Rights, Regulation and Ritualism — Country Studies
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I INTRODUCTION

This paper is part of a research project, ‘Strengthening the International Human Rights System: Rights, Regulation and Ritualism’, funded by the Australian Research Council’s Laureate Fellowship scheme. The project focuses on a problem endemic to the international human rights system: why are international human rights standards widely accepted in theory but so hard to implement in practice?

Although the international community has created a complex and sophisticated system of human rights standards, these principles are regularly sidelined or ignored by countries that have accepted them. The project draws on regulatory scholarship to analyse how states respond to human rights principles, focusing particularly on the notion of ritualism. In a classic sociological text, Robert Merton identified five modes of individual adaptation to a normative order: conformity, innovation, ritualism, retreatism and rebellion.¹ These modes appear equally at the level of organisations and among collectivities. All five modes are evident in responses to international human rights regulation, but ritualism is particularly pervasive. It has been pithily defined as ‘acceptance of institutionalised means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves’.² The concept of regulatory ritualism, then, can be understood as formal participation in a system of regulation while overlooking its substantive goals.

One aspect of the research project is to identify and analyse the ways that regulatory ritualism operates in the international human rights system through a series of case studies, of which this paper is one. The case studies document techniques of ritualism employed by countries participating in the international human rights system, with particular reference to the United Nations’ Human Rights Council Universal Periodic Review (UPR).³ The papers also look at the extent to which human rights treaties are implemented within a country’s legal framework, and the efficacy of independent oversight mechanisms such as judiciaries and National Human Rights Institutions. Collectively, they identify instances and document techniques of ritualism, as well as considering how rights are realised and ritualism avoided in particular contexts.

¹ Social Theory and Social Structure (Free Press, 1968) 194.
² John Braithwaite, Toni Makkai and Valerie Braithwaite, Regulating Aged Care (Edward Elgar, 2007) 7.
II SRI LANKA

The Democratic Socialist Republic of Sri Lanka attained independence in 1948, and became a republic in 1972. Its current constitution was introduced in 1978. The last 30 years of Sri Lanka’s history have been marked by a bloody civil war, waged in Sri Lanka from 1983 to May 2009. The war was fought between the Liberation Tigers of Tamil Elam (LTTE or Tamil Tigers), a militant organisation based in Sri Lanka’s north, and the Sri Lankan government. The LTTE were fighting to create an independent state in the north and east of Sri Lanka for members of the ethnic Tamil population—an goal that was forcefully resisted by the Sri Lankan government, who see the LTTE as terrorists. The LTTE were defeated by the Sri Lankan military in May 2009, under the government of President Mahinda Rajapaksa. Rajapaksa’s government faced strong criticism from the international community for the way that it finally suppressed the LTTE—reportedly, 7,000 civilians were killed from January to May 2009 alone, and the conflict left 265,000 ethnic Tamils displaced in overcrowded internally displaced person (IDP) camps.4

Rajapaksa was elected President again in 2010, riding on popularity gleaned from ending the civil war. In 2015, in a surprise outcome, he was defeated in Presidential elections by Maithripala Sirisena, who became President in January 2015.

III THE DOMESTIC SPHERE

A Monist or Dualist Legal System?

The Sri Lankan legal system is very strongly dualist. In the Singarasa case, Sri Lanka’s Supreme Court confirmed that treaties are not operative unless implemented by statute.5 Further, if a treaty or convention is ‘inconsistent with the provisions of the Constitution or written law’, the President has no power to commit Sri Lanka to the treaty.6

B Constitutionally Entrenched Rights?

Chapter III of the Constitution contains a number of civil and political rights.7 For example, art 10 provides that ‘[e]very person is entitled to freedom of

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5 Noel Dias and Roger Gamble, ‘Nallaratnam Singarasa v Attorney General: The Supreme Court of Sri Lanka Confirms Limited Human Rights Protection for Sri Lankan Citizens’ (2006) 18 Sri Lanka Journal of International Law 445, 449. The Court stated: ‘a treaty or covenant has to be implemented by the exercise of legislative power by parliament and where found necessary by the People at a Referendum to have internal effect and attribute rights and duties to individuals. This is in keeping with the dualist theory which underpins our Constitution’: see Singarasa v Attorney-General SC SPL (LA) No 182/99 (2006), available at <http://www.geneva-academy.ch/RULAC/pdf_state/sc-judgement1.pdf> (‘Singarasa’).
thought, conscience and religion, including the freedom to have or to adopt a
religion or belief of his choice.' Article 11 provides that '[n]o person shall be
subjected to torture or to cruel, inhuman or degrading treatment or
punishment.' Some of the provisions on fundamental rights have addendums
which qualify the absolute quality of the rights enshrined. For example,
although art 13(4) provides that '[n]o person shall be punished by death or
imprisonment except by order of a competent court', the paragraph continues
that '[t]he arrest, holding in custody, detention or other deprivation of personal
liberty of a person, pending investigation or trial, shall not constitute
punishment.' The High Courts of Sri Lanka, the Court of Appeal and the
Supreme Court are all empowered to issue writs of habeas corpus.

Some of the rights in arts 12 to 14 of the Constitution are restricted by the
provisions of art 15. For example, articles providing for freedom of speech
and expression, freedom of peaceful assembly and freedom of
association may each 'be subject to such restrictions as may be prescribed
by law in the interests of racial and religious harmony'. Prohibitions against
non-discrimination, arbitrary arrest and indefinite custody, as well as the
principle of innocence until proof of guilt and the retrospective operation of
criminal laws, can all be abrogated in the interests of 'national security'.
Such restrictions are spread out over several provisions, so that the reader
does not get the cumulative effect of a number of rights curtailments within
one provision.

C Implementation of Human Rights Treaties

1 International Covenant on Civil and Political Rights (ICCPR)

The government enacted the International Covenant on Civil and Political
Rights Act in 2007, the object of which is to 'enact appropriate legislation to
give effect to those civil and political rights referred to in the [...] Covenant, for
which no adequate legislative recognition has been granted.' Not all ICCPR
rights are covered however. There is no provision made, for example, for the
right to life.

