the Government to adopt the International Covenant on Civil and Political Rights Act, No. 56 of 2007.

26. The year 2015 saw a landmark development with regard to transitional justice, with the adoption of Human Rights Council resolution 30/1, which was co-sponsored by Sri Lanka and which outlined a pathway towards the full implementation of transitional justice mechanisms in the country. Those efforts were supported by the United Nations through the operationalization of the Sri Lanka Peacebuilding Priority Plan, with support from the Peacebuilding Fund. As noted above, progress on achieving these proposed reforms has been slow. There are, however, three notable developments in this regard: the return by the military of large areas of previously occupied civilian lands (47,604 acres as at 12 March 2019), the establishment of the Office on Missing Persons and the establishment of the Office for Reparations.

27. The country ratified the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the

<sup>2</sup> See <https://lk.one.un.org/news/full-statement-by-pablo-de-greiff-un-special-rapporteur-on-the-promotion-of-truth-justice-reparation-and-guarantees-of-non-recurrence-at-the-conclusion-of-his-official-visit/>.

<sup>3</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818&LangID=E).

Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 1995 and 1972, respectively.

28. Sri Lanka was reviewed under the universal periodic review in 2008, 2012 and 2017. Its next review is due to take place in November 2022. Recommendations made during its review included the protection of civil society actors and journalists and the investigation of human rights violations against them; the repeal of the Prevention of Terrorism Act and its replacement with legislation that is compliant with international human rights standards; the prevention and punishment of hate speech and incitement to violence against ethnic and religious minorities; and the encouragement of interfaith and inter-ethnic dialogue (A/HRC/37/17, paras. 116 and 117).

29. Sri Lanka has a mixed legal system of Roman-Dutch civil law, English common law, Kandyan law (applicable to Kandyan Sinhalese), Tesawalamai law (applicable to Tamils inhabiting the Northern Province) and Muslim law, the latter three of which extend largely only to marriage, divorce and intestate succession.

30. The rights to freedom of peaceful assembly and of association are enshrined in articles 14 (1) (b) and (c) of the Constitution; however, the enjoyment of these rights is limited to citizens only. Article 15 (7) of the Constitution places limits on these rights, in line with those mentioned in article 21 of the International Covenant on Civil and Political Rights. Article 15 (3) of the Constitution provides for limitations relating to freedom of peaceful assembly in the interests of racial or religious harmony, while article 15 (4) provides for limitations in freedom of association in the interests of racial or religious harmony, or national economy, going beyond the scope of those permitted by articles 21 and 22 of the Covenant.

31. Article 14 (1) (d) of the Constitution provides for the right to form and join a trade union, subject to the restrictions contained in article 15 (7). This right only applies to citizens. In this regard, he recalls that the rights contained in the Covenant should be granted to all persons within a State party's jurisdiction, not simply to citizens of that country.

32. Under the Constitution, it is not possible to judicially review legislation with regard to constitutionality after its enactment. There is, however, a facility for pre-enactment judicial review of legislation by the Supreme Court under article 121 of the Constitution.

33. Under article 126 of the Constitution, any person who believes that his or her fundamental rights under the Constitution have been violated or are at imminent risk of being violated as a result of any executive or administrative act may petition the Supreme Court for relief or redress. While the article states that "any person" can avail of this procedure, articles 14 (1) (b), (c) and (d) only apply to citizens, thus hindering the use of this procedure by non-citizens to safeguard their rights to freedom of peaceful assembly and of association.

### **III. Exercise of the right to freedom of peaceful assembly**

#### **A. Legal framework**

34. The right to freedom of peaceful assembly is stated in article 14 (1) (b) of the Constitution, subject to the limitations outlined above.

35. The legal framework governing the right to freedom of peaceful assembly is comprehensive, although spread across a number of different sets of laws and regulations, which seem to be interchangeably enforced. This makes it difficult for organizers of protests to be aware of all applicable laws and regulations related to the conduct of peaceful protests, creating uncertainty and possibly serving to inhibit the exercise of the right.

36. The right operates on the basis of a notification procedure, in line with international best practice, rather than an authorization procedure. Under article 77 of the Police Ordinance, protesters must notify the police officer in charge of the police station closest to the location of the assembly of their intentions, in writing, six hours in advance of the

proposed gathering. Failure to notify may result in all organizers, promoters and individuals taking part in the protest being guilty of an offence. He recalls that failure to notify authorities of an assembly does not render an assembly unlawful,<sup>4</sup> and notes that under this legislation spontaneous and urgent assemblies are prohibited, in contravention of international human rights standards.

37. Article 77 of the Police Ordinance specifies that an assistant superintendent or officer of a higher grade may prohibit or place “necessary” restrictions on a protest in the interests of the preservation of public order. Under article 78, police officers may also direct the conduct of all assemblies and processions in any public place, prescribe the routes by which and the times at which such processions may pass, and direct all crowds of 12 or more persons to disperse when they have reason to apprehend any breach of the peace. He notes that organizers should not be required to negotiate the time, place or manner of an assembly with authorities, as such requirements would be tantamount to restricting the planned assembly.<sup>5</sup>

38. Chapter VIII of the Penal Code regulates offences against public tranquillity, and provides an enumerative list of assemblies that may be considered as unlawful.

