

Adayaalam Centre for Policy Research (ACPR)

Situation Brief No. 3

COVID-19:

Sri Lanka's militarised response poses grave threats to human rights

April 30, 2020

As the world struggles to deal with an unprecedented global pandemic, it is imperative that states choose an approach that respects human rights in addressing this crisis. This brief highlights several human rights concerns in relation to Sri Lanka's militarised approach to responding to the COVID-19 pandemic with a focus on civil and political rights. Now more than ever, scrutiny of governmental action is imperative to ensure that measures taken during this public health emergency do not infringe unduly upon individual and collective rights in the short or long-term, especially for those who are already vulnerable.

Brief timeline of COVID-19 in Sri Lanka

Below is a brief timeline of major developments relating to the COVID-19 pandemic in Sri Lanka.

January 27	First reported COVID-19 patient in Sri Lanka, a foreign national. ¹
March 10	First case of a local in Sri Lanka diagnosed with COVID-19, transmitted via tourists. ²
March 16	16-20 of March declared public holidays. ³
March 18	First police curfew declared in Puttalam District and Kochchikade Police Division in Negombo. ⁴
March 20	Curfew across entire island announced in the morning to begin same day at 6PM until 23 March 2020. ⁵
March 23 – April 19	Curfew temporarily lifted across different districts for short intermittent periods of time. ⁶

¹ 'First patient with coronavirus reported in Sri Lanka' (27 January 2020) *Colombo Page*, accessed at: <http://www.colombopage.com/archive_20A/Jan27_1580144354CH.php>.

² 'First Sri Lankan coronavirus patient in the country identified' (11 March 2020) *Adaderana* accessed at: <<http://www.adaderana.lk/news/61290/first-sri-lankan-coronavirus-patient-in-the-country-identified>>.

³ 'Here in Sri Lanka, 22,000 have been arrested for breaking curfew and police are rewarded for their vigilance' (15 April 2020) *Telegraph* accessed at: <<https://www.telegraph.co.uk/travel/destinations/asia/sri-lanka/articles/a-postcard-from-sri-lanka/>>.

⁴ 'Police curfew to be imposed in Puttalam, Chilaw and Negombo-Kochchikade' (18 March 2020) *Adaderana* accessed at: <<http://www.adaderana.lk/news.php?nid=61497>>.

⁵ 'Island-wide curfew' (20 March 2020) accessed at: <<http://www.adaderana.lk/news.php?nid=61577>>.

⁶ Centre for Policy Alternatives, 'Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka' (21 April 2020), accessed at: <https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/#_ftn2> ['CPA, 'Curfew in response to COVID-10'].

- April 20 24-hour curfew relaxed for all districts except Colombo, Kalutara, Gampaha, Kegalle, Kandy, Puttalam and Ampara. All other districts to remain in curfew between 8:00PM and 5:00AM every day.⁷
- April 25 Countrywide 24-hour curfew imposed after sudden jump in infections from a navy camp on the outskirts of Colombo.⁸
- April 27 24-hour curfew extended in districts of Colombo, Gampaha, Kalutara and Puttalam until 4 May with relaxed exceptions for workers. All other districts to remain in curfew between 8:00PM and 5:00AM every day until 1 May.⁹

According to the daily situation report of the Ministry of Health's Epidemiology Unit, as of April 29 2020, there have been 619 confirmed cases of COVID-19 in Sri Lanka, 134 recovered cases, and 7 deaths.¹⁰ Worryingly, the number of cases recorded per day continues to rise, particularly after an outbreak at the Welisara navy camp.¹¹

The Sri Lankan Government's institutional apparatus to respond to COVID19:

Two government entities have been tasked with coordinating the Government of Sri Lanka's (GoSL) response to COVID-19:

1. The National Operation Centre for Prevention of COVID-19 Outbreak headed by Lt. Gen. Shavendra Silva, the Commander of the Sri Lankan Armed Forces ('Operation Centre')
2. The Presidential Task Force established to direct, coordinate and monitor the delivery of continuous services and for the sustenance of overall community life ('the Task Force') headed by the President and Prime Minister's brother Basil Rajapaksa.

The Task Force has been mandated to give 'priority to the districts of Colombo, Kalutara, Gampaha, Puttalam, Jaffna, Mannar, Kilinochchi, Vavuniya and Mullaitivu which have greater vulnerability in the eradication of coronavirus in Sri Lanka'. The expansive mandate of the Task Force and issues of legality have been documented in detail by the Centre for Policy Alternatives (CPA).¹² ACPR shares the concerns raised by CPA and others that the establishment of Presidential Task Forces which has become so frequent in the post-war context undermines bodies that have been created by acts of Parliament. In the name of executive convenience, the side lining of statutory bodies will harm the rule of law in the country. ACPR also shares the concerns expressed by the International Truth and Justice

⁷ 'Curfew in several districts and police areas to be relaxed' (18 April 2020) *Adaderana*, accessed at: <http://www.adaderana.lk/news.php?nid=62771>>.