8 Ibid art 154P(4).
9 Ibid art 141.
10 Ibid art 126(3).
11 Ibid art 14(1)(a).
12 Ibid art 14(1)(b).
13 Ibid art 14(1)(c).
15 Ibid art 12(2).
16 Ibid art 13(1).
17 Ibid art 13(2).
18 Ibid art 13(5).
19 Ibid art 13(6).
20 Ibid arts 15(7) and 15(1).
21 Human Rights Committee, Consideration of Reports Submitted by States Parties under
Article 40 of the Convention—Fifth Periodic Reports of States Parties due in November
2007—Sri Lanka, UN Doc CCPR/C/LKA/5 (31 January 2013) [91].
Much of the legislation providing for fundamental rights is undercut by the Prevention of Terrorism Act 1978 (PTA Act) and associated regulations, which allow arrest for “unspecified “unlawful activities” without warrant and permit detention for up to 18 months without producing the suspect before a court.”\(^\text{22}\) Indefinite detention is permitted via a Magistrate’s order. Government officials are immune to prosecution for wrongful acts, and legal proceedings are prohibited if an official acted ‘in good faith’ or in ‘pursuance of any order made or direction given’ under the PTA Act.\(^\text{23}\) The Human Rights Committee has commented that it is:

> concerned that, notwithstanding the lifting of the emergency regulations, provisions similar to that of the emergency regulations continue to be applied within the framework of the Prevention of Terrorism Act, including restrictions on freedom of expression and association, arbitrary searches and arrests, prolonged detention without charge or trial and the reversal of the burden of proof when detainees allege that they have made confessions as a result of torture or ill-treatment (arts. 4, 7, 9, 14, 19 and 22).\(^\text{24}\)

The scanty legislative framework that implements the ICCPR is often ignored. As at 2014, reports of violations of civil and political rights included:

- extrajudicial killings that go investigated and are reportedly committed by state agents;\(^\text{25}\)
- attacks and harassment occasioned against journalists, pro-Tamil advocates, civil society and lawyers;\(^\text{26}\)
- widespread torture and assault of detainees, as well as enforced disappearances;\(^\text{27}\)
- arbitrary search and arrests under the PTA legislation\(^\text{28}\) and inadequate conditions in detention and IDP camps.\(^\text{29}\)

In its most recent set of Concluding Observations, the Human Rights Committee expressed its concern surrounding the independence of the judiciary in Sri Lanka, and the absence of fetters on Presidential power. In 2010, Rajapaksa’s government introduced an Eighteenth Amendment to the Constitution which gave the President almost unfettered discretion over the appointments of judges and the members of independent oversight


\(^{23}\) Human Rights Watch, above n 22.


\(^{25}\) Ibid [14].

\(^{26}\) Ibid [21].

\(^{27}\) Ibid [16].

\(^{28}\) Ibid [11].

\(^{29}\) Ibid [17], [18] and [13].
commissions. This has been off-set by the actions of President Sirisena, who in May 2015 enacted a Nineteenth Constitutional Amendment to curtail the President’s powers and re-institute the original procedure for judge selection.

2 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR has not been given full effect in Sri Lanka’s legal system. Socioeconomic inequality is rife, as the country faces numerous problems resulting from the civil war. During the civil war, widespread deprivation of basic rights was reported to have occurred in IDP camps, exacerbated by the restrictions placed on international aid agencies. As citizens sought a return to normalcy after the end of the war, and returned to their local areas of residence, there have been widespread reports of government or military actors appropriating civilian land for their own purposes or profit—for example, in building tourist facilities, or entering into private deals with developers. There has been no uniform or transparent policy of compensation or redress for those owning land, and land distribution policy is enacted in a way that is discriminatory to female landholders.

The Concluding Observations issued in late 2010 observed a 15-year delay in the submission of Sri Lanka’s National Report. After noting that the Covenant has not been fully implemented in domestic law, the Report cites the damaging impact of the emergency regulations on the full realization of
economic, social and cultural rights in Sri Lanka. The reported violations include:

- high levels of corruption undermining realisation of economic, social and cultural rights and associated impunity;
- discriminatory behaviour and stigma against those living with disabilities;
- harsh living and working conditions of plantation workers and widespread sexual harassment;
- malnutrition affecting nearly one third of all children;
- a 10 per cent maternal mortality rate due to clandestine abortions;
- mental health services which remain insufficient to cope with widespread post-conflict mental disorders;
- a fragmented social security system and disparity of treatment due to shortcomings in management and coordination, corruption and fraud;
- that the female unemployment rate has remained twice as high as the male rate for the past decade;
- the prevalence of sexual assault against children, including in child sex tourism; and
- conversion of the traditional land of the Veddah (Sri Lanka’s indigenous peoples) into a national park, leading to socioeconomic marginalisation and exacerbating the existing stigmatisation of Veddah people.

Sri Lanka was commended for its achievements in augmenting primary school enrolment and gender parity, and for its ‘significant progress towards the achievement of the Millennium Development Goals’.

3 Convention on the Rights of the Child (CRC)

The CRC has still not been fully implemented in national legislation. According to the Committee on the Rights of the Child, the principle of ‘best interests of the child’ has not been consistently applied in legislation,

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39 Ibid [7]. Although the state of emergency has been lifted, damaging regulations continue under the PTA Act: CAT Concluding Observations, UN Doc CAT/C/LKA/CO/3-4, [10].
40 ICESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [12].
41 Ibid [14].
42 Ibid [13].
43 Ibid [20].
44 Ibid [33].
45 Ibid [34].
46 Ibid [35].
47 Ibid [23].
48 Ibid [16].
49 Ibid [27].
51 Ibid [26].
52 Ibid [5].
administrative and judicial proceedings, nor in policies and programs relating to children.\textsuperscript{54}

The Concluding Observations issued by the Committee on the Rights of the Child in late 2010 are lengthy and rigorous. Aside from commenting on deficiencies in how the government monitors and regulates children’s rights, it elaborates in extensive detail the many reports it has received on the ways in which children suffer rights violations in Sri Lanka. These include:

- persistent discrimination against children belonging to Veddha, Muslim and Tamil communities, particularly those living in tea plantations. Persisting discrimination exists against girls, rural children, refugee and internally displaced children, children of overseas workers, children in institutional care and children with disabilities.\textsuperscript{55}
- that notwithstanding legislation which increased the minimum age of employment from 12 to 14 and enhanced penalties for violation,\textsuperscript{56} considerable numbers of children are engaged in child labour;\textsuperscript{57}
- that 40,000 children work as prostitutes, and that Sri Lankan legislation is rarely enforced against those who have engaged in commercial sexual exploitation of children;\textsuperscript{58}
- the physical, psychological and social impact that massive labour migrations of women have on the rights and well-being of children;\textsuperscript{59}
- the widespread and growing child abuse and neglect;\textsuperscript{60}
- that Sri Lanka is a common destination for child sex tourism;\textsuperscript{61}
- that corporal punishment remains lawful in schools, in the home and in alternative care settings;\textsuperscript{62}
- that children are trafficked internationally and internally;\textsuperscript{63}
- that children in many circumstances are institutionalised for long periods of time;\textsuperscript{64}
- that a large proportion of Sri Lanka’s families and children continue to live in extreme poverty;\textsuperscript{65}
- the legal minimum age of criminal responsibility is eight years, with sentencing which is severe and disproportionate.\textsuperscript{66}

Modest successes have been made in some areas. The Committee on the Rights of the Child commended Sri Lanka for its ‘remarkable achievements in reducing infant, child and maternal mortality and continuous efforts to provide

\textsuperscript{54} Ibid [30].
\textsuperscript{55} Ibid [28].
\textsuperscript{56} Ibid [4(c)].
\textsuperscript{57} Ibid [65].
\textsuperscript{58} Ibid [69].
\textsuperscript{59} Ibid [44].
\textsuperscript{60} Ibid [48].
\textsuperscript{61} Ibid [71].
\textsuperscript{62} Ibid [40].
\textsuperscript{63} Ibid [73].
\textsuperscript{64} Ibid [40].
\textsuperscript{65} Ibid [60].
\textsuperscript{66} Ibid [77].
universal access to maternal and child health-care services’, as well as the ‘significant progress achieved over the years in the areas of school enrolment, literacy and gender equality.’

The civil war had a large impact on the realisation of child’s rights. During the war, many children were recruited by both sides to fight, despite a law prohibiting the recruitment of children in armed conflict that was introduced in 2006. In 2010, the Committee reported that Sri Lanka had not investigated the deaths of hundreds of children during the final five months of the conflict as a result of alleged shelling of civilian areas and the deliberate deprivation of humanitarian assistance.

(a) OP-CRC on the Involvement of Children in Armed Conflict

The Committee on the Rights of the Child welcomed legislative reform which penalises the engagement or recruitment of armed conflict, but expressed serious concern that ‘there has been so far [in 2010, four years after the law was enacted] no prosecution under the new law and that all those who recruited and used children continue to enjoy impunity.’ According to the Committee, the whereabouts of hundreds of missing children had not been clarified. Children face risks associated with un-detonated landmines and some children, suspected of security-related offences, have been detained under the emergency regulations and the PTA Act. The Committee stated its opinion that an emergency regulation relating to child-friendly rehabilitation for children associated with armed groups ‘does not comply with international juvenile justice standards’. Positive aspects of the report noted that children formerly associated with the armed conflict will never face prosecution (despite the Committee’s concern that this has not been codified in any official documentation), and that a subcommittee under the supervision of the Chairman of the national Child Protection Authority has been established to provide psychological support for former child combatants.

4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

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67 Ibid [52].
68 Ibid [62].
70 CRC Concluding Observations, UN Doc UN Doc CRC/C/LKA/CO/3-4, [32]. Although the LLRC report was released in 2011, its validity has been questioned for a number of reasons, see below under section III(E) at 15–16.
72 Ibid [22].
73 Ibid [14].
74 Ibid [20].
75 Ibid [32].
76 Ibid [34].
77 Ibid [38].
78 Ibid [42].
Sri Lanka has a *Convention Against Torture Act 1994*. Despite this, the UN Committee against Torture in its most recent set of Concluding Observations reiterated its view that ‘the definition of torture included in […] [the Act] does not entirely reflect the international agreed definition set out in the Convention’.79 According to the Act, torture is ‘any act which causes severe pain, whether physical or mental’, while the Convention refers to ‘severe pain or suffering’. The definition that is used in the Sri Lankan legislation excludes acts that are not violent per se, but nevertheless inflict suffering. Additionally, many of the safeguards against torture contained in Sri Lanka’s legislative framework have either been rendered ineffective, inoperable or non-applicable under the government’s emergency laws.80

Even after the end of the civil war, torture, ill-treatment, and sexual violence continued in many parts of the country, with reports suggesting its perpetration by state actors, including the military and the police.81 Allegations exist that victims are selected on an arbitrary basis.82 These reports stand despite Sri Lanka repeatedly stating that it has a ‘zero tolerance’ policy on torture.83 The PTA Act provides that all confessions obtained by police at or above the rank of Assistant Superintendent (even if coerced) are admissible, and the burden of proof is on the accused to prove that the confession was made under duress.84

The Committee against Torture’s Concluding Observations, issued in late 2011, attends in detail to the varying settings in which torture and ill-treatment has allegedly occurred in Sri Lanka, canvassing secret detention centres, police stations and prisons (including deaths in custody), detention facilities and IDP camps. The Committee looked at the absence of fundamental legal safeguards and the extraordinary anti-terrorism measure under the PTA Act, the precarious position of human rights defenders, lawyers, and civil society in Sri Lanka, the necessity of witness protection, impunity and the insufficiencies of the accountability process, violence against women (including sexual violence), and the violence that is occasioned against Sri Lankan migrant workers. The Committee noted that enforced disappearance is not a separate offence under Sri Lankan criminal law,85 and also cited an occurrence unconnected with the civil war in which Sri Lankan peacekeepers in Haiti operating under UN auspices allegedly sexually exploited and abused minors.