39. Department Order No. 19 provides guidance on the management of assemblies. This is supplemented by IG Circular 2595/2016, which states that measures that may be taken to disperse unlawful assemblies should necessarily be in terms of the law, proportionate to the situation that has developed, and purely for the purpose of maintaining law and order and protecting the society. It also states that the use of force should be the last possible resort, should be proportionate to the situation that has developed, and should follow the directions contained in sections 95, 96, and 97 of the Code of Criminal Procedure, which outline the steps to be taken in the dispersal of unlawful assemblies. Use of force under the Circular must be graded, using the type of force that is likely to be effective and would cause the least possible harm to the offenders and others in the vicinity, and it states that it is of the utmost importance that police officers in the process of protecting law and order do not intentionally or otherwise infringe upon the fundamental rights of people. The Special Rapporteur welcomes efforts to ensure that these provisions comply with international human rights standards and best practices.

40. The Prevention of Terrorism Act, which was passed in 1979, was planned as a temporary law. It was only supposed to remain in effect for a period of three years, but it remains in force today. There has been a long-standing demand for the repeal of this law in line with the State party’s obligations under Council resolution 30/1, especially by civil society and United Nations human rights mechanisms. During his discussions, he heard allegations that the Act was in some cases used against participants in peaceful assemblies owing to the broad discretionary powers that it confers on police. Provisions under this law stipulate much harsher penalties than those found under regular criminal law, and bail is also restricted.

41. The draft Counter-terrorism Act, submitted to Parliament to replace the Prevention of Terrorism Act, would empower a police officer, not below the rank of senior superintendent, to issue directives to the public, without an order of a magistrate, not to enter or leave any specified area or premises. He expresses his concern, as such directives may potentially be used to prevent a person from exercising his or her right to freedom of movement, to prevent journalists from accessing and covering events, or to prevent persons from protesting at particular sites or marches, for example.

42. At the time of his visit, the draft Counter-terrorism Act was still before Parliament; however, its progress had come to a standstill. While the future of the bill is unclear, its content gives cause for serious concern with regards to the conformity of its provisions to international human rights standards.<sup>6</sup>

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<sup>4</sup> A/HRC/31/66, para. 23.

<sup>5</sup> A/HRC/23/39, para. 56.

<sup>6</sup> See [spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24364](http://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24364), for example. The Government’s preliminary comments noted that the Cabinet had agreed to withdrawing the bill and that, in any event, the bill would have lapsed with the dissolution of Parliament.

43. Following the terrorist attacks of 21 April 2019, three emergency regulations were adopted by the President (Gazette Nos. 2120/3, 2120/4 and 2120/5), which were extended three times, for a month each time. While recognizing the legitimate need to protect the nation from terrorist attacks, these regulations appeared to further limit the right to peaceful assembly. For example, unauthorized persons could be prevented from entering restricted areas, places or premises if a competent authority was of the opinion that such special precautions should be taken. The holding of public processions or meetings could also be prohibited by the President if he was of the opinion that they were likely to cause a disturbance of public order or promote public dissatisfaction. He commends the eventual repeal of these regulations; however, he remains concerned about the status of those arrested under the regulations and plans to follow up closely on any developments in this regard.

## **B. Specific challenges to the right to freedom of peaceful assembly**

44. While the Special Rapporteur notes the considerable efforts undertaken to transform the police force into a well-trained, community-policing force since the end of the war, he noted that the overall approach of the police towards managing peaceful assemblies seems to rest on the negative perception that protests and demonstrations are generally a nuisance and should be prevented, rather than being treated as a fundamental right that is essential to democracy and is inherent to every person.

45. In spite of the legislation and regulations described above, he heard a number of concerning reports of protests that were met with baton charges, water cannons and tear gas, which seemed disproportionate considering the circumstances, in particular with regard to student protests. He also received information on a number of emblematic cases regarding excessive use of force against protesters.

46. With regard to the Rathupaswala case, involving the killing of three protesters on 1 August 2013, the Special Rapporteur received information that four army personnel were recently indicted to stand trial at a trial-at-bar, a form of expedited process. In the Welikada prison case, where 27 persons died, two prison officers and one police inspector were indicted to stand trial in expedited proceedings, in relation to eight such deaths, on 1 August 2019. In the Roshan Chanaka case, involving the death of a free trade zone worker during a protest in 2011, two police officers were indicted to stand trial on 29 July 2019. While deploring the protracted duration of the proceedings, the information received is promising, and he hopes that accountability for the perpetrators and redress for the victims will soon become a reality. He will continue to monitor these cases and hopes to receive updated information from the Government as the proceedings develop.

47. The National Police Commission was established to oversee the conduct of police personnel and ensure public accountability. Unfortunately, issues related to illegal police actions during protests remain invisible in the Commission's public reporting on complaints received, as it is not specified in which instances misconduct is linked with actions taken during protests. He encourages the Commission to develop a methodology to enable the breakdown of such information, allowing for targeted action to address those practices and complaints.

