## Introduction

This is a submission on behalf of People for Equality and Relief in Lanka (PEARL) in response to the joint call for submissions from the Office of the High Commissioner for Human Rights (“OCHR”) and UN Special Rapporteur in the Field of Cultural Rights on the Protection of Human Rights during COVID-19. The first reported case of COVID-19 in Sri Lanka was discovered on January 27th, 2020 in a foreign national.[[1]](#footnote-1) On March 10th, 2020 the first case of a local Sri lankan contracting the virus was reported. [[2]](#footnote-2) As of June 19,2020, there have been 1947 total cases with 11 deaths and 1446 recovered.[[3]](#footnote-3)

This report will outline the militarisation of the Government of Sri Lanka’s (GoSL) response, the suppression of freedom of expression and a lack of accountability and justice in the measures taken.

## Militarisation of Government COVID-19 Response

The Sri Lankan Government’s response to COVID-19 is headed by two major entities:

1. The National Operation Centre for Prevention of COVID 19 Outbreak (‘the Operation Centre’) which would ‘coordinate preventive and management measures to ensure that healthcare and other services are well geared to serve the general public’
2. A Presidential Task Force which was established to ‘ Direct, coordinate and monitor delivery of continuous services and for the sustenance of overall community life’.

Both of these initiatives are run by credibly accused war criminals with heavy involvement of other military personnel. The Operation Centre is headed by General Shavendra Silva, who was nominated by President Rajapaksa[[4]](#footnote-4). Silva, the commander of the Sri Lankan Armed Forces, was banned from travel to the United States just a month prior to this new appointment due to his alleged involvement in extrajudicial executions[[5]](#footnote-5). Despite the focus of the centre on public health in particular, Silva lacks any education, training or experience in this field. The Presidential Task Force is headed by Basil Rajapaksa, President Rajapaksa’s younger brother, who was allegedly involved in the extrajudicial executions of Tamil LTTE surrenderees[[6]](#footnote-6). Furthermore, nine of the 40 people in the task force are also security force personnel[[7]](#footnote-7). A large number of military personnel have been accused of Human Rights violations and are now expected to carry out various duties relating to the country’s response to COVID-19, many of which should be civil duties, in concentrated areas of minorities.[[8]](#footnote-8) Many of the security personnel who have been chosen for the task force were chosen precisely because of their roles in many other civil departments of the Government of Sri Lanka (GoSL) including the Presidential task force for poverty eradication and livelihood development, disaster management centre which has been brought under the auspices of Ministry of Defence, Consumer affairs authority and Sri Lankan Customs which were deemed to form integral parts of the response. The involvement of security forces can be reasonably called upon in the response to a pandemic, however, the coordination of the response typically rests with public health officials. The use of security forces should also be used proportionately and without sidelining the proper authorities with expertise but this is especially of concern where the personnel being called upon have been accused of serious atrocity crimes. The COVID-19 response in Sri Lanka, being led in large part by military, contributes to a long-established legacy of oppression and abuse suffered by the minority Tamil and Muslim communities. The appointment of accused war criminals illustrates the disregard the GoSL holds for accountability and justice for the mass atrocities committed in Sri Lanka.

#### Military Involvement in Execution of Response

The involvement of military personnel continues to grow down the chain of command with quarantine centres being run by them as well.[[9]](#footnote-9) Specifically there are many quarantine centres concentrated in the Northern and Eastern regions of the country, where Tamil and Muslim communities make up the majority of the population. This placement was protested by local communities but also questioned by healthcare professionals due to the fact their set up was not in the areas where the cases had actually been occurring.[[10]](#footnote-10) The impact of the armed conflict in these regions had also resulted in their healthcare systems lagging behind the rest of the nation’s. One reason for the placement of the centres in these areas could be the already large military presence there but could also be due to discrimination against Tamil and Muslim populations. The issues this setup presents can be seen in instances such as an outbreak in the Navy which led to the government cancelling all leave and ordering for a return to the camps, many of which were located in the North.[[11]](#footnote-11) This effectively meant many individuals who had contracted COVID-19 would be travelling to areas with fragile health infrastructure and a largely Tamil population. The following day, April 27th, an island-wide curfew was called, during which the military commenced a search for public spaces in these regions to use for quarantine.[[12]](#footnote-12) Despite the large amounts of land and bases the military was in control of in these regions, they requested to occupy secondary schools and a teachers’ training school.[[13]](#footnote-13) These requests were met with protest from local communities particularly because some of these buildings were located in densely populated areas. The quarantine centres themselves posed problems as they lacked social distancing and in at least two instances led to a surge in cases in Northern communities.[[14]](#footnote-14)