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79 *CAT Concluding Observations*, UN Doc CAT/C/LKA/CO/3-4, [25].
81 *Ibid* [6].
83 See Committee against Torture, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Sri Lanka—Addendum—Information Received from Sri Lanka on Follow-Up to the Concluding Observations*, UN Doc CAT/C/LKA/CO/3-4/Add.1 (9 September 2013) [2].
84 *CAT Concluding Observations*, UN Doc CAT/C/LKA/CO/3-4, [11]. This report further states that ‘in most cases filed under the PTA the sole evidence relied upon is confessions obtained by an ASP or an officer above that rank’: at [11].
85 *Ibid* [9].
114 members of the Sri Lankan contingent were repatriated on disciplinary grounds.86

It is notable that over the course of the 2000s, the tone of UN oversight with respect to torture in Sri Lanka has gradually become more grave. From 1999-2002 an inquiry was conducted into Sri Lanka under the inquiry procedure mandated by art 20 of CAT. Despite pointing out that torture is ‘frequently resorted to’ in Sri Lanka, the report characterises violence as something as the state has difficulties controlling, rather than as State-sponsored (a position which is more prevalent in reports released towards the end of the decade). The report ends by stating:

[the Committee welcomes the many significant efforts undertaken by the Government of Sri Lanka to fight and prevent acts of torture. It welcomes the ceasefire agreement and expresses appreciation for the measures taken to implement nearly all the recommendations made by the Committee. The Committee points out, however, that the fight against torture is an ongoing process which requires the vigilance of the State party.87

Through this language, the government of Sri Lanka is seemingly denied the lion’s share of the blame—instead, it is granted a moderate chiding for its failure to keep internal forces in check.

5 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Sri Lanka last submitted a report to the UN Committee on Racial Discrimination in 2000. This may reflect the fact that the civil war was fought along ethnic lines. Allegations have surfaced that the PTA Act is applied in a discriminatory manner to Tamils.88

Discrimination against Tamils in Sri Lanka is long-standing: Tamils of Indian origin were stripped of their citizenship in 1948—although legislation was introduced to grant them their citizenship in 2003. In 2010, the Committee on Economic, Social and Cultural Rights criticised Sri Lanka for its failure so far to award citizenship rights under this legislation.89 Members of the Muslim and Christian populations are also the targets of racial discrimination in Sri Lanka.90

86 Ibid [23].
89 ICESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [13].
90 See Hampson, Sevón and Wieruszewski, above n 80, [23]. In 2008, the Internal Displacement Monitoring Centre of the Norwegian Refugee Council cited ‘government-sponsored movement of Sinhalese settlers into Tamil and Muslim areas, the movement of administrative boundaries seeking to reduce the size of minority populations in certain areas, as well as the declaration of minorities’ land as sacred for construction of Buddhist temples’: see Internal Displacement Monitoring Centre, ‘Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Universal Periodic Review Mechanism Established by the Human Rights Council in Resolution 5/1 of 18 June
The Concluding Observations issued by the Committee on the Elimination of Racial Discrimination in 2001 are succinct but dated. Many positive aspects are mentioned with respect to Sri Lanka’s involvement in human rights related initiatives, and its cooperation with the United Nations. The primary issues of concern expressed by the Committee relate to the PTA Act and emergency regulations; the situation of civilians living in the north and east; that a large number of Tamils of Indian origins had no citizenship rights; and that the ancestral forestland of Sri Lanka’s indigenous population has been turned into a national park. The Committee reminded Sri Lanka of its obligation to conduct exhaustive and impartial investigations into allegations of human rights violations involving racial discrimination and bring to justice those responsible.

6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In Sri Lanka, there is no legislation prohibiting discrimination against women. Indeed, Sri Lanka has a number of laws that enshrine gender-based discrimination. These include a Land Development Ordinance which gives preference to male heirs over females; Muslim Personal Law which allows marriage of girls as young as 12; as well as other culturally-designated systems of personal law (Kandyan and Tesawalamai) governing marriage and succession, which are discriminatory against women in many respects.

Evidence suggests that women’s rights are consistently undermined within Sri Lankan society. Problems include:
- the persistence of stereotypes regarding the roles of women and men;
- the persistent sociocultural values that condone domestic violence;

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91 CERD Report, UN Doc A/56/18, [324]–[331].
92 Ibid [332].
93 Ibid [333].
94 Ibid [334].
95 Ibid [335].
96 Ibid [336].
98 Ibid [16].
99 As an example, according to the Marriage and Divorce (Kandyan) Act 1952 (Sri Lanka), while a man can divorce a woman on the grounds of adultery (s 32(a)), for a woman to have the same right of divorce, her husband’s adultery must be ‘coupled with incest or gross cruelty’ (s 32(b)).
100 CEDAW Concluding Observations, UN Doc CEDAW/C/LKA/CO/7, [22].
the failure to use or prosecute offenders under the Prevention of Domestic Violence Act 2005. If the Act is used, delays between five and 12 years have been reported to occur before a case is concluded, and many cases are referred to mediation;\textsuperscript{102}  
the criminalisation of abortion, even in cases of rape or incest;\textsuperscript{103}  
the fact that that marital rape is only recognised in cases of judicial separation.\textsuperscript{104}  This problem is entrenched by the fact that ‘cultural sensitivities are used as a justification not to criminalize marital rape in all circumstances’;\textsuperscript{105}  
that women, in their education, develop lower skill areas of vocational and technical education as a result of gender stereotypes,\textsuperscript{106} are discriminated against in the labour market,\textsuperscript{107} and have limited access to knowledge on reproductive health, resulting in higher rates of teen pregnancy and HIV infection;\textsuperscript{108}  
that land distribution laws award property in the name of the ‘head of the household’—customarily only men, which has the effect of depriving women of their property rights when land is re-awarded by the government (as an example, after the 2004 tsunami);\textsuperscript{109} and  
that conflict-related rape and torture of women in coercive environments was reported both during and in the aftermath of the civil war.\textsuperscript{110}