48. He also heard concerning accounts of groups that were attempting to peacefully assemble and mobilize around common concerns but that were prevented from doing so, or that were met with physical or verbal violence at the hands of individuals without intervention by authorities, despite police or army presence.

49. In Keppapilavu, he met with representatives of 100 families whose land had been occupied by the army since 2008. At the time of the meeting, the families had been peacefully protesting for the return of their land for 900 days, in front of the army compound where their land is located. For 792 days, they had been carrying out their protest on the road in front of the army compound. Thereafter, they had to relocate to a piece of previously released land under a temporary shed, following a court order obtained by the authorities. The order forbade gatherings of more than five persons at any one time at the protest site, and required them to refrain from chanting slogans, owing to supposed



risks that such an activity could present to the security forces. While the representatives did not complain of any physical intimidation, they reported that they were psychologically affected by efforts to demoralize them and discourage them in their struggle.

50. While noting the efforts made by the Government to return military-occupied land to their original civilian owners, he considers it to be of utmost importance that such restitution happen promptly, transparently and in a non-discriminatory manner, and that the peaceful protests of those who are still dispossessed be allowed to take place with no undue restrictions. The fertile land occupied by the army in this instance is essential for the livelihoods of the families, and each day that passes without restitution puts additional strain on the women and men who must work as daily labourers, while keeping up the protest in the hopes that their demands are met. In addition, owing to a lack of economic opportunities, a number of the families' members, including young people, have been forced to migrate long distances for work, which has exposed them to an array of other human rights abuses. What the Special Rapporteur found especially troubling in this circumstance was the belief of the families that the land was being retained purely for economic benefit, rather than for any specified reason legitimately connected with national security.

51. On several occasions, he received reports of the use of court injunctions to stop protests or to prevent them from taking place. It seems that these injunctions are usually obtained on the basis of anticipated public nuisance or disturbance, and that the police force may seek an injunction on its own initiative or following a complaint from the public. According to the information received, these court injunctions are frequently granted, despite the fact that typically, neither party has had an opportunity to present its case. Furthermore, they are often obtained after court hours, the evening before a protest, so as to give no opportunity to challenge them before a magistrate.

52. Reports of intimidation and surveillance were also frequently received by the Special Rapporteur in relation to peaceful protests. This was especially prevalent with regard to memorial services commemorating disappeared persons in the north and east. For example, he learned that on 18 May 2019, the Ampara chapter of the Families of the Disappeared organization attended a memorial ceremony at Thrikovil Manikka Pillayar temple, and that during the ceremony, a number of soldiers arrived and proceeded to destroy and remove banners and decorations, and also threatened to arrest and detain the participants. In other instances, civil society actors were questioned for hours by officers of the Criminal Investigation Department regarding their work, financial details, office space and participation in memorial ceremonies.

53. He also notes that the Government seems to have resorted to declaring certain employment sectors as essential public services, in order to restrict that sector's right to strike and peacefully assemble. In June 2019, an order was gazetted, declaring that public transport services provided by any public corporation, government department, local authority or cooperative society, or any branch of those institutions, were an essential public service under article 2 of the Essential Public Services Act No. 61 of 1979. In such a case, it is a criminal offence to disrupt the working of such a service through participation in a strike. Similarly, in 2017, an order declared waste disposal as an essential service under article 17 of the Public Security Ordinance. He notes that, in these cases, protests seem to be stifled through the use of an executive decision, rather than through engaging with the concerned communities about their dissatisfaction and reasons for protesting.

#### **IV. Exercise of the right to freedom of association**

54. Sri Lankan civil society is comprised of a wide and varied set of organizations and associations, including approximately 1,500 non-governmental organizations (NGOs) registered nationally, with many more working at the district and divisional levels. These include organizations working on post-conflict rehabilitation and reconciliation, disappearances, women's rights, LGBTIQI+ inclusion, land rights, environment, natural resources, freedom of expression, minority rights, corruption, development and education, among others.

55. He was especially happy to see a promising trend of associations organizing themselves at a local level into community consortia, pooling knowledge and resources, and providing mutual support in order to create a strong and vibrant civil society culture. He was glad to meet with the NGO Consortium of the Jaffna district, hearing information on common concerns and group initiatives undertaken in the area with regard to various human rights, transitional justice and development issues.

## **A. Legal and institutional framework**

56. The right to freedom of association is stated in article 14 (1) (c) of the Constitution, subject to the limitations outlined above, including the extension of the right only to citizens of Sri Lanka rather than to all those under its jurisdiction.

57. While registration is not necessary for an association to operate, there are a number of methods of legal incorporation under Sri Lankan law, including as an NGO under the Voluntary Social Service Organizations Act No. 31 of 1980, or as a society or not-for-profit company under the Companies Act No. 7 of 2007. He is, however, concerned about reports he received, which stated that unregistered organizations often face difficulties in opening bank accounts, accessing funding and obtaining visas for expatriate staff.

58. Some tax benefits are available to registered NGOs. The NGO Secretariat, which was established to oversee and monitor the work carried out by NGOs, provides additional support in obtaining visas for employees; however, registration also carries with it increased obligations for organizations, such as unreasonably burdensome reporting obligations. NGOs are also required to provide large amounts of information, including personal information of its members, when registering.