The military and police were also heavily involved in the approval of curfew passes which were initially given out in an inconsistent manner throughout the country[[15]](#footnote-15). The procedure for obtaining a pass was initially very unclear with some districts requiring the approval of the District Secretariat and Civil Affairs Division of the Army while others required the permission of the Presidential Task Force. One activist even reported the insistence of local army leadership in Jaffna to be the authority providing approvals because they believed they were more knowledgeable about the localities than the District Secretariat[[16]](#footnote-16). Although on April 7th the GoSL released a formal procedure for approvals, only authorizing police to give out curfew passes, the requirement of military approval continued past this date.

 The military has also engaged in contract-tracing which has been established as a helpful COVID-19 response tactic but has also raised concern from various entities including the UN Special Rapporteur on its potential impact on human rights[[17]](#footnote-17). In Sri Lanka this is particular cause for concern due to the decades long history of surveillance of Tamil and Muslim minorities. These efforts are also being led by the state’s intelligence services which widely employed for toroture tactics against primarily Tamil civilians and ex-combatants[[18]](#footnote-18). There have been reports of the military leaking details of Tamils and Muslims who have been traced discriminatorily.[[19]](#footnote-19) There has also been plans to utilise drones to monitor affected villages.[[20]](#footnote-20) This would allow for further surveillance of minority communities and increase the impact and hold the military already exercises over them.

#### Consultation of Experts and Participation of Minorities

Due in large part to the militarised response, there was lack of representation from minority groups and civilian experts. The military is largely made up of Sinhalese Buddhists, as is the Presidential Task Force.[[21]](#footnote-21) As mentioned above, there has also been little regard for the health of minority communities in the North in regards to placement of quarantine centres. The lack of inclusion of minorities has contributed to discriminatory practices being implemented such as a policy of mandatory cremation of all victims of COVID-19.[[22]](#footnote-22) This is an affront to the Muslim and Christian minorities in the country as a central tenet of their religions is the pactice of burials for the deceased. This mandate not only violates the WHO recommendations on respecting cultural choices of victim families but has also been criticised by 4 UN Special Rapporteurs who found it to be a violation of freedom of thought, conscience and religion and to be discriminatory against minority communities.[[23]](#footnote-23)

## Suppression of Freedom of Expression

Sri Lanka has always had limited freedom of expression, ranking 127th on RSF’s World Press Freedom Index, an improvement from the previous ranking of 165 when Gotabaya Rajapaksa was president and this has only been exacerbated by the pandemic.[[24]](#footnote-24) President Rajapaksa has been credibly accused of ordering the abduction and murder of several jurnalists during tenure as Secretary of Defence in the final stages of the armed conflict as well as during the years that followed.[[25]](#footnote-25) As mentioned, there has been criticism of GoSL’s response to COVID-19 both in terms of its effectiveness as well as its impact on human rights.The government seems to be involved in the suppression of criticisms of the military run quarantine centres. For example, a community medicine specialist who raised concerns publicly about the problems the centres posed was made subject of a complaint from Government Medical Officers Association, which is closely aligned with the ruling Government, claiming they expressed views ‘detrimental to the health department and Sri Lanka army’ and an investigation of the doctor was called for.[[26]](#footnote-26) The post also drew an angry response from Shavendra Silva himself.

