

Adayaalam Centre for Policy Research (ACPR)

Situation Brief No. 4

Sri Lanka's Repression of the Tamil Polity's Rights to Remember

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On Friday January 8, Jaffna university authorities on direction of the government destroyed a memorial commemorating Tamil civilians killed in the final phase of the war in Mullivaikkal on the Jaffna university campus. Their actions were a brazen attempt by the government to crackdown on the Tamil polity's right to remember. According to UN estimates, approximately 70,000 Tamils were killed during the final atrocities of the war¹; a genocide in which the Sri Lankan state sought to destroy the Tamil population of the LTTE-controlled Vanni. The memorial was unveiled in February 2019 in advance of the 10-year anniversary of the war,² and one of the student-designers is himself a victim, having lost his father in Mullivaikkal.³ The powerfully moving design depicted several arms reaching out of a pile of rubble.



Photo of Mullivaikkal Memorial at Jaffna University Campus courtesy of Tamil Guardian

The right to remember and memorialization are key parts of addressing deep-rooted conflicts. By only permitting a certain State-led narrative to exist in remembering the war while actively oppressing any alternative constructions of the war, the Sri Lankan state is only furthering ethnic conflict, and preventing any meaningful reconciliation from occurring. The acts of remembrance beyond being a cathartic moment of collective grieving, also serve as a catalyst for the critical discussions necessary to move forward processes of truth, justice and reconciliation. It is in the days following Maaveerar Naal or May 18, when the Tamil community has been allowed to grieve in the way they choose, that conversations around who is mourned and how they are mourned, have occurred. The Tamil people, a decade after the end of the war, are still defending their right to remember. So long as communities must defend their right to remember, they will struggle to find the space for debate and critique of who is being remembered and how – instead understandably focusing their efforts on resisting the State-led memory erasure project.

¹ Charles Petrie et al 'Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka' (November 2012), accessed here: <https://digitallibrary.un.org/record/737299>

² 'Mullivaikkal memorial unveiled at Jaffna university' (12 February 2019) *Tamil Guardian* accessed here: <https://www.tamilguardian.com/content/mullivaikkal-memorial-unveiled-jaffna-university>

³ Tweet by journalist Uthayarasa Shalin (8 January 2021) accessed here: <https://twitter.com/uthayashalin/status/1347593527593742337?s=20>

“When memory dies a people die. But what if we make up false memories? That’s worse than that’s murder” – Ambalavaner Sivanandan

Since the end of the war in 2009, the Sri Lankan state has cracked down on any form of remembrance, particularly during the months of November and May,⁴ portraying these acts as criminal activities. Instead, the North-East is covered in State-constructed memorials paying tribute to the Sri Lankan military for “rescuing the Tamil people in a humanitarian operation.” These memorials stand as an affront to the thousands of Tamil victims of atrocities perpetrated by the Sri Lankan military.

The cruel destruction of the Mullivaikkal memorial in January follows several months of the Sri Lankan state returning to a pattern of taking extraordinary measures to prohibit and repress the Tamil polity’s right to remember those who were killed or fought in the armed conflict. According to communities across the North-East, the State’s actions in respect of remembrance activities these past few months have felt the most repressive of any year since the end of the war and have only added to the fear and apprehension Tamil communities have about the returned Rajapaksa regime.

In this briefing, ACPR documents how the Sri Lankan government has actively sought to repress the Tamil community’s right to remember leading up to and including the month of November last year, as well as considering the government’s most recent actions demolishing the Mullivaikkal memorial at Jaffna university. In clamping down on remembrance activities, the Sri Lankan state has violated a number of rights of Tamil communities and individuals, as we document in this briefing.

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⁴ The month of November is particularly important in the Tamil calendar, because it marks the period in which vast segments of the Tamil polity remember and commemorate those who died fighting in the Tamil struggle against the Sri Lankan State, particularly those who were part of the Liberation Tigers of Tamil Eelam (LTTE). The month of May is also significant because it is the anniversary of the end of the war, and a period when the Tamil community mourns the thousands who were killed or disappeared during the final phase of the war.

A. The Repression of the Right to Commemorate ‘Maaveerar Naal’

While the Sri Lankan state portrays its repression of remembrance in November by the Tamil polity as in furtherance of national security, in effect, it is preventing the reflective and critical conversations around the war that could meaningfully ensure non-recurrence of violence in the future.

This section outlines the two main ways the Sri Lankan state has cracked down on remembrance this past November: (1) weaponization of the law; and (2) increased securitisation and militarisation throughout the North-East. It is important to understand the tools the State is using to repress the Tamil polity’s rights, because they are easily transferrable and mark a shift from overt repression to more subtle and dangerous ways of clamping down on human rights.

i. **Weaponizing the Law to repress memorialisation**

The attempt to hide repression under the guise of the law, has been a prominent feature of the returned Rajapaksa regime. Whether in the form of its clampdown on NGO finances, or the arrest of Hejaaz Hizbullah earlier this year, the Rajapaksas appear to be undertaking a strategy to harass and intimidate Tamil and Muslim communities, human rights defenders and journalists, through exploitation and misuse of the law. The distortion of the law to prop up State-led violations is not a unique phenomenon and is used by repressive regimes around the world to portray what would otherwise be considered violations of human rights as upholding the law. For example, describing the moves the Chinese government took in Hong Kong to impose its National Security Law, the Centre on Constitutional Change writes:

In other words, what Beijing and its puppet government in Hong Kong are trying to do now is to crush the democracy movement through extralegal “legal” means. By using the law rather than, say, the military, the regime is attempting to imbue its manoeuvre with a semblance of legitimacy....⁵

Across the North-East this past November, police officers filed reports to Magistrate’s Courts seeking orders prohibiting any remembrance activities from taking place. The police sought to justify the ban on the basis that these events could pose a public health risk due to Covid-19, and that they should be banned as they were commemorations of the LTTE which is banned under regulations under the Prevention of Terrorism Act 1978 (PTA), gazetted in 2011. Most orders were sought under section 106(1) of the Criminal Procedure Code relating to public nuisance. In this section we outline why neither Covid-19 nor the ban on the LTTE justified a ban on all public Maaveerar remembrance events in November. Further we set out the argument for why public nuisance laws cannot restrict the rights to freedom of speech, expression and assembly, even under Sri Lankan domestic law.

a. ***Maaveerar remembrance events posed little to no risk of furthering Covid-19 cases***

First, on the issue of Covid-19, it is worth noting that the Sri Lankan government on October 7, already issued a ban on any public gatherings, though they continued to permit funerals to occur with a maximum of 50% of the capacity of the premises.⁶ On November 7, these directions were reiterated as the Sri Lankan Health Promotion Bureau announced Sri Lanka was at ‘Alert level 3’, meaning public

⁵ Centre on Constitutional Change, ‘Hong Kong’s National Security Law: weaponizing the constitution, securitizing authoritarianism’ (15 June 2020), accessed at: <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/hong-kongs-national-security-law>

⁶ Sri Lankan Ministry of Health ‘Revised Timeline for Public Activities – 4 October 2020 to 31 October 2020’ (6 October 2020) accessed here: http://www.health.gov.lk/moh_final/english/public/elfinder/files/feturesArtical/2020/Timeline_06-October2020.pdf

gatherings were still banned, but funerals could take place with up to 25 guests present.⁷ During the months of October and November, the vast majority of Covid-19 cases were reported being in Colombo and Gampaha, and to a lesser extent, other districts also located in the Western Province or South of the country. Thus, as a starting point, seeking out specific orders to ban remembrance gatherings was technically unnecessary as public gatherings were already banned.

Yet, on November 17, 2020, Sri Lankan army commander and alleged war criminal, Shavendra Silva, announced that any attempts to hold Maaveerar Naal commemorations in public will “result in legal action under the Coronavirus Act.”⁸ The focus of his comments remained on the fact that commemorations would be of “terrorists” and could lead to “public reviving of the LTTE”, rather than any public health risk which commemorations could pose. In fact, there were no statements from public health authorities in regards to Maaveerar Naal or the risk it could pose. This was likely because public gatherings were already banned and on the day Silva made his announcement, cases across most of the North-East still remained markedly low. In the North, Mullaitivu had only one reported case, Kiliuchchi had 3, Mannar had 10, and Jaffna and Vavuniya had 25 each respectively. In the East, Batticaloa reported the highest number at 70 cases, while Trincomalee had 12 cases, Ampara had 23 cases, and Kalmunai had 2 cases. Comparatively, the North-East thus had a very low proportion of the cases in Sri Lanka with the vast majority of Sri Lanka’s 17,674 confirmed cases on this date located in the South of the country.⁹

Earlier last year, courts resisted police attempts to utilize Covid-19 to disrupt remembrance events. On May 17 2020, the Jaffna Magistrate’s Court issued an order sought by police requiring Tamil National People’s Front (TNPF) politicians and organizers to isolate for 14 days due to Covid-19 as a result of weeklong Mullivaikkal commemorations. The next day on May 18, the TNPF went back to Court seeking the order be vacated on the grounds that as per the Gazette notification of 25.03.2020, only proper authorities (such as medical officers) could seek quarantine orders, and the police had no powers to do so without advice from public health authorities. The Jaffna Magistrate’s Court granted the TNPF’s motion, and the order was vacated.¹⁰

Unfortunately, six months later, courts were not so willing to resist, and most accepted police arguments about Covid-19 in their orders.

Even more problematically, in referencing concerns about Covid-19, the Batticaloa Magistrate’s Court issued an order on the basis that remembrance events could “lead to protests by those who oppose [them]” and that those protests would raise Covid-19 concerns.¹¹ This raises serious concerns about the legal precedent set by this order, which in essence prohibits a community from exercising a legitimate right, because it might give rise to protests about them exercising that right.

From a public health standpoint therefore, the Sri Lankan police and military were on very weak footing in suggesting that Maaveerar Naal gatherings should be banned due to Covid-19 concerns. Public gatherings had already been banned and the case count across the North-East was incredibly low. Theoretically, individuals could have visited Thuyilam Ilams independently, or lit lamps outside their homes or taken turns paying tribute in significant places, without being in violation of the

⁷ ‘Sri Lanka’s Covid-19 situation is currently at alert level 3’ (7 November 2020) accessed here: http://www.colombopage.com/archive_20B/Nov07_1604733389CH.php

⁸ Kalaikkathi, 16.11.2020.