⁸ 'Sri Lanka reinstates 24-hour curfew after surge in coronavirus cases' (25 April 2020) *New York Post* accessed at: <https://nypost.com/2020/04/25/sri-lanka-reinstates-curfew-after-surge-in-coronavirus-cases/>>.

⁹ 'Curfew extended until 4th May for 4 districts' (25 April 2020) *New 1st* accessed at: <https://www.newsfirst.lk/2020/04/25/curfew-extended-until-4th-may/>>.

¹⁰ Ministry of Health and Indigenous Services, Epidemiology Unit, 'Coronavirus disease 2019 (COVID-19) - Situation Report - 29.04.2020 - 10:00AM' (29 April 2020) accessed at: http://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-28-04_10.pdf>.

¹¹ *Ibid.*

¹² Centre for Policy Alternatives, 'Brief Guide III: Structures to deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force' (April 2020) accessed at: <https://www.cpalanka.org/wp-content/uploads/2020/04/FINAL-Presidential-Task-Force-on-COVID19-April-2020-copy.pdf>>.

Project (ITJP)¹³ and others about the large number of military personnel on the Task Force, many of whom stand credibly accused of grave human rights violations. This will be discussed further in the next section of the brief.

ACPR additionally has serious concerns about the militarised approach to public health encapsulated by the 'Operation Centre' being headed by an alleged war criminal. This will also be discussed further in the next section of the brief. The GoSL's response to COVID-19 cannot be read in a vacuum, and these measures further entrench the normalisation of militarisation in the conflict-affected North-East.

Key Areas of Human Rights Concerns around COVID-19 Response

The following section highlights four main areas of human rights concerns in relation to Sri Lanka's response to the COVID-19 pandemic: (a) the lack of a legal basis for the curfews; (b) the militarisation of what should be a public health response; (c) the suppression of the freedom of expression; and (d) the increase in intercommunal tensions related to COVID-19 and infringements of the right to freedom of religion. ACPR is deeply concerned that the GoSL's response to the pandemic has continuously disregarded human rights and presents worrying implications for already marginalised communities, particularly Muslims and Tamils. While this brief seeks to draw from interviews and research in the North and East, many of the issues touched upon are applicable across the island.

A. The legality (or lack thereof) of the curfew

On 20 March 2020, the GoSL announced an island-wide three-day curfew with less than 12 hours' notice.¹⁴ The curfew has been described largely as 'police curfew' in notifications by the police.¹⁵ The curfew has been justified by the police as being 'necessary to prevent violations of provisions and regulations of the Quarantine and Prevention of Diseases Ordinance'.¹⁶ The Army Commander has described the curfew as a "Quarantine Curfew".¹⁷

The stated purpose of the curfew to prevent transmission of COVID-19 within communities is a welcome goal. However, the way in which the curfew has been administered, at times with little warning, and then with short breaks, has raised serious questions about whether it is achieving this purpose.¹⁸ Further, the failure to put in place government supports prior to declaring a curfew has disproportionately impacted the most economically marginalised sections of society who rely on daily wages but cannot work during the curfew or must work in hazardous conditions.¹⁹

¹³ International Truth and Justice Project, 'Sri Lanka's Militarisation of COVID-19 Response' (8 April 2020) accessed at: <https://itjpsl.com/assets/press/English-ITJP_COVID-19-press-release-Merged-copy.pdf> ['ITJP, 'Sri Lanka's Militarisation of COVID-19 Response'].

¹⁴ 'Island-wide curfew to be imposed until Monday' (20 March 2020) *Adaderana* accessed at: <<http://www.adaderana.lk/news.php?nid=61577>>.

¹⁵ Ministry of Foreign Affairs, 'Declaration of Police Curfew Island Wide' (20 March 2020) accessed at: <<https://www.mfa.gov.lk/declaration-of-police-curfew-island-wide/>>.

¹⁶ *Ibid.*

¹⁷ 'Heed the advice of health professionals to eliminate the virus – Army Commander' (12 April 2020) *Sunday Observer* accessed at: <<http://www.sundayobserver.lk/2020/04/12/news-features/heed-advice-health-professionals-eliminate-virus-%E2%80%93-army-commander>>

¹⁸ CPA, 'Curfew in response to COVID-10' *supra*.

¹⁹ See for example: Meera Srinivasan, 'Uncertainty during difficult times' (4 April 2020) *The Hindu*, accessed at: <<https://www.thehindu.com/news/international/uncertainty-during-difficult-times/article31258774.ece>>.