After April 1st, criticism from other civilians were met with a more heavy-handed response after the Acting Inspector General of Police, C.D. Wickramaratne, ordered the Criminal Investigation Department to arrest those who criticize, scold, chastise or point out minor shortcomings in the response measures.[[27]](#footnote-27) There was no indication that there was a legal basis for this order or for the resulting arrests. Criticisms are a vital part of civic engagement and does not warrant arrest. More than 7 people were arrested in the week after the order came into effect and as of April 17th, 10 more people had been arrested for ‘spreading false information’ on COVID-19[[28]](#footnote-28). These arrests include a university student who criticized the appointment of Basil Rajapaksa as the head of the Presidential Task Force.[[29]](#footnote-29) Another case was of a middle-aged woman who was arrested for making a post on FaceBook alleging that President Rajapaksa had COVID-19 for which she spent a week in prison. While it may be important to curb misinformation on the virus these arrests contribute to the chilling effect of criticism and are unconstitutional and this arbitrary power seems to increase the authoritarianism of the state. On May 18th, many Tamils observe Tamil Genocide Remembrance day and in particular engage in memorialization of the event in Mullivaikkal, the land on which the final stages of the armed conflict occurred. Plans to carry out a socially distanced memorial was prevented by the military and security forces harassed the Tamil civilians who were on their way to Mullivaikkal.[[30]](#footnote-30) They were also threatened to be sent to quarantine centres if they continued to commemorate the day. This is part of a well-established pattern of the prevention of memorialization on this day by the Sri Lankan security forces. In contrary, the President and many other high ranking security forces personnel held a ceremony on the same day as their ‘Victory Day’ over the LTTE.[[31]](#footnote-31) Although it claimed to be lowkey, it was still anticipated to be well attended by many ‘war heroes’ and their close family.

## Lack of Accountability and Justice

#### Increasing Anti-Muslim Rhetoric

Despite the suppression of Freedom of Expression through the means outlined above, racist and harmful rhetoric targeting minority communities has become increasingly common with little accountability in addressing them. The GoSL has failed to take action against a number of prominent journalists, politicians and religious officials who have spread hate speech against the Muslim community, blaming them for the spread of the virus and inciting hatred and violence.[[32]](#footnote-32) In the South, Sinhala-Buddhist nationalist groups, supported by media outlets and powerful government members have pedalled fake news which point to the Muslim community as drivers of the spread. This occurs in the wake of almost a decade of increasing racist rhetoric, economic reprisals and violence against the community driven by these same groups which grew more rapidly following the Easter Attacks in 2019. One group in particular which promoted this rhetoric was the Bodhu Bala Sena (BBS) which was closely aligned with President Rajapaksa and subsequently disbanded when he became president stating that their work was complete.[[33]](#footnote-33) Several Muslim organizations have published letters to the Inspector General of the Police, to alert them to the increased hate speech and racist appeals to boycott Muslim businesses on social media but no action has been taken. A Muslim retired government official was arrested after posting about religious discrimination on Facebook suggesting further censorship and infringement of Freedom of expression but also illustrating the disregard by security forces for protecting the Muslim Community. Along with refusal to bury victims of coronavirus, the Muslim community continues to face discrimination with no end in sight.

#### Measures taken without Legal Backing

The GoSL ordered a 3-day island-wide curfew a mere 12 hours prior to its start, leaving many individuals in a vulnerable position.[[34]](#footnote-34) Many individuals who rely on daily wages but could not work during the curfew or would be subjected to hazardous conditions if deciding to work, were disproportionately affected by this order. Further, there was no government support offered to citizens prior to the implementation of the curfew leaving many citizens, particularly those from minority communities, in a stressful situation. The stated purpose of the curfew was preventing transmission within communities which is an important goal but the nature of its administration questions how it achieves this goal as not only was it announced on very short notice but also consisted of short breaks.[[35]](#footnote-35) There is a need to limit transmission but it must be met in accordance with law and is alarming that the GoSL displayed no sense of need to articulate a legal basis for this measure. This indicates that the GoSL may feel that the law can be dispensed with in matters of ‘urgency’. It was impossible to implement this measure lawfully under the Public Security Ordinance due to President Rajapaksa dissolving parliament, which would have needed to vote to implement any curfew that would last longer than a month.[[36]](#footnote-36) There was also no state of disaster clarified under the disaster management act as well a lack of laws allowing for police curfews.