Despite the fact that Sri Lanka elaborated a thematic action plan on women, the Committee on the Elimination of Discrimination against Women pointed out in its 2011 Concluding Observations that ‘the previous National Action Plan has never been adopted.’\textsuperscript{111} There were, at the time the report was issued, ‘no plans to adopt temporary special measures as a necessary strategy to accelerate the achievement of substantive equality between women and men’,\textsuperscript{112} nor have any measures been taken to encourage women’s participation in political life.\textsuperscript{113} The Committee noted with concern

\begin{footnotesize}
\begin{itemize}
\item 103 ICCPR Concluding Observations, UN Doc CCPR/C/LKA/CO/5, [10].
\item 104 Women and Media Collective, above n 102, [1].
\item 105 ICESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [25].
\item 106 CEDAW Concluding Observations, UN Doc CEDAW/C/LKA/CO/7, [32].
\item 107 Ibid [34].
\item 108 Ibid [36].
\item 109 Women and Media Collective, above n 102, [3].
\item 111 CEDAW Concluding Observations, UN Doc CEDAW/C/LKA/CO/7, [18].
\item 112 Ibid [20].
\item 113 Ibid [30].
\end{itemize}
\end{footnotesize}
the existence of violence against women and exploitative prostitution. The report contains some elaboration on problems related to socioeconomic rights, as well as the destructive impact of the conflict on women in Sri Lanka.

The Committee has lauded Sri Lanka for undertaking efforts to combat trafficking (involving a change to the legislation, as well as awareness-raising activities and the establishment of a task force). However, it expressed concern at the low number of convictions and punishments, and the lack of protective measures and safe homes for victims.

7 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)

Sri Lanka’s legislation protecting migrant workers does not operate in concordance with the CMW. Despite this, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families observed that Sri Lanka demonstrated a ‘commitment’ to migrant workers’ rights, as evinced by ‘national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms’ in place within the country.

The Committee characterised Sri Lanka as mainly a ‘country of origin’, with a large number of migrant workers overseas. After elaborating on the positive aspects of Sri Lanka’s legislative framework in this area and suggesting areas for reform, the Observations commence their discussion of the human rights of migrant workers and members of their families. The most pressing problem seems to be the abuse and ill-treatment of Sri Lankan citizens abroad, particularly women, many of whom are ‘underpaid and treated as virtual slaves.’ Four sets of Concluding Observations referred with concern to the reported abuse (including sexual abuse) faced by Sri Lankans who migrate for work: those under CAT, CESCR, CRC, and CEDAW, which goes some way to suggesting the urgency of the problem. Other reported violations include threats, work in degrading conditions, overly long working hours, insufficient food, no medical care, illegally low salaries, withheld pay and forced overtime. Sri Lanka seems to be engaged in a number of initiatives

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114 Problems related to education, health, employment and rural women are enumerated from in [32]–[38] of the Concluding Observations.
115 CEDAW Concluding Observations, UN Doc CEDAW/C/LKA/CO/7, [26].
117 Ibid [5].
118 Ibid [3].
119 Ibid [27].
120 CAT Concluding Observations, UN Doc CAT/C/LKA/CO/3-4, [24].
121 CESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [21].
122 CRC Concluding Observations, UN Doc UN Doc CRC/C/LKA/CO/3-4, [44]–[45].
123 CEDAW Concluding Observations, UN Doc CEDAW/C/LKA/CO/7, [42].
124 CMW Concluding Observations, UN Doc CMW/C/LKA/CO/1, [39].
to regulate the movement and employment of its citizens abroad. However, there is little cited protection for workers coming to Sri Lanka from abroad, who are subject to strict visa requirements that tether them to their institution of employment and specified profession. Non-citizen workers in Sri Lanka also do not have the guaranteed right of peaceful assembly, nor do they have the right to join a trade union.

8 Convention on the Rights of Persons with Disabilities (CRPD)

Sri Lanka signed the CRPD in 2007, but has not yet ratified it. The country enacted disability legislation in the form of the Protection of the Rights of Persons with Disabilities Act 1996. It also launched a National Policy on Disability in 2003. The act has been criticised for severely lacking ‘the provision of a codified statement of rights’, with only two provisions that prohibit discrimination on the grounds of disability. The UN Committee on Economic, Social and Cultural Rights commented in its Concluding Observations that the 2003 Policy has not yet been implemented, and expressed its concern that despite the ‘recent establishment of quotas for the employment of persons with disabilities, they remain discriminated against in their access to employment and highly stigmatized in the society.’ Progress towards protection of disability rights has been stymied by the civil war. One local NGO has cited the difficulties of collecting reliable data while the country is in conflict, or conducting meaningful monitoring. Owing to the lack of infrastructure that exists to support those living with disabilities, citizens often resort to institutionalisation of disabled children. Similarly, legislative provisions referencing disability in Sri Lanka ‘tend to be heavily medicalized and protective’ in their approach.

D Independent Bodies to Monitor and Scrutinise Rights Enforcement

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125 For example, the appointment of labour welfare officers abroad; bilateral agreements entered into with major labour receiving countries a compulsory registration scheme requiring registration prior to departure, and that service contracts must be signed in the presence of Bureau of Foreign Employment officers; and policy guidelines for the recruitment of migrant workers and amendments to legislation which penalise recruitment agencies which charge exorbitant fees: see ibid [29], [39], [43].

126 See the reservations to CMW, below.

127 CMW Concluding Observations, UN Doc CMW/C/LKA/CO/1, [25].


129 ICESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [14].

130 Ibid.

131 The Hill Country Disabled Group, Sri Lanka Government Policies <http://hcdg.org/govpolicy.htm>. The Committee on the Rights of the Child has also commented in its concluding observations that: ‘confusion and overlapping of powers and functions among the different ministries dealing with disability issues negatively affect the coordination of actions for children with disabilities.’ See CRC Concluding Observations, UN Doc UN Doc CRC/C/LKA/CO/3-4, [50].

132 ICESCR Concluding Observations, UN Doc E/C.12/LKA/CO/2-4, [14].

133 Campbell, above n 128, 80.
The most relevant body from the perspective of rights enforcement is the Human Rights Commission of Sri Lanka (HRCSL), established via a legislative instrument in 1996.

E How Effective are the Monitoring Bodies?