While, there is a need to restrict movement to limit transmission of COVID-19 in line with guidance from the World Health Organisation (WHO), this must be done in accordance with the law. An underlying concern about the curfew is that the GoSL has not provided any real legal basis for it nor does it seem to feel the need to articulate one, implying that the law can be dispensed with in matters of urgency. The laws of Sri Lanka do not provide for a 'police curfew'. No curfew has been declared under the Public Security Ordinance,²⁰ neither has a 'state of disaster' been declared under the Disaster Management Act. The GoSL has likely been reluctant to declare a curfew under the PSO because to declare a curfew longer than a month it needs Parliament's approval. This is currently impossible unless the President's decision to dissolve the Parliament is reversed and the Parliament is reconvened. The President has repeatedly stated that he will not call back the dissolved Parliament.²¹

In the meantime, as of the time of this brief close to 40,000 individuals have been arrested for violating the 'curfew' by the police and the military.²² Police have been arresting curfew violators without warrants though it unclear what the legal basis for those arrests are. Initially the police granted bail to all those arrested for allegedly violating curfew on their own accord but more recently the police have only been granting bail with the Magistrate's permission.²³ Police also confiscate vehicles of those violating curfew and have warned that the vehicles will not be returned until the COVID-19 threat has subsided.²⁴ ACPR finds the broad grant of arrest powers to the police and military extremely concerning, especially given the systemic prejudice both of these institutions have displayed in the past towards Tamil and Muslim communities on the island. Additionally, placing people even for short periods of time in already overcrowded and confined places of detention is not in the interests of public health. The UN Office of the High Commissioner for Human Rights²⁵ and the World Health Organisation²⁶ have both recommended decreasing prison populations in response to COVID-19, as prisons provide an area ripe for transmission.

In Jaffna, individuals engaged in relief work including local councillors have been arrested for not possessing a curfew pass while doling out aid and supplies to impoverished communities.²⁷ Even volunteers in possession of valid curfew passes have been harassed and prevented from doing work slightly outside the zone delimited by their curfew passes. Some aid workers have reported that the supplies they were trying to distribute were confiscated

²⁰ Either *vide* Section 16 of the Public Security Ordinance providing for a curfew or under Part II of the ordinance through a declaration of emergency and making regulations for curfew thereunder. Both require parliamentary approval for extension beyond a month.

²¹ Meera Srinivasan, 'We'll cooperate, reconvene Parliament: Sri Lankan Opposition' (27 April 2020) *The Hindu* accessed at: <<https://www.thehindu.com/news/international/well-cooperate-reconvene-parliament-sri-lankan-opposition/article31445543.ece>>.

²² 'Over 40,000 people arrested in Sri Lanka for violating curfew' (28 April 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/over-40000-people-arrested-sri-lanka-violating-curfew>>.

²³ Interview with a lawyer in Jaffna, 17 April 2020.

²⁴ 'Over 1,500 curfew violators arrested within 24 hours' (15 April 2020) *Adaderana* accessed at: <<http://www.adaderana.lk/news/62642/over-1500-curfew-violators-arrested-within-24-hours>>.

²⁵ United Nations Office of the High Commissioner for Human Rights, 'Urgent action needed to prevent Covid-19 "rampaging through places of detention" – Bachelet' 25 March 2020, accessed at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>>.

²⁶ World Health Organisation, 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention' (15 March 2020), accessed at: <<http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness.-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020>>.

²⁷ Interview with aid workers in Mullaitivu area, 12 April 2020; 'Sri Lankan police arrest more local councillors providing aid to under-privileged families in North-East' (18 April 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/sri-lankan-police-arrest-more-local-councillors-providing-aid-under-privileged-families>>.

by the military and police and then redistributed under the military banner.²⁸ None of these actions have any basis in law.

The GoSL has taken no effort at all to justify the legality of the curfew. The broad acceptance of its social need has been utilised by the GoSL to brush aside concerns relating to its (lack of) legality. The fear and anxiety of the moment is such that any talk of law and procedure is considered a luxury. But the imposition of a curfew (for the right reasons) not backed by law might set a precedent where the Executive might be emboldened to impose curfews in the future (for the wrong reasons) side stepping the law. That people are being detained for arrests and enlarged on bail by courts for offences that have no basis in law greatly undermines rule of law on the island.

B. Militarisation of the COVID-19 Response

From the outset, Sri Lanka's response to the COVID-19 has been a heavily militarised one. Unlike other countries where the response is lead by public health officials who utilise the military as necessary, in Sri Lanka the military is squarely in charge of all aspects of the response. In public health emergencies there is a reasonable basis for the inclusion of the security sector in response efforts, but this must be proportionate to the need and must not side-line agencies that have the competence and knowledge to give leadership to the emergency. In Sri Lanka where the military stands credibly accused of serious atrocity crimes during and after the war, it is especially imperative to critically examine their role in what is first and foremost, a public health crisis.

(i) *The Militarisation of notionally Civilian Authorities*

As already noted above, one of the two institutions set up by the GoSL to manage the COVID-19 response, the National Operation Centre, is headed by Lt. General Shavendra Silva, the Commander of the Army and a credibly accused war criminal. A month prior to the Operation Centre being established, Silva was banned from travel to the United States due to his involvement in "extrajudicial executions" at the end of the war.²⁹

The other branch of the GoSL's response efforts, the Presidential Taskforce is headed by the President's brother, Basil Rajapaksa, and nine of its 40 members are from the security sector, including Silva.³⁰ Silva is not the only one on the Task Force that stands accused of grave human rights violations though. The ITJP has documented in detail the background of individuals with a security sector background who now lead the COVID-19 response and the violations they are credibly accused of.³¹ Significantly, many of those from the security sector form part of the Task Force because they are in charge of what should be considered civilian authorities that form an integral part of the response effort including the Task Force for Poverty Eradication and Livelihood Development, the Disaster Management Centre which has now been brought under the auspices of the Ministry of Defence, the Consumer Affairs Authority, and Sri Lankan Customs. The militarisation of civilian authorities is not new in Sri

²⁸ *Ibid.*

²⁹ US Department of State, 'Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act' (14 February 2020), accessed at: <<https://www.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/>>.