Despite a lack of legal basis for the curfews themselves, close to 40,000 people were also arrested for ‘violating’ curfew by both the police and military.[[37]](#footnote-37) These arrests also took place without warrants and without a clear legal basis. Initially everyone was granted bail on the police’s own accord but more recently a magistrate’s permission was sought. Placing people for short periods of time in overcrowded and confined places of detention is not in the interest of public health and both the UN Office of the High Commissioner for Human Rights and WHO advised nations to decrease prison populations in response to COVID-19 as prisons were identified as likely to facilitate spread of the virus.[[38]](#footnote-38) In Jaffna local councilors and others engaged in relief work have been arrested for not possessing curfew pass while distributing aid to impoverished communities. Volunteers with valid passes have also been harassed and prevented from doing work just slightly outside the zone delimited by their curfew passes.[[39]](#footnote-39) In some cases, aid workers reported that their supplies was confiscated by police and military and redistributed under a military banner. Besides arrest, another consequence for breaking curfew included the confiscation of vehicles which were not to be returned until the threat of COVID-19 subsided.[[40]](#footnote-40) None of these actions have basis under law and in particular, people being arrested, detained and enlarged on bail by court for offences with no basis in law greatly undermines the rule of law in Sri Lanka.. A broad grant of police and military power to arrest is also concerning given systemic prejudice of both institutions against Tamil and Muslim minorities.

#### Creation of Presidential Task Forces

The lack of legal basis in the response measures probes questions about the wide-reaching power exercised by the President which is only furthered with the creation of a number of Presidential Task Forces during this time. A general pattern has been established by President Rajapaksa to forgo parliamentary authorities in favour of the executive convenience of task forces which are given vague mandates and broad-sweeping powers.[[41]](#footnote-41) The Presidential Task Force for the response to COVID-19 has been found to have an expensive mandate and issues of legality which have been documented by the Centre for Policy Alternatives.[[42]](#footnote-42) It results in a severe escalation to the President's move to militarize activities of the state in the name of national security and response to pandemic while breeding further tension and instability in the Northern and Eastern regions. This instability is further exacerbated by the contribution of this Task Force to state-sponsored colonization.

The creation of two additional task forces during this time sets the country on a firm course to autocratic governance:

1. Presidential task force to build Secure Country, Disciplined, Virtuous and Lawful Society
2. Presidential Task Force for Archaeological Heritage Management in the Eastern Province[[43]](#footnote-43)

The first of the two is made up entirely of military and police officials including credibly accused war criminals (according to both the UN and US). Its goals include to ‘curb illegal activities of social groups, take legal action against persons responsible for … anti-social activities’ which provides for a wide remit due to its vague wording.[[44]](#footnote-44) This strengthens fears of the GoSL restricting the activity of human rights organizations, Tamil civil society groups, and political actors. Members of the task force are also given a license to ‘take measures’ against those in other countries which effectically sanctions increased targeting and surveillance of the Tamil diaspora. The impact of the second task force should be understood in the broader context of Sinhala colonization of the East led by military, government officials and the Department of Archaeology. Currently one of the forms of colonization which take place are the construction of Buddhist temples in the Tamil and Muslim majority province. This task force is made up exclusively by Sinhala-Buddhists and will likely serve as extension of colonization to identify and safeguard Sinhala-Buddhist ‘historical sites’ at the expense of Tamil or Muslim sites. Further cause for concern is that the task force includes several Buddhist extremists such as Panmure Thilakawansha Thero, a monk, who is notorious for Sinhalization efforts around Pulmoaddai, Trincomalai. Both new task forces include suspected war criminals and seem to be exclusively Sinhalese, indicating that the purpose of these task forces are to further ethnocracy with backing of a president accused of mass atrocities. Appointing war criminals shows disregard for international calls for accountability for mass atrocities committed against Tamils in 2009.