59. During his visit, he found it challenging to locate clear guidance on the required steps and information necessary to register an NGO at the national, divisional and district levels alike, creating a barrier to registration for smaller NGOs without sufficient capacity to direct their limited resources towards the process. While the Special Rapporteur was provided with a booklet outlining the procedure, the booklet was produced by civil society actors, rather than by the Government, leading him to believe that such an initiative was needed and clearly had demonstrated value. He was, however, pleased to see the recent establishment of an online registration process for NGOs at a national level, which simplified the process somewhat.<sup>7</sup>

60. There are currently three levels of NGO registration available under the Voluntary Social Service Organizations Act: national, district and divisional. NGOs that wish to register must do so at the national level if they are registered in any country outside of Sri Lanka, if they receive any foreign funding or if they operate in more than one division or district. For district and divisional registrations, NGOs must operate in only one administrative district or divisional secretariat area, respectively.

61. Approval to register at the national level is conditional upon prior receipt of a security clearance from the Ministry of Defence, demonstrating that a national security element to NGO management still remains. In cases where security clearance from the Ministry is not provided, registration will be refused. The Special Rapporteur was informed by representatives of the NGO Secretariat that, in such cases, a dialogue is established with the NGO in question in order to resolve security concerns leading to refusal of registration, including through the removal of members. Such a solution, however, raises concerns about the right to freedom of association of members who have not passed the security clearance process, especially because reasons for failure are not given and there is no appeals process.

62. For those NGOs that are registered in a country other than Sri Lanka, or those receiving funding from abroad, the Ministry of Foreign Affairs must also provide its approval.

63. He heard concerns from civil society organizations, especially in the north and east of the country, that informal refusals of associations at the district and divisional levels are

<sup>7</sup> Available at [www.ngosecretariat.gov.lk](http://www.ngosecretariat.gov.lk).

commonplace for groups working on politically sensitive issues, such as LGBTQI+ rights, disappearances, land rights and transitional justice. These refusals typically come in verbal form, without any documentation, reasons or avenue for appeal. Reports state that local officials may also refuse to accept registration forms from such organizations, or refuse to provide registration materials in the first place. Oversight and approval of activities by district or divisional secretaries can also create difficulties for organizations working on corruption or governance, for example.

64. In 2018, a bill to replace the Voluntary Social Service Organizations Act, known as the NGO bill, was introduced with little to no consultation with civil society. The bill drew widespread criticism from civil society owing to the presence of a number of restrictive provisions that were not in line with international human rights norms and standards, including the mandatory registration of organizations and a wide number of bases for the punitive dissolution of organizations. The bill also provided new powers to the NGO Secretariat, including the ability to freely seize any organizational document, to enter organization offices without notice in order to conduct monitoring, and to launch investigations into organization activities without judicial oversight.

65. Following complaints from over 130 civil society organizations regarding the content of the bill and the lack of a consultative process in its drafting, the Minister of National Integration, Official Languages, Social Progress and Hindu Affairs withdrew the bill, opting instead to permit a group of civil society organizations to create and propose a draft instead, taking into account the various considerations and concerns of all parties. The Special Rapporteur welcomes this decision, especially with regard to the cooperative and consultative nature of the undertaking, and the promotion of the role of civil society in democratic processes. However, he notes that this plan of action should have been taken from the beginning, during the initial drafting phases of the bill. He also notes some concerns from civil society that the initial restrictive draft of the bill could be revived, and strongly recommends that the Government allow the civil society draft to advance as proposed.

66. NGOs are also required to pay tax under article 102 of the Inland Revenue Act No. 10 of 2006, which states that 3 per cent of any money received by an NGO should be treated as profit, and should be accordingly taxed at a rate of 30 per cent (amounting to an effective tax of approximately 1 per cent on all funding received). On 22 July 2011, however, a new regulation was passed, freeing NGOs of tax liability if the Commissioner General of Inland Revenue determines that they are engaged in humanitarian activities. While this new regulation is a step in the right direction, he considers that any tax paid by NGOs is unwarranted, given the not-for-profit nature of the organizations and the meagre amount that any such tax actually provides to the Government, which could instead be diverted directly towards beneficiaries.

## **B. Trade unions**

67. While Sri Lanka has a long history of strong trade unions, the opening up of the country to economic liberalization in the late 1970s led to the weakening of trade unions over the past decades. As a result, workers, especially in the informal sector, have found it increasingly difficult to assert their labour rights. The Special Rapporteur received many reports that politically aligned trade unions often represented the interests of political parties over those of their own members, while the concerns of smaller independent trade unions were often not heard.

68. Trade unions in Sri Lanka are split into public and private categories and are strictly separate. Under article 21 of the Trade Union Ordinance No. 14 of 1935, public trade unions are forbidden from federalizing with other public or private trade unions. The rationale behind this was allegedly to prevent widespread industrial action across the private sector, in order to protect public works. While public federations do exist in practice, they have no basis in law and can be legally disbanded.