⁹ Sri Lanka Ministry of Health Epidemiology Unit ‘Covid-19 Situation Report – 17.11.2020’ (17 November 2020) accessed here: https://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-17-11_10.pdf

¹⁰ INFORM Human Rights Documentation Centre, ‘Repression of Dissent in Sri Lanka: 1st-31st May 2020’ (accessed here: https://www.inform.lk/wp-content/uploads/2020/06/ROD2020May_Eng.pdf)

¹¹ Case No AR/690/20 (20.11.2020) Magistrate’s Court Batticaloa

government ban on public gatherings due to Covid-19, and without posing any risk to themselves or others. But in effect, what the police were seeking, were orders to ban even private individuals from commemorating outside their own homes that had nothing to do with Covid-19 concerns.

b. The Ban on the LTTE does not preclude Maaveerar Remembrance events

Almost all Magistrates' courts also referenced the fact that the LTTE is a banned organization inside and outside Sri Lanka in their decision to grant police orders. At the Jaffna High Court hearing of three petitions from M.A. Sumanthiran and V. Manivannan seeking proactive orders permitting remembrance activities, the government's lawyer, Senior ASG Jayasundera, argued that remembrance activities are a threat to national security on the basis that the events would revive a banned organization under the PTA and the 2011 PTA Regulation banned any remembrance of the LTTE or its cadres.¹² The Jaffna High Court chose not to engage in the substance of that argument and instead refused to grant the orders sought by the petitioners on the preliminary objection that as a provincial court it did not have jurisdiction over matters of "national security".

However, the Magistrate's courts and the ASG were incorrect in their interpretation of the ban. Nowhere in the PTA Regulation nor in any other piece of legislation does the Sri Lankan state ban the remembrance of anyone who died irrespective of whether they were a member of a proscribed organization.

On 7 June 2017, the National Human Rights Commissioner of Sri Lanka clarified this in a letter to the President:

'After a thirty year armed conflict Sri Lanka is at present attempting to rebuild ethnic relations and work towards reconciliation. In this process it is important that all communities have the space and ability to mourn the loss of their loved ones and remember them. Hence, memorialisation is an important and integral part of the reconciliation process. In Sri Lanka we have built many memorials to commemorate the soldiers who have lost their lives during the armed conflict. Likewise, all communities should have the right to construct memorials to remember their family members and loved ones. The fact that the person who died was a LTTE cadre should not be used as the reason to deny the family to mourn and remember their loved one. Every family has the right to remember and memorialise their loved ones irrespective of their status or political beliefs. The Commission is of the view that allowing families the space to do so would enable them to feel they too have, and are able to exercise their rights as citizens of Sri Lanka, and are part of a common journey towards reconciliation. Denial of such an opportunity will only serve to deepen ethnic divisions and hamper reconciliation efforts.'¹³

The Consultation Task Force on Reconciliation Mechanisms, which had a mandate from the Sri Lankan government, also reiterated the importance of the right to collective memorialization of those who died in the war, including LTTE cadres.¹⁴

¹² Reporting by S. Rubatheesan on Twitter (25 November 2020), accessed here: <https://twitter.com/rubatheesan/status/1331596628860436484?s=20>

¹³ National Human Rights Commission of Sri Lanka, 'Letter from Chairperson to HE the President Maithripala Sirisena' (07 June 2016) accessed here: <http://hrcls.lk/english/wp-content/uploads/2017/06/Letter-to-H.E.-President-Memorialization-and-Reconciliation-E.pdf>

¹⁴ Consultation Task Force on Reconciliation Mechanisms, 'Observations, Recommendations and Executive Summary', Page 91, Para 12.

Importantly, the courts themselves have permitted the remembrance of LTTE war-dead, distinguishing between commemoration events which portrayed the LTTE flag or insignia, versus those where individuals commemorated their dead loved ones without any LTTE paraphernalia. In 2018, the Batticaloa Magistrate's Court issued an order in response to a police complaint about Maaveerar Naal stating:

"...I hereby ban any use of flags that represent the LTTE, tombs, boundary blocks or LTTE songs.

Further, I hereby order that there is no ban on lighting lamps and remembering the fallen members."¹⁵

The direct contradiction of precedent, when there has been no material change in circumstances, undermines the rule of law, and goes against the common law tradition. It also devalues the credibility of the judiciary and raises concerns about whether judges are succumbing to political pressure from the centre.

Ultimately, there is no ban on remembering LTTE cadres who have died, nor should there be.

c. Regulation of Public Nuisance cannot be used to restrict freedom of speech, expression and assembly.

Most orders obtained by police were issued under section 106(1) of the Criminal Procedure Code No.15 of 1979, which reads:

Section 106.