The HRCSL has a weak history of rights enforcement. An oft-cited problem is its lack of independence from the executive.\textsuperscript{134} Prior to 2010, members of the HRCSL were elected by a body known as the Constitutional Council. This body was abolished via the Eighteenth Constitutional Amendment and replaced by the President’s relatively unfettered discretion.\textsuperscript{135} Up until the passage of the Nineteenth Amendment to the Constitution in early 2015 by President Sirisena’s government, former President Rajapaksa was effectively permitted to hand-pick Commissioners.

Even prior to the Eighteenth Constitutional Amendment, evidence suggests that the HRCSL was not operating effectively or according to its mandate. One example of this is the three-month limitation period imposed in 2007 on the receipt of all complaints of rights abuses,\textsuperscript{136} which—in the context of a civil war where those suffering violations are likely to be fearful of reprisals and reluctant to come forward—is arbitrary and impracticable. Another example is the ‘blackout’ that was imposed on all HRCSL sub-offices in 2007, effectively stripping those outside Colombo of a mechanism of complaint.\textsuperscript{137} In 2007, the UN High Commissioner for Human Rights, Louise Arbour, stated that people from across a broad political spectrum and from various communities have expressed to me a lack of confidence and trust in the ability of existing relevant institutions to adequately safeguard against the most serious human rights abuses.\textsuperscript{138}

From 1991 to 2009, President Rajapaksa was involved in setting up nine Commissions of Inquiry to deal with allegations arising from the civil war.\textsuperscript{139} Additionally, in 2010, the Sri Lankan government set up a ‘Lessons Learnt

\textsuperscript{135} For more information on the abrogations of due process that occurred, see Transparency International Sri Lanka, ‘Adverse Impact of the 18th Amendment on Governance’ (Position Paper, 4 November 2010) <http://www.tisrilanka.org/?p=6430>. Mario Gomez comments that ‘Sri Lanka has witnessed a progressive decline in the independence and effectiveness of most of its democratic institutions over these past forty years. These include the police, the public service, the Parliamentary Oversight Committees, the Attorney Generals’ Department, the judiciary, the Public Service Commission, the Human Rights Commission, the Police Commission, and the Commission to Investigate All Forms of Bribery or Corruption (CIABOC).’ See Mario Gomez, ‘Keeping Rights Alive: Reform and Reconciliation in Post-War Sri Lanka’ (2011) 17 Asian Yearbook of International Law 117, 141.
\textsuperscript{137} Ibid 43. Hampson, Sevón and Wieruszewski refer to this as a ‘gagging order on human rights abuses’: above n 80, 41.
\textsuperscript{138} Statement of Louise Arbour, High Commissioner for Human Rights (Oct 13, 2007), cited in Gomez, above n 135, 142.
and Reconciliation Commission’ (LLRC). These commissions have been slow to lay blame or allocate responsibility. With respect to the LLRC outcomes, a Presidential task force was appointed to monitor implementation in 2012. The same year, the task force issued a national plan of action for implementation, with an update being provided in 2014. Commenting on the issue of implementation, former UN High Commissioner for Human Rights Navi Pillay ‘questioned the process and rationale for the Government’s selectivity in implementing only some of the recommendations […] certain recommendations had been watered down in the national plan of action’. Further, ‘in many instances, the specified activity in the national plan of action does not fully correspond to or address the recommendations’ made by the LLRC. These actions are characteristic of government-sponsored accountability mechanisms set up in other areas, which operate to stymie transparency, deflect blame, and block meaningful investigation. A court of inquiry of the Sri Lankan Army completed in early 2013 concluded that instances of shelling referred to in the LLRC report had not been caused by the army, and that ‘civilian casualties might have been due to unlawful acts by the LTTE.’ Although in November 2013 the government announced that the HRCSL would conduct a national inquiry into allegations of torture, the inquiry was ‘postponed indefinitely’ only one month later. According to former UN High Commissioner for Human Rights Navi Pillay, the government of Sri Lanka has

yet to satisfy the call made by the Human Rights Council for a credible and independent investigation into the allegations of serious human rights violations that persist or to take the necessary steps to fulfil its legal obligations to ensure justice or redress.

In March 2014 the Human Rights Council appointed three experts to conduct a comprehensive investigation into the alleged violations of international human rights law and humanitarian law and monitor domestic accountability processes. These experts were scheduled to report back in March 2015, but owing to the change of government in Sri Lanka (and after intense lobbying), the release of the report has been delayed to September 2015.

141 Ibid [29].
142 Ibid [31].
143 Ibid [38]. The report further notes that ‘the Commander of the Army who established the courts was also the commander of the security forces in the main battle zone of the conflict’ at [38]—a statement which does not inspire confidence in the impartiality of the process. See also Alston and Abresch, above n 134, 34.
144 HCHR Report, UN Doc A/HRC/25/23, [44].
145 Ibid [65].
F Cause of Action in Domestic Legislation?

The Supreme Court of Sri Lanka has sole and exclusive jurisdiction\(^\text{147}\) under Article 17 of the Constitution to hear claims of infringements of fundamental rights contained in the Constitution.

G How Effective is the Cause of Action?

The right to have the breach of a human right adjudicated is significantly curtailed by the applicable limitation period: an application must be filed within one month of the alleged infringement.\(^\text{148}\) Additionally, the Supreme Court is not easily accessible from the north and east of Sri Lanka, which are areas associated with the Tamil population.

Aside from the problems associated with the Eighteenth Amendment (now repealed) and the President's former power to select judges, the International Bar Association has cited the 'excessive influence of the Chief Justice', and the 'apparently inconsistent jurisprudence of the Supreme Court in relation to certain issues'.\(^\text{149}\) A past Chief Justice, Sarath Silva, allegedly used the case allocation system to distribute all the politically sensitive cases to himself and the most junior judges available,\(^\text{150}\) and used contempt of court powers inappropriately to stifle criticism from civil society.\(^\text{151}\) Chief Justice Shirani Bandaranayake was subject to impeachment orders and dismissed in 2012 after she refused to pass favourable judgement on a law proposed by the Rajapaksa administration. The law expanded the regulatory powers entrusted to Basil Rajapaksa, the Minister of Economic Development and President's younger brother, and also had the effect of authorising the transfer of 480bn rupees (roughly AUD4.6bn) into an executive-controlled fund exempt from parliamentary oversight.\(^\text{152}\) Although President Sirisena reinstated Chief Justice Bandaranayake to the Chief Justice post after he won the election, the reinstatement was largely symbolic, as she retired one day later and Kanagasabapathy Sripavan assumed the position.