³⁰ Gasette No. 2168/8 (26 March 2020), accessed at: <http://documents.gov.lk/files/egs/2020/3/2168-08_E.pdf>.

³¹ ITJP, 'Sri Lanka's Militarisation of COVID-19 Response' *supra*.

Lanka, and its continuation in the State's response to Covid-19 is unsurprising but deeply concerning.

(ii) Military-run quarantine centres in the North-East

In addition to the appointment of military actors to lead what should be civilian bodies, the armed forces themselves have directly been tasked with establishing and running quarantine centres. Early on, the decision to place many of these quarantine centres in the North and East was met by significant resistance from local populations and critiqued by healthcare professionals who questioned why quarantine centres would be placed so far from where the actual spread of the virus was located at the time.³² Local politicians and doctors warned against the risk of bringing the virus to communities where the impact of the war was still felt in healthcare systems which lag behind other parts of the country.³³ While GoSL officials deflected these criticisms, it is likely that quarantine centres were placed in the North-East at least in part due to the disproportionate presence of the armed forces there.³⁴ Local communities also argued the placement of quarantine centres in predominantly Tamil and Muslim areas despite the lack of infections in those areas at the time was due to systemic discrimination.³⁵

The issue of quarantine centres in the North once again flared up this week in the wake of an outbreak of COVID-19 among the navy.³⁶ The GoSL cancelled all leave and ordered all military personnel to return to their camps on April 27 declaring the day as an island wide curfew. Given the disproportionate number of military personnel stationed in the North, many of these returning personnel who may have contracted COVID-19 will be travelling to largely Tamil-populated areas where, as stated above, health infrastructure impacted by the war remains fragile. On April 27 and 28 the military began looking for public spaces in the Northern Province to serve as quarantine centres for these returning military personnel despite the vast number of military bases and land they occupy in the province.³⁷ They have requested to occupy a number of secondary schools and in one instance a teachers' training college to set up quarantine centres. Locals have erupted in protest in many of these locations against using schools as quarantine centres particularly in crowded areas, arguing that the risk of community infection is significant.³⁸

As for the actual quarantine centres, while local media in the South have heaped praise on the military's running of these facilities, some public health officials in the North and outside

³² 'Coronavirus detention centres in North-East spark fears for local health systems' (13 March 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/coronavirus-detention-centres-north-east-spark-fears-local-health-systems>>; 'Tamil doctor warns of 'politicised' response as Sri Lankan military ramps up coronavirus measures' (15 March 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/tamil-doctor-warns-%E2%80%99politicised%E2%80%99-response-sri-lankan-military-ramps-coronavirus-measures>>; 'Coronavirus quarantine centres in North-East 'has created fear among the people' – Sumanthiran' (15 March 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/coronavirus-quarantine-centres-north-east-%E2%80%99has-created-fear-among-people%E2%80%99-sumanthiran>>.

³³ *Ibid.*

³⁴ ACPR and PEARL report, 'Normalising the Abnormal – The Militarisation of Mullaitivu' (4 October 2017).

³⁵ 'Tamil doctor warns of 'politicised' response as Sri Lankan military ramps up coronavirus measures' (15 March 2020) *Tamil Guardian* accessed at: <<https://www.tamilguardian.com/content/tamil-doctor-warns-%E2%80%99politicised%E2%80%99-response-sri-lankan-military-ramps-coronavirus-measures>>.

³⁶ 'Implosion of COVID cases at Welisara navy Camp: something is not right' (28 April 2020) *Daily Mirror* accessed at: <<http://www.dailymirror.lk/opinion/Implosion-of-COVID-cases-at-Welisara-Navy-Camp-Something-is-not-right/172-187334>>.

³⁷ ACPR and PEARL report, 'Normalising the Abnormal – The Militarisation of Mullaitivu' (4 October 2017).