- (1) In cases where in the opinion of a Magistrate immediate prevention or speedy remedy is desirable the Magistrate may by a written order stating the material facts of the case and served in manner provided by section 99 direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if the Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

A marginal note to section 106(1) permits Magistrate courts the 'power to issue absolute order at once in urgent cases of nuisance.' As argued by ACPR's Chair before the Vavuniya High Court in 2017, the use of this regulation to prohibit the right of citizens to engage in lawful assembly and remembrance is inappropriate because: (1) it is an attempt to shift the burden of decisions from the police to the judiciary in matters of breach of peace; (2) it cannot be invoked merely on flimsy grounds of suspicion; and (3) it must be ready narrowly in tandem with fundamental rights enshrined in the constitution which acts of memorialization as expressions/acts of speech are per Article 14(1)(a).¹⁶ For all these reasons, the use of public nuisance regulation to issue these preventive orders is an example of the government misusing the law to attach a sense of legitimacy to its authoritarian actions.

The Mallakam Magistrate's Court made this point when the Magistrate refused to grant police orders under section 106(1). Instead, the Magistrate told police that they could come to court with evidence

¹⁵ Case No B/1063/2018 (26.11.2018) Batticaloa Magistrate's Court

¹⁶ Written Submissions for Respondent-Petition before Vavuniya High Court in HCV/R/267/17, Attorney-at-law Kumaravadivel Guruparan.

of violations of the law, but that it would be inappropriate for him to issue a preventive order on mere suspicion banning remembrance activities under public nuisance regulations.¹⁷

Thus, while the Sri Lankan government made attempts to portray the issue of memorialization as a legal one divorced from political realities, it is clear that their use of the law is itself a political tool. As the UN Special Rapporteur on Cultural Rights, Farida Shaheed, concluded writing on memorialization processes, “[m]emorial dynamics are always political processes.”¹⁸

ii. Increased securitization and militarization

In addition to the legal avenues the Sri Lankan government took to repress the right to remembrance of Tamil communities, they also pursued more familiar tactics of increased securitization and militarisation of the predominantly Tamil North-East.

a. Police disrupt clean-up of cemeteries

Even before many courts had issued orders prohibiting public commemorations, in early-mid November, Sri Lankan police prevented local Tamil politicians and civilians in various districts across the North-East from cleaning up Thuyilam Ilams (cemeteries housing LTTE cadres) and making preparations for commemoration efforts, despite the fact they were following coronavirus rules by social distancing and wearing masks.¹⁹ Police interrogated volunteers engaged in these efforts, and noted down their names.²⁰ In Vaharai, the police even arrested a TNPf organizer, Tharmalingam Suresh, for cleaning up a Thuyilam Ilam, only releasing him after 3-4 hours of interrogation.²¹ These were clearly acts of intimidation and did not even offer the cover of the orders prohibiting commemorations which came after this period as described above.

These actions were swiftly followed by remarks from senior military officials such as Shavendra Silva, threatening to arrest anyone participating in these commemorations as detailed above.

b. Military deployed throughout North-East on Maaveerar Naal and increased securitization

On Maaveerar Naal itself, the military was deployed in full force throughout the North-East, and primarily the Vanni. The map below marks the significant number of checkpoints that were put up in Mullaitivu and on the roads between Jaffna and the Vanni on the day. Mullaitivu is already the most militarized area in the country, and as our research previous found, in 2017 it had a ratio of one soldier to every two civilians.²² The additional checkpoints not only served to intimidate and harass local

¹⁷ Interview with Mallakam Magistrate.

¹⁸ OHCHR, ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Memorialization processes,’ Report to UN Human Rights Council, A/HRC/25/49, 23 January 2014, accessed at: <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/MemorializationProcesses.aspx>