Whether the culture of Sri Lanka's judiciary changes under the Sirisena administration remains to be seen. The reinstatement of the Constitutional Court is a positive development and the symbolic gesture in re-appointing Shirani Bandaranayake suggests the government is critical of the political motivations behind her dismissal.

H Use of Individual Complaints Procedures and Number of Communications


\(^{148}\) Ibid art 126(2).


\(^{150}\) Ibid 32.

\(^{151}\) Ibid 35.

From 2000 to 2011, 20 individual complaints have been made against Sri Lanka, all of them under the Optional Protocol to the ICCPR.153 However, according to the *Singarasa* judgement handed down by the Supreme Court of Sri Lanka in 2006, the President’s executive action in acceding to the ICCPR Optional Protocol was unconstitutional. Since that case, Sri Lanka has not cooperated with any submissions provided to it under Optional Protocol procedures.

The *Singarasa* complaint concerned a Sri Lankan citizen, Nallaratnam Singarasa, who was arrested in 1993 by Sri Lankan security forces while sleeping in his home. In 1995, Singarasa was convicted of five counts of conspiracy to overthrow the government under the PTA Act, and sentenced to 50 years imprisonment. The evidence relied on by the court was a ‘confession’ obtained after several days of torture. Singarasa had been forced to sign a confession statement using his thumbprint, despite the fact that he could not understand as it was typed in Sinhalese, and had no legal representation at the time. In 1999, the Court of Appeal reduced Singarasa’s sentence to 35 years. Singarasa submitted a communication under the ICCPR Optional Protocol in 2001. In 2004, the Human Rights Committee held that Sri Lanka was in violation of articles 14, paragraphs 1, 2, 3, (c) and 14, paragraphs 2, and 3(g), read together with article 2, paragraph 3, and 7 of the Covenant, and that Sri Lanka was under an obligation to provide Singarasa with an effective and appropriate remedy, including release or retrial and compensation.154

On the basis of these findings, Singarasa filed an application to the Sri Lankan Supreme Court to have his conviction set aside. The Supreme Court denied Singarasa’s appeal. It stated that the Human Rights Committee was not authorised to exercise ‘judicial power’. According to the Constitution only ‘[c]ourts, [t]ribunals, or institutions established or recognised by the Constitution or by the law’ could do so.155 Judicial power can only be allocated in Sri Lanka via an act of Parliament. Thus, the Court held that the President’s action in acceding to the Optional Protocol was unconstitutional, as it involved a granting of judicial power that bypassed parliament. The Court concluded by stating that the ‘accession […] [to the Optional Protocol] does not bind the Republic qua state and has no legal effect within the Republic.’156

According to this judgment, the findings of the human rights treaty committees are of no import, force or effect in Sri Lanka.157

156 Ibid.
IV REVIEW OF THE STATE BY THE UPR AND SPECIAL PROCEDURES

A. The Universal Periodic Review

Sri Lanka was reviewed in the UPR in 2012. One of the most significant pledges to come out of its 2008 review was the creation of a National Action Plan for the Promotion and Protection of Human Rights (NHRAP).158 In its National Report, and presentation to the UPR Working Group as part of the 2012 process, Sri Lanka commented on the progress of the NHRAP using examples of implementation selected in a relatively piecemeal fashion. These included preparation of draft legislation on occupational safety and the implementation of a national Trilingual policy.159 The implementation measures cited in the National Report were not, however, connected with any particular provisions in the NHRAP. In one of the preparatory documents for the UPR, the Office of the High Commissioner for Human Rights noted that there had not been widespread dissemination of the final NHRAP, nor had it been presented to Sri Lanka’s parliament.160

The language used by Sri Lanka in its National Report and state presentation suggests partial disclosure, or careful use of half-truths. During Sri Lanka’s state presentation, its representative commented that ‘[r]egarding allegations of intolerance or attacks against […] [civil society] organizations […] there was no [g]overnment policy to stifle criticism, activism or dissent, and […] the [g]overnment did not condone such attacks.’161 Of course, the absence of a policy to stifle criticism does not preclude any connection between attacks on civil society and government imperatives. Likewise, the fact that attacks were not condoned does not eliminate the possibility of any connection with the state. In this way, Sri Lanka was able to obfuscate by speaking of its position on rights violations in a roundabout way, and by failing to disclose hidden chains of responsibility that may operate within the country. The state’s capacity to do this is furthered by the multitude of actors that were involved in the civil war. Using the example of child recruitment, though the government enacted a law prohibiting child soldiers, the Karuna Group, a military faction reported to be complicit with the government, reportedly abducted children for...
combat in government-controlled areas. By ignoring the complex network of responsibility and leadership embedded in the civil war, it is easier for the government to evade direct responsibility.

On the basis of its National Report and state presentation, Sri Lanka is well-versed in the language of global human rights discourse. However, in the absence of any clear progress towards substantive accountability or rights enforcement, its sentiments seem ritualistic, and diffuse with jargon. An example of this is clear in Sri Lanka’s references to the NHRAP: ‘[a] time frame for implementation was in process. Thematic sub-committees had been created under the task force for better coordination and implementation. Recommendations were further sub-divided’. Further:

...specific examples of completion or substantial progress on activities were provided. Suggestions that only some of the recommendations were addressed for implementation and that there was no progress were unfounded.

Plans, sub-committees, investigations and examples are continually espoused, with little comment on the effect of these measures on civilian lives. Additionally, the use of the passive voice in the ‘Presentation by the State under review’ section allows Sri Lanka to make these statements without indicating who was responsible for all these initiatives, or further details about their efficacy.