69. Public trade unions experience significant fragmentation within sectors, with some sectors, such as railway workers, registering over 50 representative trade unions. They also

often tend towards hierarchical fragmentation within given fields, thereby making it difficult to obtain representative status, which requires 40 per cent of workers within a given field to be members of a trade union in order for it to be able to engage in collective bargaining. Under the Industrial Disputes Amendment Act No. 56 of 1999, no employer may refuse to bargain with a trade union that has in its membership not less than 40 per cent of the workers on whose behalf such trade union seeks to bargain. Reports provided to the Special Rapporteur note that this requirement often leads to infighting between trade unions, in an attempt to gain advantage and claim representation.

70. With regards to the settlement of labour disputes, the Special Rapporteur is concerned about reports that the Department of Labour is perceived to be pro-employer in its mediation efforts. Trade union representatives that he met with stated that the Department unfairly privileged foreign investors, who allegedly viewed trade unions and strong labour rights as deterrents to investment. He also heard a number of complaints regarding the failure of the Department to intervene in industrial disputes in a timely fashion.

71. Concerns have been raised with him about the limited involvement of the Department of Labour with regard to industrial disputes arising in free trade zones, also known as export processing zones. While the right to form trade unions is also guaranteed in these areas, union busting, reprisals for union membership, intimidation, substandard working conditions and sexual harassment are allegedly commonplace. Workers in free trade zones also comprise a particularly vulnerable section of the labour force, since they have often migrated long distances in search of employment, live in lodgings provided by the employers themselves, and lack an effective support structure to help them deal with difficulties that they encounter.

72. Labour laws in Sri Lanka are spread across over 40 sources, which has led the Government to attempt to codify them into a single unified employment law. A draft bill is currently in circulation, although trade union representatives have objected that the bill was created without the knowledge or consultation of trade unions. Although the Government has stated that the new draft law does not curtail any of the rights available to workers, it provides no additional rights. It also reduces limits on minimum terms and conditions, such as maximum daily working hours, which were hard fought for by unions. The bill would affect approximately 2.5 million workers and was rejected by all trade union representatives of the National Labour Advisory Committee. Following widespread dissatisfaction with the bill, the Department of Labour provided trade union representatives a one-month period to provide observations and comments on the text. While the Special Rapporteur welcomes this decision by the Department, he stresses the important consultative benefit that trade unions and members of civil society can confer on the drafting of human rights-compliant legislation at all stages of its formulation.

## **V. Key challenges to the rights to freedom of peaceful assembly and of association**

### **A. Surveillance and intimidation**

73. Although a decade has passed since the end of the protracted and deadly armed conflict, a real and comprehensive security sector reform has yet to take place, with areas in the north and east parts of the country remaining heavily militarized. As a result, the surveillance structure in the country, especially in the north and east, has remained in place, acting largely independently of governmental direction. Following the Easter bombing attacks in April 2019, this surveillance has allegedly increased.

74. The Special Rapporteur is seriously concerned about the numerous reports of surveillance that he received from civil society during his visit, including surveillance in online spaces such as social media platforms. While organizations working on various topics undergo differing levels of surveillance, depending on the perceived sensitivity of the topic, it was reported that almost all organizations were subject to low but regular levels of

surveillance. This surveillance included the monitoring of phone calls, visits at home or at work, and photographic surveillance carried out by intelligence services, among others. Protests are also frequently surveilled by security forces and intelligence services, including the Criminal Investigation Department, with participants often being subjected to questioning, threats and intimidation before and after assemblies.

75. In this regard, the Special Rapporteur also heard reports of security forces and intelligence officers frequently entering NGO offices, submitting members to questioning and creating an intimidating environment. He heard of one instance where the offices of an NGO were visited six times in a two-month period by officers of the Criminal Investigation Department. Some civil society members also expressed that they had to refrain from conducting home visits, as security forces might follow them to the homes of victims. The Special Rapporteur is also concerned about allegations that NGO members and participants in assemblies must informally notify security forces and intelligence services before holding events, for fear that they will be shut down otherwise.

76. At one meeting, he was alerted by civil society interlocutors to the presence of presumed intelligence personnel in civilian clothing, who were observed monitoring participants outside of the meeting place. At another location, military personnel appeared to have taken note of the number plates of the Special Rapporteur's vehicle. This kind of surveillance is clearly aimed at creating a climate of intimidation, and may be considered as an act of reprisal against the civil society member and human rights defender interlocutors for their interactions with United Nations human rights mechanisms.

77. The reports that were shared with the Special Rapporteur during his visit about the surveillance and intimidation experienced by members of civil society and others who take part in peaceful protests are particularly worrying. Such surveillance and intimidation creates a climate of mistrust and fear, which leads to self-censorship and has a chilling effect on civic space. Many members of civil society also expressed fear of how this information might be used in the future.

## **B. Ethno-religious discrimination and violent content online**

78. A recurring theme in conversations that the Special Rapporteur had during his visit was the systematic discrimination faced by ethnic and religious minorities. This discrimination comes in many forms, including the use of vilifying language by high-level officials; the lack of parity regarding the application of laws; police inaction; smear campaigns through the media; and hate speech, both online and offline.