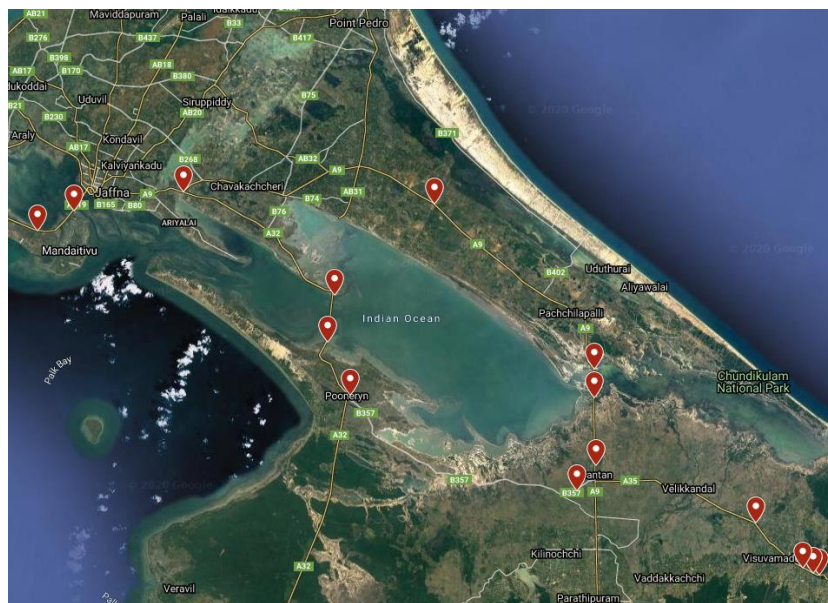
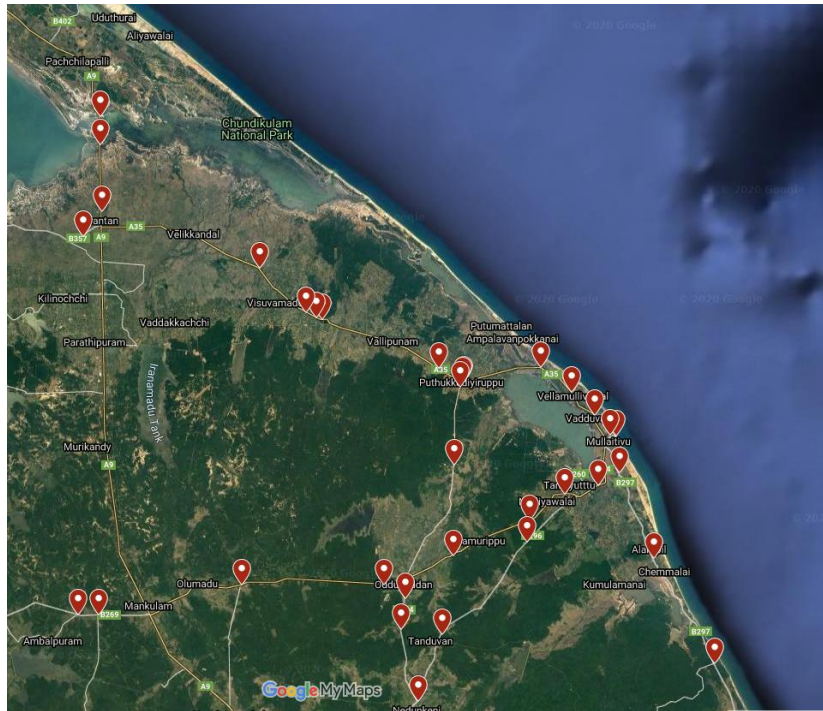
¹⁹ See for example: Tamil Guardian, ‘Sri Lankan police disrupt Maaveerar Naal preparation in Kilinochchi’ (16 November 2020), accessed at: <https://www.tamilguardian.com/content/sri-lankan-police-disrupt-maaveerar-naal-preparation-kilinochchi>; Tamil Guardian, ‘Sri Lankan police interrupt Maaveerar Naal preparation in Mullaitivu’ (16 November 2020), accessed at: <https://www.tamilguardian.com/content/sri-lankan-police-interrupt-maaveerar-naal-preparation-mullaitivu>; Tamil Guardian, ‘Sri Lankan police interrupt Maaveerar Naal preparation in Visuvamadu’ (19 November 2020), accessed at: <https://www.tamilguardian.com/content/sri-lankan-police-interrupt-maaveerar-naal-preparation-visuvamadu>

²⁰ *Ibid.*

²¹ *Thinnakural*, (21 November 2020).

²² ‘Normalising the Abnormal: The Militarisation of Mullaitivu’ (October 2017) *ACPR and PEARL*. A copy can be obtained by request.

communities, but also to further securitize the Tamil polity, making it apparent the State views Tamils as a threat to peace.



Military Checkpoints on Maaveerar Naal, November 27, 2020.²³ The top map is of Mullaitivu while the bottom map is of the roads connecting Jaffna to the Vanni through Elephant Pass.

Soldiers were stationed by most almost all Thuyilam Ilams, turning away anyone trying to pay their respects. In Jaffna, police and military were observed stationed in front of churches and regular cemeteries as well. Soldiers were stationed outside the homes of Tamil politicians, an act of harassment, as no reports had been registered of anyone breaking the court orders issued. Motorbike

²³ Checkpoints were mapped and identified in-person by Adayaalam staff. A checkpoint was determined as a place where military were stationed and were stopped vehicles passing by for questioning.

units of the Sri Lankan army were deployed in each district, seemingly only to intimidate, as they travelled through areas with faces covered, and not obeying traffic rules in a convoy manner.²⁴

The army and police also violated their own court orders, invading private homes and disrupting commemorative ceremonies being held in line with the court order. For instance, police entered the TNPf's office in Kokkuvil, Jaffna, in an attempt to stop private commemorations.²⁵ In another case described below, the army and police invaded the Bishop of Jaffna's house, even arresting a priest. In several cases, army and police officers surrounded private homes, captured on CCTV by one affected family.²⁶

The use of the military to enforce the court orders above should be critiqued, as it is a function that properly belongs within the purview of the police. It is unclear on what basis military were deployed, but it may have been under the Coronavirus regulations, which again points to the Sri Lankan government's use of the pandemic to increase authoritarian tactics on the island.²⁷

In a predictable move, in the week leading up to Maaveerar Naal, the Sri Lankan military allegedly found explosives and ammunitions in Kilinochchi.²⁸ They carried out several arrests in December, again linked to the alleged discovery of explosives, sometimes targeting former LTTE cadres.²⁹ The pattern of the security forces 'discovering' a perceived threat against the State from the Tamil community around major commemorative days in the Tamil calendar is all too familiar and should be observed with deep skepticism.

c. Surveillance by drones

The security forces also used new invasive technologies to carry out surveillance. In Mullaitivu, drones were observed being operated by the security forces in various villages.³⁰ The introduction of drones to Sri Lanka's surveillance of Covid-19-related infractions earlier this year was met with criticism from human rights defenders worried this could be utilized to further repress Tamil and Muslim communities. As was evident on Maaveerar Naal, these fears were clearly well-founded.

d. Arrests and Online Surveillance

In addition to acts of harassment and intimidation, the Sri Lankan military and police made several arrests around Maaveerar Naal:

1. Arrest of a journalist under the PTA

²⁴ Field observation by Adayaalam staff.