# Conclusions and Recommendations

In conclusion the militarisation of the COVID-19 Response along with a suppression of freedom of expression and lack of accountability or justice, poses serious consequences for the human rights of civilians. In the forthcoming elections, President Rajapaksa will likely seek to solidify his authoritarian reign and action must be taken now to prevent repeating a tragic past. In moving forward the following recommendations have been made by PEARL and Adayaalam Centre for Policy Research (ACPR):

* PEARL advocates for civilian oversight, respect of human rights and to follow scientifically grounded advice from international bodies like WHO
* PEARL urges the UN to establish an independent monitoring presence under the UNHRC in the North and East of Sri Lanka to ensure:
	+ The establishment of a special judicial international criminal justice mechanism in Sri Lanka that would involve international experts, including foreign judges, lawyers, and investigators, as outlined in Resolution 30/1
	+ Support for permanent OHCHR presence in Sri Lanka by funding a permanent OHCHR presence in the North-East, Kilinochchi or Trincomalee, and engaging with Sri Lanka to provide consent to this presence.
	+ The reiterating of calls for the repeal of the Prevention of Terrorism Act
	+ The reiterating calls for security sector reform, the removal of the military from civilian activities, and a proportionate presence in line with the rest of the island
	+ The removal of the Presidential task forces
	+ Support in advocating for the end of harassment and surveillance of civil society actors, media workers and protesters
	+ Decisiv steps are taken to build wider support for the continued scrutiny of accountability and justice in Sri Lanka up through and beyond the March 2021 deadline of the current UNHRC resolution.
	+ The exploration and support of options to advance accountability and justice past the expiration of the current UNHRC Resolution 40/1, such as an independent investigative mechanism similar to the UNHRC-established Ongoing Independent Mechanism for Myanmar or the UN General Assembly-established International, Impartial and Independent Mechanism (IIIM) for Syria.
	+ The nomination, selection, appointment and funding of an independent Special Rapporteur/Independent Expert for Sri Lanka at the OHCHR per UNHRC Resolution 16/21.
* ACPR recommends international actors join in calling on the GoSL to:
	+ Demilitarise the COVID-19 response by transferring the Operation Centre and Presidential Task Force leadership to civilians
	+ Ensure consultation of Tamil and Muslim communities in these initiatives
	+ To only issue directives within the parameters of Sri Lanka’s Constitution and las as well as in accordance with International human rights laws
	+ Be fully transparent about the legal framework underlying measures which would restrict movement and freedoms and to use such measures only where absolutely necessary in line with international guidance
	+ To rescind the Inspector General’s orders to arrest criticising government officials and order the immediate release of anyone arrested under this power and
	+ Modify the mandatory cremation policy in line with WHO guidelines and in accordance with the right to freedom of religion
1. <http://www.colombopage.com/archive_20A/Jan27_1580144354CH.php> [↑](#footnote-ref-1)
2. <http://www.adaderana.lk/news/61290/first-sri-lankan-coronavirus-patient-in-the-country-identified> [↑](#footnote-ref-2)
3. <https://www.epid.gov.lk/web/images/pdf/corona_virus_report/sitrep-sl-en-19-06_10.pdf> [↑](#footnote-ref-3)