³⁸ Reported in Tamil in the Uthayan, Kalaikathir, and Thinakkural (28 April 2020).

the country have been critical. The lack of social distancing inside these quarantine centres has been cited by some medical professionals in the North as a possible reason why there was a surge of cases on the day of April new year – all from the Palali and Mulankavil quarantine centres in the North.³⁹ A Community Medicine specialist who raised the issue in public about the running of the quarantine centre has been the subject of a complaint by the Government Medical Officers Association (GMOA) claiming that the medical professional is expressing views detrimental to *inter alia* the army and calling for an inquiry.⁴⁰ It is well known that the GMOA is very closely aligned to the ruling GoSL. The Director of the Jaffna Teaching Hospital was also mildly critical of the running of the quarantine centres and drew a response from the Army Commander defending their work.⁴¹

(iii) Curfew Passes remain under Military's Control in North

As described above, curfews have formed a key part of Sri Lanka's response to COVID-19. There are only a few exceptions under which individuals can venture out during curfew and to do so they most procure a 'curfew pass' or present their service ID if they are employees of state bodies, private banks and hospitals, insurance companies or media outlets.⁴² Initially the process by which curfew passes could be obtained was unclear and processes sprung up in an ad hoc manner. Unsurprisingly in the North, the military played a large role in this process. In Jaffna for example the application for a pass for those engaging in relief work needed to be approved by the District Secretariat, the Police and the Civil Affairs division of the Army. In some instances, curfew pass seekers also had to seek permission from the Special Task Forces.⁴³ One activist told ACPR that local army leadership in Jaffna insisted that they approve curfew pass applications as they are more knowledgeable about the localities than the District Secretariat.⁴⁴

On 7 April 2020 the GoSL released a new Circular setting out detailed regulations for receiving curfew passes.⁴⁵ This provided that the police would be the only agency authorised to provide curfew passes. But according to local actors in Jaffna whom ACPR spoke with the system of requiring the military's approval for a curfew pass has continued past that date. A senior government official told ACPR that the decision to continue the military's role in approving curfew passes was decided at a meeting convened by the Northern Governor in which the security sector was also represented.⁴⁶ ACPR is deeply concerned by these reports which suggest the military may be acting outside the letter of the law and using this opportunity to increase its surveillance of Tamil communities in the North.

(iv) Military's role in Contact-Tracing

A strategy that some countries have implemented in tackling COVID-19 has been in the form of contact-tracing, where authorities attempt to track down those who have come into contact with the virus and quarantine them from the general population. While this has

³⁹ '15 people tested positive for COVID-19 in a single day in Sri Lanka' (14 April 2020) *News 1st* accessed at: <<https://www.newsfirst.lk/2020/04/14/15-people-tested-positive-for-covid-19-in-a-single-day-in-sri-lanka/>>.

⁴⁰ 'Jaffna health workers complain of poor facilities as pandemic spreads in Sri Lanka' (29 April 2020) *World Socialist Web Site*, accessed at: <<https://www.wsws.org/en/articles/2020/04/29/jaff-a29.html>>.

⁴¹ Uthayan, Lead Story, (18 April 2020).

⁴² 'New method to obtain curfew passes' (7 April 2020) *News 1st* accessed at: <<https://www.newsfirst.lk/2020/04/07/new-method-to-obtain-curfew-passes/>>.

⁴³ Interview with social activist, Jaffna, April 5, 2020.

⁴⁴ *Ibid.*

⁴⁵ 'New regulations for issuing curfew passes' (7 April 2020) *Adaderana* accessed at: <<http://www.adaderana.lk/news.php?nid=62368>>.

⁴⁶ Interview with a senior government official, 17 April 2020.

proven an effective strategy in countries such as South Korea, UN Special Rapporteurs have expressed cautions on the impact on human rights of increasing surveillance measures.⁴⁷ This is especially the case in Sri Lanka, where the Tamil community has been at the end of far-reaching securitisation and surveillance policies for decades leading to repression of rights.⁴⁸

Worryingly in Sri Lanka contact-tracing efforts are being lead by the State's intelligence services who are notorious for their use of torture against primarily Tamil civilians and ex-combatants.⁴⁹ They are using the assistance of telecommunication companies to trace individuals' contacts and the places they have visited,⁵⁰ in addition to looking through people's immigration records.⁵¹ The military is also planning to use drones to monitor villages affected by COVID19.⁵²

Already Tamil aid workers and activists in the North who have been distributing rations to impoverished communities including Tamil families of the disappeared and ex-combatants have reported been interrogated by the CID about where they got the aid.⁵³ The CID has told them that they should be informed about any aid distributions even where activists had already informed local government officials.⁵⁴ Reports have also emerged of the military leaking details of individuals they have traced discriminatorily against Tamils and Muslims.⁵⁵

In a context where the military has consistently used surveillance as a tool of intimidation and harassment of human rights defenders, journalists, and the Tamil community, the broad powers and technology being given to them without any apparent oversight or end date is of grave concern to ACPR.

C. **Suppression of dissent**

During a time of global crisis, it is even more imperative that debate and critique be permitted, not stifled, to ensure government approaches to addressing the crisis are thoroughly scrutinised. In a report published on April 27, 2020, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David

⁴⁷ UN Office of the High Commissioner for Human Rights 'COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts' (19 March 2020) accessed at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=Ecess>>.

⁴⁸ See for example: ACPR, 'Situation Brief No.2: Surveillance, Harassment and Intimidation of Disappearances' Activists in the North-East' (30 August 2018) accessed at: <<http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/>>.