79. The issue of the uneven application of legislation to the detriment of minorities was raised with the Special Rapporteur on numerous occasions. Although Sri Lanka has legislation to combat discrimination and online violence, both at a constitutional level as well as through the Penal Code (e.g., arts. 290A and 291) and the International Covenant on Civil and Political Rights Act, in many circumstances this legislation is applied against members of minority communities, while blatant acts of hate speech from majority communities often go completely unchecked.

80. Following the Easter bombing attacks, there was a sudden upsurge of online violence, and disinformation spread quickly, both online and offline. In order to deter ethno-religious violence, the Government instituted curfews in certain areas and blocked social media platforms on various occasions. The Special Rapporteur notes that partial Internet shutdowns are in contravention of international human rights law, as blanket bans do not permit a determination on the proportionality of each limitation on the rights to freedom of peaceful assembly, freedom of expression and freedom of association. The institution of contemporaneous curfews and partial or total Internet shutdowns during a period of crisis has severely negative effects on communities, as they are unable to gather or associate freely; access information; express their concerns, requirements or points of view; or contact family members and friends. At such times, platforms such as social media become important democratic tools.

81. While the Government has the obligation to combat the use of the Internet for purposes of ethno-religious violence, finding effective solutions requires a systematic perspective of the problem and collaborative actions with all stakeholders, including with civil society, the media and social media companies. In particular, he stresses that instead of shutting down the Internet or blocking access to social media platforms, Governments should work with online platforms and civil society organizations to develop laws, policies and processes that allow for a coordinated and prompt response against the dissemination of disinformation and violent content following a terrorist attack, in a manner consistent with international human rights law. Actions taken should be targeted, specific and proportionate.<sup>8</sup>

82. Female members of minority communities are often doubly stigmatized, both because of their religion or ethnicity and because of their gender. Many female members of civil society from minority communities expressed to the Special Rapporteur that they felt intimidated online, owing to the significant amounts of online violence that they experienced. Operating in toxic environments such as these significantly deters female civil society members and human rights defenders from carrying out their work, for fear of online harassment. There are also other frequent issues to contend with online, such as doxing (the publication of private information online with malicious intent). In addition, a number of women also stated that they had allegedly been added on social media by members of the intelligence community through the use of fake profiles.

83. As noted above, members of minority communities, especially those who raise dissenting voices, also face issues with regard to police inaction and the refusal by other civil servants to access services. Many interlocutors reported difficulties in obtaining justice for attacks they had suffered during protests and other events. In several cases, the Special Rapporteur heard that officers working on NGO registration had refused to provide application forms on the basis of the religion, ethnicity or sexual orientation of applicants. Interlocutors tended to see civil servants as an extension of the Government, stating that if their narrative differed from that of the Government they were likely to face discrimination in their work.

### C. Adverse effects of national security legislation

84. National security and emergency legislation presents a significant barrier to the rights to freedom of peaceful assembly and of association for a number of reasons. While national security is a permissible basis for restrictions on these rights, and while Sri Lanka has legitimate reasons to react to threats against its national security, the concern is that such legislation may be overbroad and used frivolously, without due consideration for the proportionality of its use.

85. Although the Prevention of Terrorism Act of Sri Lanka is undergoing a reform process, as mentioned above, the newly proposed draft bill carries with it its own difficulties. Article 3 (b) of the bill, for example, criminalizes wrongfully or unlawfully compelling the Government of Sri Lanka, or any other government, or an international organization, to do or to abstain from doing any act when committing any of the acts referred to in article 3 (2), which include causing serious obstruction or damage to essential services or supplies, and causing serious damage to property, including public or private property. The broad construction of these articles leaves a wide margin to manoeuvre for possible prosecution under the bill, especially with regard to certain acts of civil disobedience, or trade union actions in sectors that are defined as essential services. It is thus not difficult to consider the effect that this could have on the right to freedom of peaceful assembly.

86. The Special Rapporteur notes that during his visit, many interactions were characterized by a deep-seated mistrust of the Government on the part of interlocutors. A combination of discriminatory practices with surveillance, intimidation and overbearing counter-terrorism legislation creates harsh divisions, which in fact themselves undermine

<sup>8</sup> A/HRC/41/41, paras. 3–4, 85 and 91.

national security. Concerns were frequently expressed to him with regard to the discriminatory application of counter-terrorism legislation, in circumstances where the characterization of the offence as terrorism seemed draconian and manifestly disproportionate. The most frequent instances heard by the Special Rapporteur were connected with memorials for those who were killed or disappeared during the armed conflict, and with student union protest movements.

#### **D. Impunity**

87. Mistrust of the Government and State institutions is exacerbated by a prevailing climate of impunity. Although discussions regarding a transitional justice accountability mechanism have taken place, disputes over, inter alia, the presence of international judges on such a mechanism have paralysed the process. The end result is that few perpetrators have ever been held accountable for atrocities committed during the armed conflict, and faith in the national justice system has been eroded. Indeed, the Special Rapporteur was deeply disappointed to learn that on 18 August 2019, after the completion of his visit, Lieutenant General Shavendra Silva was appointed as the new army chief of Sri Lanka, despite the serious allegations against him with regard to his involvement in the commission of war crimes and other human rights abuses during the conflict. This appointment will serve to undermine faith in the armed forces and reinforce a prevailing climate of impunity for atrocities committed during the war.