4. [https://www.cpalanka.org/wp- content/uploads/2020/04/FINAL-Presidential-Task-Force-on-COVID19-April-2020-copy.pdf](https://www.cpalanka.org/wp-) [↑](#footnote-ref-4)
5. [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/](https://www.state.gov/public-designation-due-to-) [↑](#footnote-ref-5)
6. <https://www.hindustantimes.com/world/sl-army-killed-surrendering-ltte-leaders/story-sZVfBJi6JW1IbGboZMbLfM.html> [↑](#footnote-ref-6)
7. <http://documents.gov.lk/files/egz/2020/3/2168-08_E.pdf> [↑](#footnote-ref-7)
8. <https://itjpsl.com/assets/press/English-ITJP_COVID-19-press-release-Merged-copy.pdf> [↑](#footnote-ref-8)
9. <https://www.tamilguardian.com/content/coronavirus-detention-centres-north-east-spark-fears-local-health-systems> [↑](#footnote-ref-9)
10. *Ibid*. [↑](#footnote-ref-10)
11. <http://www.dailymirror.lk/opinion/Implosion-of-COVID-cases-at-Welisara-Navy-Camp-Something-is-not-right/172-187334> [↑](#footnote-ref-11)
12. <http://adayaalam.org/situation-brief-no-3-covid-19-sri-lankas-militarised-response-poses-grave-threats-to-human-rights/> [↑](#footnote-ref-12)
13. *Ibid.* [↑](#footnote-ref-13)
14. <https://www.newsfirst.lk/2020/04/14/15-people-tested-positive-for-covid-19-in-a-single-day-in-sri-lanka/> [↑](#footnote-ref-14)
15. *Supra* note 12. [↑](#footnote-ref-15)
16. *Supra* note 12. [↑](#footnote-ref-16)
17. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=Eccess> [↑](#footnote-ref-17)
18. <https://www.thehindu.com/news/international/covid-19-sri-lankan-military-is-helping-the-country-fight-the-pandemic/article31350778.ece>; <https://itjpsl.com/reports/terrorism-investgation-division> on the human rights abuses [↑](#footnote-ref-18)
19. [https://mailchi.mp/6961b33de4b8/update-on-sri-lankas-covid-19- response-5777324?e=09b0daa8e6](https://mailchi.mp/6961b33de4b8/update-on-sri-lankas-covid-19-) [↑](#footnote-ref-19)
20. <https://www.dailynews.lk/2020/04/15/local/216483/minister-gifts-new-drone-camera-army-its-covid-19-control-projects> [↑](#footnote-ref-20)
21. *Supra* note 12. [↑](#footnote-ref-21)
22. <https://www.amnesty.org/en/latest/news/2020/04/sri-lanka-religious-minorities-must-have-their-final-rites-respected/> [↑](#footnote-ref-22)
23. *Ibid.* [↑](#footnote-ref-23)
24. <https://rsf.org/en/sri-lanka> [↑](#footnote-ref-24)
25. *Ibid.*  [↑](#footnote-ref-25)
26. <https://www.wsws.org/en/articles/2020/04/29/jaff-a29.html> [↑](#footnote-ref-26)
27. *Supra* note 12. [↑](#footnote-ref-27)
28. *Supra* note 12. [↑](#footnote-ref-28)
29. <https://www.wsws.org/en/articles/2020/04/09/medi-a09.html> [↑](#footnote-ref-29)
30. <http://www.asiantribune.com/node/94059> [↑](#footnote-ref-30)
31. <https://www.wionews.com/sri-lanka/sri-lanka-to-keep-11th-anniversary-of-victory-over-ltte-low-key-amidst-covid-19-299429> [↑](#footnote-ref-31)
32. <https://groundviews.org/2020/04/05/the-president-in-the-pandemic/> [↑](#footnote-ref-32)
33. *Supra* note 12. [↑](#footnote-ref-33)
34. <http://www.adaderana.lk/news.php?nid=61577> [↑](#footnote-ref-34)
35. *Supra* note 12. [↑](#footnote-ref-35)
36. *Supra* note 12. [↑](#footnote-ref-36)
37. <https://www.tamilguardian.com/content/over-40000-people-arrested-sri-lanka-violating-curfew> [↑](#footnote-ref-37)
38. *Supra* note 12. [↑](#footnote-ref-38)
39. *Supra* note 12. [↑](#footnote-ref-39)
40. <http://www.adaderana.lk/news/62642/over-1500-curfew-violators-arrested-within-24-hours> [↑](#footnote-ref-40)
41. *Supra* note 12. [↑](#footnote-ref-41)
42. *Supra* note 4. [↑](#footnote-ref-42)
43. PEARL Statement ‘Sri Lankan Presidential Task Forces Signal Deepening Militarization’ [↑](#footnote-ref-43)
44. *Ibid*. [↑](#footnote-ref-44)