²⁵ 'Sri Lankan police enter TNPf offices in Jaffna to stop Maaveerar Naal commemorations' (27 November 2020) accessed here: <https://www.tamilguardian.com/content/sri-lankan-police-enter-tnpf-offices-jaffna-stop-maaveerar-naal-commemorations-0>

²⁶ 'Sri Lankan army's Maaveerar Naal crackdown in Jaffna caught on CCTV' (28 November 2020) accessed here: <https://www.tamilguardian.com/content/sri-lankan-army-s-maaveerar-naal-crackdown-jaffna-caught-cctv>

²⁷ For more on this, see our briefing on Sri Lanka's militarised response to Covid-19 here: <http://adayaalam.org/situation-brief-no-3-covid-19-sri-lankas-militarised-response-poses-grave-threats-to-human-rights/>

²⁸ *Kalaikkathir* (25 November 2020)

²⁹ See for example: 'Tamil family arrested by Sri Lanka police' (8 December 2020) *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/tamil-family-arrested-sri-lankan-police> and 'Sri Lankan security forces conducts raids in Mullaitivu after reported explosion' (9 December 2020) *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/sri-lankan-security-forces-conduct-raids-mullaitivu-after-reported-explosion>

³⁰ In-person and phone interviews with villagers in Mullaitivu by Adayaalam staff (27 November 2020).

On November 29, 2020, Murugupillai Kokilathasan, a 37-year old independent journalist from Valaichenai, Batticaloa, was arrested by the Sri Lankan Terrorism Investigation Division (TID) over allegations that he had published pictures of the LTTE on Facebook. He was initially held at Batticaloa Police Station, and then subsequently it was reported³¹ he was taken to the fourth floor of CID Headquarters in Colombo, notorious as a torture site.

Over a month later, he continues to languish in detention after having made a brief court appearance on December 1.³² It is unclear exactly what charges the police are pursuing him for under the PTA. The PTA is a draconian piece of counter-terrorism legislation that sets out a broad and vague interpretation of terrorism and terrorism-related activities, and also enables the police to hold individuals for up to 18 months without producing them before a court.³³ Abuses under the PTA have been well-documented by human rights organizations and UN bodies. According to the UN Special Rapporteur on Human Rights and Counterterrorism following an official visit in 2017, “the use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds.”³⁴

2. Arrest of several people in the East based on social media activity

On November 26, 2020, it was reported that Eravur police arrested 19 people in the Batticaloa district for allegedly wishing the deceased leader of the LTTE, Velupillai Prabhakaran, happy birthday on social media. They reportedly also identified an additional 55 people for possible arrest following surveillance of social media activities. While most of the individuals were released after a TNA MP visited the station to advocate for their release, four of the individuals continue to be held under the PTA.³⁵ The arrests sent a clear message that social media activities were being monitored and served a chilling effect on freedom of expression.

Even into December, at least one family member of a person arrested reported not knowing where they had been taken.³⁶

On November 27, a youth from Trincomalee was arrested by the Sri Lankan army for allegedly uploading songs related to Maaveerar Naal on Facebook under the PTA. He still continues to be held in detention to date.³⁷

Alarming, Sri Lanka’s Mass Media Minister, Keheliya Rambukwella, told the Daily News in December that the government “needs to register social media pages and sites that provide information to the

³¹ ‘Tamil journalist arrested by Sri Lanka’s Terrorism Investigation Division’ (29 November 2020), *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/tamil-journalist-arrested-sri-lanka-s-terrorism-investigation-division>

³² International Federation of Journalists, ‘Sri Lanka: Tamil journalist arrested for social media posts’ (3 December 2020), accessed here: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sri-lanka-tamil-journalist-arrested-for-social-media-posts.html>

³³ Human Rights Watch, ‘Locked up without evidence: Abuses under Sri Lanka’s Prevention of Terrorism Act’ (January 2018), accessed at: https://www.hrw.org/sites/default/files/report_pdf/srilanka0118_web_0.pdf, p 12.

³⁴ UN OHCHR, ‘Human Rights and counter-terrorism: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Sri Lanka – Preliminary findings of the visit to Sri Lanka’ (14 July 2017), accessed here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

³⁵ Field interviews by ACPR staff, Batticaloa (November 2020).