⁴⁹ Meera Srinivasan, 'COVID-19: Sri Lankan military is helping the country fight the pandemic' (15 April 2020) *The Hindu* accessed at: <<https://www.thehindu.com/news/international/covid-19-sri-lankan-military-is-helping-the-country-fight-the-pandemic/article31350778.ece>>; For information on the intelligence services' abuses see for example: International Truth and Justice Project 'Terrorism Investigation Division' (September 2019) accessed at: <<https://itjpsl.com/reports/terrorism-investigation-division>>.

⁵⁰ 'Intelligence units to tract contacts of COVID-19 patients' (18 April 2020) *News First LK* accessed at: <<https://www.newsfirst.lk/2020/04/18/intelligence-units-to-trace-contacts-of-covid-19-patients/>>.

⁵¹ Meera Srinivasan, 'COVID-19: Sri Lankan military is helping the country fight the pandemic' (15 April 2020) *The Hindu* accessed at: <<https://www.thehindu.com/news/international/covid-19-sri-lankan-military-is-helping-the-country-fight-the-pandemic/article31350778.ece>>.

⁵² 'Minister gifts new drone camera to the army for its COVID-19 control projects' (15 April 2020) *Daily News* accessed at: <<https://www.dailynews.lk/2020/04/15/local/216483/minister-gifts-new-drone-camera-army-its-covid-19-control-projects>>.

⁵³ Interview with local activist, Northern province (vague for security reasons), 28 April 2020.

⁵⁴ *Ibid.*

⁵⁵ The Alliance of Independent Professionals, 'Status Statement IV: 28 April 2020 Sri Lanka's Response to COVID-19' (28 April 2020) accessed at: <<https://mailchi.mp/6961b33de4b8/update-on-sri-lankas-covid-19-response-5777324?e=09b0daa8e6>>.

Kaye, expressed alarm at the authoritarian measures states are taking in the name of addressing the COVID-19 pandemic. He reiterated that under the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a signatory, the right to freedom of expression can only be limited by governments on very narrow grounds. Any limitation must be “provided by law and be necessary for respect of the rights or reputations of others, or for the protection of national security or public order, or of public health and morals.”⁵⁶ Key amongst these requirements the Special Rapporteur noted was that ‘provided by law’ means “not only must the law be clearly set out, but also the scope, meaning and effect of the law must be sufficiently clear to allow individuals to regulate their actions so as to avoid violation.”

In Sri Lanka, on April 1, 2020, the Acting Inspector General (IGP) instructed the police to take legal action against those who publish posts on social media criticising government officials and obstructing their duties.⁵⁷ The police have not indicated under what legal provision these actions will be taken. The Penal Code has an archaic provision which criminalises obstruction of a public servant from carrying out his duties⁵⁸ but it is far from obvious that genuine criticism directed at the failings of government action constitutes an obstruction of duty.

The police reportedly arrested more than seven individuals in the week after this order came into place. As of April 17 the police had reportedly arrested 17 individuals ‘for spreading false information’ about COVID-19.⁵⁹ Included among those arrested was reportedly a university student who criticised the appointment of the President’s brother, Basil Rajapaksa, as head of the Task Force on COVID-19.⁶⁰ One middle-aged woman was arrested after posting a message on Facebook alleging the president had COVID-19 and spent a week in prison.⁶¹ The Human Rights Commission of Sri Lanka (HRCSL) has questioned the legal basis of the statutes that the B reports pertaining to these arrests cite, and have noted that one B report did not even specify a legal basis.⁶² ACPR shares the concerns of the HRCSL that these arrests are contributing to “chilling of criticism” and are unconstitutional.⁶³

In the meantime, the GoSL has taken no action against prominent journalists, politicians and religious officials who have spread hate speech against the Muslim community blaming them for the spread of the virus in Sri Lanka and inciting hatred and violence.⁶⁴

⁵⁶ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ‘Report: Disease pandemics and the freedom of opinion and expression’ UN Human Rights Council, A/HRC/44/49 at para 11, accessed at: <<https://www.business-humanrights.org/en/un-special-rapporteur-calls-for-robust-transparent-public-oversight-of-surveillance-companies-seeking-entrance-into-covid-19-surveillance-field>>.

⁵⁷ ‘Strict action against those criticise state officials on social media’ (1 April 2020) *Daily Mirror* accessed at: <http://www.dailymirror.lk/breaking_news/Strict-action-against-those-criticise-state-officials-on-social-media/108-186028>.

⁵⁸ Section 183 of the Sri Lankan Penal Code.

⁵⁹ <https://twitter.com/BasnayakeM/status/1251085913784025088>

⁶⁰ ‘Sri Lankan government intensifies crackdown on social media’ (9 April 2020) *World Socialist Web Site* accessed at: <<https://www.wsws.org/en/articles/2020/04/09/medi-a09.html>>.

⁶¹ ‘Asia cracks down on coronavirus ‘fake news’’ (10 April 2020) *Straits Times* accessed at: <<https://www.straitstimes.com/asia/coronavirus-asia-cracks-down-on-virus-fake-news>>.