88. This lack of accountability is similarly mirrored in the Rathupaswala, Welikada prison and Roshan Chanaka cases mentioned above. All three cases are characterized by long periods of inaction by the administration of justice system, up to eight years in one case. While some movement has been seen recently in bringing these cases to trial, such protracted delays further undermine faith in the system and create poor perceptions of access to justice. In a similar way, police inaction also contributes to this.

89. It is essential that victims of human rights violations, including violations of the rights to freedom of peaceful assembly and of association, feel supported and able to redress these violations in a straightforward and efficient manner. Indeed, the fight against impunity is crucial for the maintenance of a sustainable democracy, of peace and of development.

### **VI. Conclusions and recommendations**

#### **A. Conclusions**

90. **While Sri Lanka has made valuable democratic strides in the last five years, a prevailing apprehension exists among civil society, who fear there could be rollbacks on these gains in the future. Sri Lankans fear the dismantling or undermining of fragile yet important institutions that safeguard their democratic rights, and a shift back to media restrictions, governmental opacity and a climate that requires self-censorship. This must not be allowed to happen.**

91. **While national legislation adequately protects the rights to freedom of peaceful assembly and of association for the most part, the unequal application of the laws, including informal refusal to enact laws at an administrative level, seriously affects the enjoyment of these rights. Ethnic and religious discrimination, mistrust in State authorities and the heavy militarization of certain areas must be immediately tackled in order to fully realize the enjoyment of human rights in the country. Furthermore, if perpetrators of gross human rights violations are permitted to enjoy and profit from a climate of impunity, it will serve to undermine people's confidence in State institutions and jeopardize the country's progress towards sustainable democracy and development.**

92. **The vital role that civil society plays in the promotion of democracy, providing checks and guidance on governmental actions in the promotion of universal human**

rights standards, must be nurtured. Civil society is a necessary and essential conduit for the voice of the people, and civil society actors must strive to work together in a coherent fashion in order to ensure that they adequately fulfil their role. Their actions have been instrumental in the widening of democratic space that the country has experienced since 2015, and they will continue to be instrumental in the fight to maintain and increase those gains.

93. More must also be done on social cohesion to unite people and communities, embracing their differences and rebuilding trust in order to work towards the full enjoyment of human rights for all in Sri Lanka. First steps towards this must necessarily include the even application and rule of law, an end to impunity, and meaningful transitional justice and reconciliation processes, in line with the commitments of the Government of Sri Lanka as contained in Human Rights Council resolution 30/1.

## **B. Recommendations**

94. The Special Rapporteur recommends that the Government:

(a) Ratify and implement the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(b) Undertake a review of the Constitution with a view to extending the fundamental rights contained therein to all those under the Government's jurisdiction, including migrants, refugees, asylum seekers and other non-citizens, as per the requirements of the International Covenant on Civil and Political Rights;

(c) Consider repealing article 16 of the Constitution, which forbids judicial review of existing legislation that violates the rights to freedom of peaceful assembly and of association, and other fundamental rights;

(d) Ensure non-discriminatory application of legislation across communities, including ethnic, religious, LGBTIQ+ and other groups, undertaking review of such legislation in order to prevent its discriminatory use, and providing guidelines to law enforcement on the application of legislation that might be prone to misuse;

(e) Complete its review and repeal of the Prevention of Terrorism Act, replacing it instead with legislation that is fully compliant with international human rights norms and standards, in continued consultation with civil society; implement the recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism with regard to the draft Counter-terrorism Act, and immediately establish a moratorium on the use of the Prevention of Terrorism Act for new arrests until it is repealed;

(f) Implement comprehensive security sector reform and demilitarization, in line with the country's transitional justice commitments under Human Rights Council resolution 30/1, and order all security forces to immediately end all forms of surveillance and harassment of and reprisals against human rights defenders, other actors, and victims of human rights violations;

(g) Maintain engagement with the United Nations peacebuilding architecture, in particular the Peacebuilding Commission, through regular updates on progress made in implementing the country's Peacebuilding Priority Plan and the sharing of and benefiting from good practices and experiences related to transitional justice and reconciliation processes;

(h) Provide support to important institutions such as the Constitutional Council, the Office on Missing Persons, the Office for Reparations and the Human Rights Commission of Sri Lanka, ensuring that they are able to continue to work independently and with sufficient resources to discharge their mandates;



(i) Safeguard the democratic gains made by the country in the last five years, including through the preservation of the Nineteenth Amendment to the Constitution;

(j) Guarantee a vibrant civic space, where all civil society actors are able to carry out their work in a safe and enabling environment, free from threats or acts of violence, intimidation, surveillance, or any other form of harassment, including judicial harassment and reprisals;

(k) Ensure that the rights to freedom of peaceful assembly and of association can be effectively exercised, in law and in practice, fulfilling the indispensable role that they play in the promotion of a fair, free, pluralistic and democratic society where minority and dissenting views are respected;

(l) Take steps to address the perceived climate of impunity by improving access to justice, promoting and mainstreaming human rights through its legislation, procedures and other actions, and taking resolute steps towards bringing the perpetrators of human rights violations to justice.