³⁶ ‘Wife pleads for release of husband arrested over Facebook post’ (6 December 2020) *Tamil Guardian* accessed here: <https://www.tamilguardian.com/content/i-do-not-know-his-whereabouts-wife-pleads-release-husband-arrested-over-facebook-post>

³⁷ Interview with family member of youth (January 2021).

public.”³⁸ He noted there needed to be limitations to freedom of expression. This raises concerns about the possibility that social media-based arrests to curb freedom of expression will be on the rise in coming years in Sri Lanka, inevitably disproportionately affecting numerically smaller Tamil and Muslim communities.

3. Arrest of a Priest in Jaffna

In the North, on November 27, 2020, army officers and police raided the Bishop of Jaffna’s home where decorations had been laid out for a private commemoration event, and arrested a priest, Father Baskaran. After reported calls from senior clergy officials to the police, the police chose to charge Father Baskaran under the criminal code rather than the PTA, and the Father was released on bail the following day. His case is still pending and scheduled to be heard in March 2021.³⁹

The invasion of a private home to disrupt commemorative activities violated even the court orders the police had obtained, which clearly set out that private commemoration activities within one’s own home were permitted.

4. Interrogation of civil society

In advance of Maaveerar Naal, several victim community advocates reported being visited by CID officers telling them not to engage in Maaveerar Naal commemorations.⁴⁰

Following Maaveerar Naal, it was reported that four civil society actors who organized a press conference on the commemoration bans on November 25, were interrogated by Mannar police on instruction from Colombo.⁴¹

None of these individuals had violated the court orders or any laws, and the visits by the police only served to intimidate and harass these community activists, violating their rights to freedom of expression.

e. Crackdown on Tamil Hindu festival of Karthikai Deepam

The Sri Lankan security forces’ crackdown on remembrance also led them to mistakenly attack a Tamil Hindu festival that occurs annually quite close to Maaveerar Naal, Karthikai Deepam, which involves the lighting of lamps.

In Mallakam, soldiers warned temple organizers not to light lamps, while in Chunnakam police actively kicked over decorations in front of a temple.⁴² In Mullaitivu as well, communities reported Sri Lankan soldiers and police destroying lamps and banana tree decorations after having gone around and

³⁸ Daily News, ‘We have made headway amid challenges – Mass Media Minister Keheliya Rambukwella’ (22 December 2020), accessed here: <http://www.dailynews.lk/2020/12/22/features/236740/we-have-made-headway-amid-challenges-mass-media-minister-keheliya>

³⁹ Interviews by ACPR staff with Jaffna civil society (November 2020).

⁴⁰ Interviews with victim community advocates in Kilinochchi and Mullaitivu, November 2020.

⁴¹ ‘Sri Lankan police interrogate Tamils over Maaveerar Naal press conference’ (6 December 2020) *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/sri-lankan-police-interrogate-tamils-over-maaveerar-naal-press-conference>

⁴² ‘Sri Lanka’s Maaveerar Naal crackdown extends to Tamil Hindu festival of lights’ (29 November 2020), accessed here: <https://www.tamilguardian.com/content/sri-lanka-s-maaveerar-naal-crackdown-extends-tamil-hindu-festival-lights>

threatened people who lit lamps in their homes.⁴³ In Paranthan, the military broke lamps lit by an elderly couple inside their home, and threatened journalists who went to cover the incident.⁴⁴

At Jaffna university, students who gathered outside the campus's Parameswarar temple were forcefully told by Sri Lankan police and army officers that they could not light lamps outside of their accommodation. One student in the Faculty of Science, Dharshikan, was arrested immediately upon trying light a lamp outside the temple's gates and then taken to Koppay police station. He was only released after senior lawyers arrived at the station and an MP intervened.⁴⁵

This was a blatant violation of people's right to freedom of religion.

The militarisation and securitisation of Tamil communities across the island but particularly in the North-East leading up to Maaveerar Naal, amounted to a severe repression of the Tamil polity's rights and freedoms. It is a clear reminder of the need to demilitarize the North-East, and undertake a meaningful security sector reform process which includes accountability.

⁴³ Field interviews by ACPR staff; 'Jaffna Uni student arrested and further crackdown on Karthikai festival' (29 November 2020) *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/jaffna-uni-student-arrested-and-further-crackdown-karthikai-festival>

⁴⁴ *Valampuri*, 30.11.2020

⁴⁵ 'Jaffna Uni student arrested and further crackdown on Karthikai festival' (29 November 2020) *Tamil Guardian*, accessed here: <https://www.tamilguardian.com/content/jaffna-uni-student-arrested-and-further-crackdown-karthikai-festival>

B. Destruction of Mullivaikkal Memorial at Jaffna University

As described in the introduction to this briefing, on Friday January 8, 2021, late at night, Jaffna university authorities carried out the demolition of a memorial on campus built in commemoration of the thousands of Tamil civilians who were killed during the final phase of the war in Sri Lanka. The destruction of this memorial was deeply painful for many Tamil victim-survivor communities on the island and overseas.