⁶² ‘HRCSL urges Act. IGP to review legal bases for recent arrests for misinformation’ (29 April 2020) *The Sunday Morning* accessed at: <<http://www.themorning.lk/hrctl-urges-act-igp-to-review-legal-bases-for-recent-arrests-for-misinformation/>>.

⁶³ *Ibid.*

⁶⁴ Meera Srinivasan, ‘Muslim organisations in Sri Lanka concerned over ‘hate mongering’’ (13 April 2020) *The Hindu* accessed at: <<https://www.thehindu.com/news/international/muslim-organisations-in-sri-lanka-concerned-over-hate-mongering/article31334589.ece>>; ‘Derana TV Chathura’s Double Standards Exposed: Citizens Enraged over Racist Slurs of Derana TV Anchor’ (2 April 2020) *Colombo Telegraph* accessed at:

Sri Lanka currently ranks 127th on RSF's World Press Freedom Index, and during the period when Gotabaya Rajapaksa was last in government ranked as low as 165th.⁶⁵ Rajapaksa is credibly accused of having ordered the abduction and murder of several journalists during his tenure as Secretary of Defence during the end of the armed conflict and in the dark years that followed.⁶⁶ In this context, ACPR is extremely alarmed by the vague order directed by the IGP expanding the power of police to increasingly restrict freedom of expression. While curbing malicious misinformation about the virus is a worthwhile endeavour, the arbitrariness of the way this power is being used and the lack of information about its legal basis, suggests this is an opportunist attempt to increase authoritarianism of the state, rather than a genuine attempt to support public health efforts.

D. COVID-19 and Intercommunal tensions

An underreported issue that has arisen amidst the COVID-19 pandemic has been its exploitation by extremist elements of ethnonationalist groups to incite hatred against minority communities on the island.

(i) Racism against the Muslim community

In the South, Sinhala-Buddhist nationalist groups supported by certain media outlets and powerful members of the GoSL have pedalled fake news pointing to the Muslim community as the drivers of the virus.⁶⁷ This comes in the wake of almost a decade of increasing racist rhetoric, economic reprisals and violence against the Muslim community driven largely by extremist Sinhala-Buddhist nationalist groups.⁶⁸ Those groups include for example the Bodhu Bala Sena (BBS), which was closely aligned to Rajapaksa and which disbanded after he became president, declaring its work to be complete.⁶⁹ In the year since the horrific Easter Sunday attacks of 2019, the violence and rhetoric against Muslims in Sri Lanka has only grown further.⁷⁰

On April 12, several Muslim organisations including the Muslim Council of Sri Lanka and the Colombo District Mosques' Federation published a letter to the Inspector General of Police raising alarm about the increased spread of hate speech and "racist appeals" to boycott Muslim businesses on social media and in the mainstream media.⁷¹ However, there have been no reported arrests or investigations of individuals who have publicly made incendiary statements inciting hatred, boycotts or violence against Muslims. Instead, a Muslim retired

<<https://www.colombotelegraph.com/index.php/derana-tv-chathuras-double-standards-exposed-citizens-enraged-over-racist-slurs-of-derana-tv-anchor/>>.

⁶⁵ "Terminator' v. press freedom' (2019) *Reporters without Borders* accessed at: <<https://rsf.org/en/sri-lanka>>.

⁶⁶ *Ibid.*

⁶⁷ Tisaranee Gunasekara, 'The President in the Pandemic' (5 April 2020) *Groundviews* accessed at: <<https://groundviews.org/2020/04/05/the-president-in-the-pandemic/>>.

⁶⁸ See for example: BBC, "The hardline Buddhists targeting Sri Lanka's Muslims" (25 March 2013), accessed: <https://www.bbc.co.uk/news/world-asia-21840600>; Roshini Wickremesinha, 'Confronting intolerance: Continued violations against religious minorities in Sri Lanka' (Dec 2016) accessed here <https://minorityrights.org/wp-content/uploads/2016/12/MRG_Rep_SriLan_Dec16.pdf>; Groundviews, "INFOGRAPHIC: Religious Violence in Post- War Sri Lanka," (16 Sep 2014) accessed here <www.groundviews.org>.

⁶⁹ BBC, "The hardline Buddhists targeting Sri Lanka's Muslims" (25 March 2013), accessed at: <<https://www.bbc.co.uk/news/world-asia-21840600>>.

⁷⁰ Human Rights Watch, 'Sri Lanka: Muslims face threats, attacks' (3 July 2019) accessed at: <<https://www.hrw.org/news/2019/07/04/sri-lanka-muslims-face-threats-attacks>>.