95. With regard to peaceful assembly, he recommends that the Government:

(a) Consider revising the laws and regulations relating to freedom of peaceful assembly in order to ensure their compliance with international human rights norms and standards;

(b) Consider developing clear and accessible guidance based on the laws and regulations regarding the right to freedom of peaceful assembly in order to facilitate the organization of assemblies according to law, both by organizers and law enforcement authorities;

(c) Consider amending the law regarding notification procedures in order to allow for the occurrence of spontaneous or urgent assemblies without risk of criminality;

(d) Refrain from using national security legislation, including the Prevention of Terrorism Act, to criminalize protesters legitimately exercising their right to freedom of peaceful assembly;

(e) Refrain from shutting down the Internet, in whole or in part, which always contravenes international human rights standards, and work collaboratively with civil society, the media, Internet service providers, and social media companies in order to find effective and evidence-based solutions to counter violent content and disinformation online, in a manner consistent with international human rights law;

(f) Ensure that any use of force to disperse assemblies is in accordance with international human rights law, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, including through the provision of relevant training;

(g) Ensure that any court orders sought in order to prevent or stop an assembly allow organizers adequate time and opportunity to challenge them, and also ensure that organizers of protests are not held personally accountable for illegal acts committed by others in the context of the protests that they have organized;

(h) Ensure the safe exercise of the right by groups such as national and religious minorities, LGBTQI+ groups, children and women, including by protecting them from attacks, harassment and intimidation by third parties;

(i) Ensure that all incidents in which the actions of security forces have resulted in human rights violations, in particular death and injury, are promptly, independently and transparently investigated and prosecuted, including the Rathupaswala, Welikada prison and Roshan Chanaka cases.

96. With regard to the right to freedom of association, the Special Rapporteur recommends that the Government:

(a) Ensure that existing legislation dealing with the right to freedom of association is in line with international human rights laws and standards, in particular in relation to registration, reporting requirements, the right to privacy and suspension or dissolution of associations, and avoid enacting regressive legislation in the future, including legislation mandating the registration of associations;

(b) Engage in meaningful consultation with civil society and the National Human Rights Commission on all relevant legislation, including at the drafting, review and implementation stages, especially when such legislation pertains to an alteration in the status, rights or obligations of associations, such as NGOs and trade unions;

(c) Ensure that all administrative authorities at the national, divisional and district levels dealing with the right to associate are duly trained on international human rights norms and standards in order to create a favourable and enabling environment for civil society to operate;

(d) Provide an avenue of appeal in cases where the Ministry of Defence denies the registration of an association on the basis of national security, and ensure that reasons for refusal are provided in writing at the earliest possible opportunity;

(e) Ensure the rights to form and join trade unions, both inside and outside of free trade zones, and guarantee their rights to strike and collectively bargain, including through the removal of the 40 per cent threshold in this regard; also ensure that no restrictions are placed on the right to strike, other than those listed as permissible under articles 21 and 22 of the International Covenant on Civil and Political Rights;

(f) Accurately measure and record the membership and representative status of trade unions and engage in efforts to promote fruitful interactions between them, with the aim of improving labour standards, guaranteeing labour rights and assisting in the realization of common goals;

(g) Ensure the full implementation of the recommendations contained in the reports of the Committee of Experts on the Application of Conventions and Recommendations.

97. The Special Rapporteur calls on civil society organizations, including trade unions, to:

(a) Continue to work together, speaking with a united and coherent voice towards the realization of common goals, such as the promotion and protection of human rights, democracy, rule of law, sustaining peace and justice;

(b) Work collaboratively with the Government at every opportunity in order to advocate for the mainstreaming of human rights through legislative instruments and policy implementation;

(c) Advocate to maintain the democratic progress that the country has made in the last five years and continue in the pursuit of an expansive and vibrant civic space that is respectful of minority and dissenting views;

(d) Continue its advocacy and monitoring work in relation to the rights to freedom of peaceful assembly and of association and enhance engagement with United Nations human rights mechanisms, including the special procedures and treaty bodies;

(e) Continue fighting against impunity for past and present violations of human rights, with a view to seeking justice, accountability and redress for victims;

(f) Follow up and monitor the implementation of the recommendations contained in the present report.

98. The Special Rapporteur calls upon the United Nations, other international organizations and other stakeholders to:

- (a) Continue working with Sri Lanka towards the fulfilment of all of its international obligations, including those pertaining to human rights and transitional justice;
  - (b) Work effectively with civil society, mutually supporting each other's activities and sharing relevant information;
  - (c) Support Sri Lanka in its efforts towards achieving the Sustainable Development Goals;
  - (d) Systematically consider information and recommendations from special procedures to inform country-level conflict analysis, strategies and programmatic responses;
  - (e) Monitor the implementation of the recommendations contained in the present report.
-