“For those of us who survived Mullivaikkal and lost family members there, this is an act of cruelty. By destroying this memorial, they are also trying to erase the truth about what happened to our family. This incident opened old wounds and reminded me of how my family members died during the last days, their dismembered bodies drenched in blood and not being able to properly bury them with respect. It haunts me to this day. It would help to build memorials and remember them with respect, but that is also not allowed here. It is very cruel to block us from our right to remember. Military has many monuments across North and East to remember their soldiers, why cannot we erect a memorial to remember ours? Why such discrimination in our own land? I would feel better if we can go and cry at a memorial whenever I feel like, but to see this memorial being destroyed is hard. I hope the government knows they are making a huge mistake.” – *Reflection from a survivor of Mullivaikkal currently residing in the Vanni (11 January 2021)*

The University Grants’ Commission (UGC) Chairman has since claimed that the memorial was demolished to restore “North-South unity” while Jaffna University’s Vice-Chancellor has told journalists the memorial was destroyed due to repeated requests by higher authorities claiming the structure was “unauthorised.”

While this briefing does not delve into the politics of Jaffna University’s relationship with the UGC it is worth noting, that over the last two years there has been a concerted attempt by the military through the UGC, to shut down any space for critique of the State within Jaffna university, including through forcing the resignation of ACPR’s own Board Chair, Dr. Kumaravadivel Guruparan.⁴⁶

As this briefing has already outlined, memorialisation that reflects the multiple ways communities were impacted by the conflict and not just the State-led narrative, is a critical component to achieving sustainable peace and reconciliation. The UGC Chairman’s argument goes against the recommendations of a number of Sri Lanka’s own domestic mechanisms and institutions, including the National Human Rights Commission and the Consultation Task Force. Former UN Special Rapporteur on Transitional Justice, Pable de Greiff, said this on the impact of denying memorialisation:

The contexts in which dealing with the past is urgent are contexts in which there have been huge asymmetries in the distribution of the costs of maintaining a political project. These costs manifest themselves in great atrocities such that it is unreasonable to expect the victims or their descendants to forget. The expectation that they will forget involves the deployment of state and social power to that end, and such deployment generate new grievances that belie any claim to equality or inclusiveness.⁴⁷

Turning to the second argument that was advance by the Vice-Chancellor, ACPR believes that the memorial was lawful. Jaffna University currently sits on land that was bequeathed to the university by a private individual. As the university is a publicly-funded university, arguably the land on which it sits,

⁴⁶ For more information on this please email ACPR to receive a briefing.

⁴⁷ Pable de Greiff, ‘Does collective memory impede reconciliation: on vacuums, ends and methods’ (26 May 2016) accessed at: <https://www.ictj.org/debate/article/vacuums-ends-and-methods>

can be considered State land for relevant legal purposes. However, the Jaffna University Council is an autonomous institution and is not required to follow the UGC nor any other government authority's decisions. In February 2019, when university students erected the Mullivaikkal memorial, and the Jaffna University Council at that time did not refuse its construction, the university was in essence, authorizing the memorial through acquiescence.

For the Vice-Chancellor to now claim that the memorial has to be removed because he is receiving requests from higher authorities and it was unauthorized, violates the autonomy of the university and is incorrect.

Further to this, any requests made by higher authorities for the memorial's removal must be viewed as a function of the State's ethno-nationalist discriminatory practises. The State has permitted memorials at many other publicly-funded universities commemorating victims of the State's violence in response to the JVP insurrection and even to the once-proscribed JVP, often established by students at those universities as well. The argument is not that those memorials should come down, but rather that the State should permit memorials by sub-national communities including Tamils and Muslims that are critical of the State as well. To do otherwise, is to blatantly propagate ethno-nationalism which has been the underlying source of Sri Lanka's internal conflicts.

C. Recommendations

We feel it is a mostly futile pursuit to put forward recommendations to a government that is determined to rule by Sinhala-Buddhist chauvinism, but nonetheless, we have noted down recommendations to serve as measure by which to see how far the Sri Lankan government is falling short.

We call on the Government of Sri Lanka to respect and uphold the rights of communities, particularly sub-national Tamil and Muslim communities, to remember and grieve in the way that they choose. Specifically, we recommend that the Government:

1. Restore memorials and monuments which have been destroyed including Thuyilam Ilams and memorials relating to Mullivaikkal.
2. Stop surveillance, intimidation and harassment of Tamil communities, journalists, human rights defenders and politicians engaged in peaceful memorialisation activities.
3. Release all individuals arrested under the PTA or criminal code for peaceful activities related to memorialisation. ACPR also more broadly recommends the immediate release or charging of all individuals held under the PTA, and the repeal of the PTA.
4. Permit peaceful memorialisation activities by sub-national communities to take place without interference from the security forces or the State.
5. Undertake a genuine security sector reform process to demilitarise the North-East including:
 - a. Removing members implicated in atrocity crimes or ongoing human rights violations; and
 - b. Reallocating the military throughout the island in proportion to provinces' population, rather than continue the overwhelmingly disproportionate militarisation of the North-East.
6. End the practice of securitizing Tamil and Muslim communities.
7. Make transparent any policies or practises of online surveillance, and ensure they are only carried out in line with evidentiary rules, and in respect of the right to freedom of expression enshrined in Article 14(1) of the Constitution.
8. Permit Muslim communities to bury their dead as per their religious beliefs; a practise that is in line with scientific guidance on Covid-19.