⁷¹ Meera Srinivasan, 'Muslim organisations in Sri Lanka concerned over 'hate mongering'' (13 April 2020) *the Hindu* accessed at: <<https://www.thehindu.com/news/international/muslim-organisations-in-sri-lanka-concerned-over-hate-mongering/article31334589.ece>>.

government official was arrested after posting about religious discrimination on his Facebook page.⁷²

The GoSL has further undermined the rights of the Muslim community by instituting a mandatory cremation policy for victims of COVID_19; a policy that also potentially discriminates against Christians and certain other religious minorities in Sri Lanka. Two of the initial COVID-19 related deaths in Sri Lanka were from the Muslim community, and contrary to the tenets of Islam and the WHO's guidelines, the GoSL ordered the cremation the individuals' bodies.⁷³ Muslim leaders and human rights activists in Sri Lanka immediately protested the decision.⁷⁴ The decision was also criticised by four UN Special Rapporteurs who found the mandatory cremation policy to be in violation of the right to freedom of thought, conscience and religion, and to be discriminatory against minority communities.⁷⁵ The vice president of the Muslim Council of Sri Lanka, Hilmy Ahamed, told Al Jazeera, "[t]he Muslim community sees this as a racist agenda of extremist Buddhist forces."⁷⁶

(ii) An issue to watch: Anti-Christian rhetoric in the North

In the North, the media contributed to some social media proliferation of anti-Christian rhetoric through sensationalist reporting of the virus being traced to an Evangelical Pastor (based in Switzerland with a church branch in Jaffna). This led to some ostracising the Christian community as a whole.⁷⁷ While the rhetoric in no way reached the levels that anti-Muslim rhetoric has achieved, it is still an issue to be watched amidst growing extremist Hindu fundamentalist elements in the North which have attempted to marginalise and alienate Christian communities.

Conclusion and Recommendations

As this brief demonstrates, the GoSL's response to the COVID-19 pandemic has disregarded human rights, and in fact appears to be worryingly increasing the authoritarian nature of the state. This places Tamil and Muslim communities who have already been marginalised and have faced discrimination from the State at increased risk of human rights violations. As stated over the past few weeks, an increase in racism against Muslims has already been reported. Tamil communities are understandably very concerned about the broad surveillance and arrest powers that have been given to security state actors, having borne the brunt of widespread human rights violations from the security services for decades. Considering Sri Lanka's conflict-affected context, it is imperative that any measures taken to

⁷² Damith Chandimal and Ruki Fernando, 'Free Expression, Hunger and Racism in the context of COVID-19' (14 April 2020) *Groundviews* accessed at: <<https://groundviews.org/2020/04/14/free-expression-hunger-and-racism-in-context-of-covid19/>>.

⁷³ Amnesty International, 'Sri Lanka: Religious minorities must have their final rites respected' (3 April 2020) accessed at: <<https://www.amnesty.org/en/latest/news/2020/04/sri-lanka-religious-minorities-must-have-their-final-rites-respected/>>.

⁷⁴ Shereen Qasi and Ashkar Thasleem, 'Anguish as Sri Lanka forces Muslims to cremate COVID-19 victims' (3 April 2020) *Al Jazeera* accessed at: <<https://www.aljazeera.com/news/2020/04/anguish-sri-lanka-forces-muslims-cremate-covid-19-victims-200403053706048.html>>.

⁷⁵ 'Communication from UN Special Rapporteurs' (8 April 2020) AL LKA/2/2020, accessed at: <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25175>>.

⁷⁶ Shereen Qasi and Ashkar Thasleem, 'Anguish as Sri Lanka forces Muslims to cremate COVID-19 victims' (3 April 2020) *Al Jazeera* accessed at: <<https://www.aljazeera.com/news/2020/04/anguish-sri-lanka-forces-muslims-cremate-covid-19-victims-200403053706048.html>>.

⁷⁷ Barnabas Fund, 'The Impact of the Coronavirus (COVID-19) on Christians' (April 2020) accessed at: <<https://barnabasfund.org/en/news/receive-news-updates/barnabas-aid-magazine/mj20-The-Impact-of-the-Coronavirus-COVID-19-on-Christians>>.

address the COVID-19 pandemic be considered critically and with possible ramifications on vulnerable communities in mind.

ACPR calls on international actors who are providing COVID-19 related assistance to Sri Lanka to insist on the GoSL adopting a human rights approach that is de-militarised and in line with international human rights law. Specifically, this would include as a minimum the GoSL:

- Demilitarising its COVID-19 response starting with transferring leadership of the Operation Centre and the Task Force to civilian ownership;
- Ensuring in consultation with Tamil and Muslim communities, adequate representation of these communities in the structures mentioned above;
- Only issuing directives and orders within the parameters of Sri Lanka's constitution and laws and in accordance with international human rights law;⁷⁸
- Being fully transparent about the legal framework underlying any measures taken to restrict movement and other freedoms and only doing so where absolutely necessary in line with international guidance;
- Rescinding the Inspector General's order to arrest those criticising government officials and ordering the immediate release of anyone arrested under this power; and
- Modifying the mandatory cremation policy in line with the WHO guidelines and in accordance with the right to freedom of religion.

⁷⁸ Several of Sri Lanka's laws such as the *Prevention of Terrorism Act* are themselves in violation of international human rights law which is why ACPR does not feel it is enough of a safeguard to call for directives and orders to be in line with domestic laws.