In some cases, Sri Lanka makes blanket statements with great certainty, but without supporting evidence. Examples include: ‘[a]ction has been taken to combat sexual violence. Any correlation between military presence and sexual violence is unfounded.’ Or, that in the north of Sri Lanka, ‘the military had assisted civilians resume their normal lives.’

In the Interactive Dialogue, almost every state that spoke commended Sri Lanka on some aspect of its progress towards a fuller realisation of rights. The comments by states and the recommendations provided to Sri Lanka demonstrate that the international community has, at least to some extent, accepted the language and rhetoric surrounding the NHRAP and the LLRC, despite scrutiny which points to the flaws inherent in both these institutions. Switzerland was one of the few countries that refused to do this. Its recommendation to ‘[c]arry out an independent and credible investigation on the allegations of violations of human rights and international humanitarian law’ forms the central thrust of Navi Pillay’s report, published two years later. The 204 recommendations cover a wide range of rights issues, and seem fragmented in their emphasis. In the face of such widespread rights violations, the lack of focus and relatively soft tenor of the recommendations

164 Ibid [17].
165 Ibid [16].
166 See ibid 19.
suggest that the international community was unsure how to respond.\textsuperscript{167} This is confirmed by the vagueness of many of the recommendations.\textsuperscript{168}

Of the recommendations it received, Sri Lanka accepted 113 and rejected 91. Some of its rejections are significant. For example, it rejected a recommendation to ‘[f]ully cooperate with United Nations Human Rights mechanisms’,\textsuperscript{169} and rejected calls to ratify the \textit{Convention for the Protection of All Persons from Enforced Disappearance}.\textsuperscript{170} In the annex to the draft of the Working Group Report, where Sri Lanka stated its views on the recommendations it had received, it often rejected recommendations very briefly.\textsuperscript{171} Thus, to a recommendation by Thailand that Sri Lanka

\begin{itemize}
\item strengthen relevant legislations and administrative measures to ensure transparency and non-impunity in the judicial process on all alleged enforced disappearance cases including investigation, prosecution and reparation, which would help contribute towards its national reconciliation[.]
\end{itemize}

Sri Lanka responded with ‘[i]nsufficient clarity of language.’\textsuperscript{173}

Overall, Sri Lanka’s involvement in the UPR was characterised by a lack of cooperation on the part of the state. Sri Lanka seemed to deliberately obfuscate the human rights realities of its citizens, and was unwilling to accommodate suggestions for substantive avenues of reparation.

B \textit{Interaction with Special Procedures}

Sri Lanka has not issued an open invitation to all thematic special procedures. It has had the following Special Procedures visits:

\begin{itemize}
\item For example, South Africa, where the legislative framework on women’s rights is quite progressive, received multiple recommendations on women’s rights. In Sri Lanka, which has a retrogressive legislative framework and were wartime rape was reported to be widespread, a much lower proportion of recommendations addressed women’s rights and violence against women. See the country study on South Africa that forms part of this paper series.
\item Recommendation 128.43 (Burkina Faso); see UPR Info, above n 168, 9.
\item Recommendations on this issue were submitted by Argentina, Belgium and Iraq, France, Spain and Sweden. See ibid 7–8.
\item Recommendation 129.75: ibid 24.
\item Ibid 24 n 34.
\end{itemize}
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1997 and 2005);
- Working Group on enforced or involuntary disappearances (1999);
- Special Rapporteur on Freedom of Religion or Belief (2005);
- Special Rapporteur on torture (2007);
- Representative of the Secretary-General on Internally Displaced Persons (2007 and 2009);
- Special Rapporteur on Internally Displaced Persons (2013)
- Special Rapporteur on Migrants (2014); and
- Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (2015).

According to the Special Procedures website, the Working Group on Enforced or Involuntary Disappearances is scheduled to investigate in Sri Lanka between 3 and 15 August 2015, and two other visits have been agreed in principle or are under consideration—the Special Rapporteur on Freedom of Expression and the Special Rapporteur on Education. Six requests remain outstanding: on the independence of judges and lawyers; minority issues; human rights defenders; discrimination against women in law and in practice; enforced, summary or arbitrary executions; and freedom of association and assembly. These requests, and their associated reminders, were made between 1999 and 2015.

V NGO ASSESSMENTS

Throughout the course of the civil war, human rights NGOs have been active in bringing attention to the human rights situation in Sri Lanka. Over the years, a number of reports have been published canvassing various rights issues. The strong NGO interest is also reflected in the large number of civil society submissions received in preparation for Sri Lanka’s 2012 UPR. More recently, both Amnesty International and Human Rights Watch have used the election of President Sirisena to re-iterate their concerns about human rights in Sri Lanka, and to urge the government forward in pursuing a rights-based agenda. Both NGOs have emphasised the importance of involving international actors in any new accountability mechanisms that are developed.

Human Rights Watch Director Kenneth Roth’s letter to President Sirisena in February 2015 has highlighted a number of positive initiatives undertaken by the new government. These include:

- a pledge to evaluate all cases of detainees under the PTA Act on a case-by-case basis;
- the lifting of restrictions on media reporting;
- the end of internet censorship;
- the appointment of non-military personnel as governors to the north and east provinces;
- the removal of NGOs from the oversight of the Ministry of Defence;
- a pledge to form commissions to return land in the former war zones to their rightful owners;
- two speeches in which the President expressed sentiments of inclusiveness towards Sri Lanka’s minority communities; and
- a pledge to dismantle the surveillance apparatus that led government critics to fear their phones were being tapped and their emails were not secure.

In commentary unrelated to the civil war, the 2015 world reports of both Amnesty International and Human Rights Watch have cited incidents of racially motivated violence perpetrated against Muslims by ultra-nationalist Buddhist groups, particularly the Bodhu Bala Sena (BBS). In June 2014, protests led by BBS initiated riots leaving at least four Muslims dead, 80 injured, and numerous homes and businesses destroyed.178

VI RIGHTS RITUALISM

Sri Lanka’s human rights record is blighted by its recently concluded civil war, and the atrocities committed by both sides in the conflict. Fundamental rights were, and continue to be, undermined to a large extent in Sri Lanka, as the country deals with re-integration of its civilian population. Socioeconomic inequalities have been exacerbated by the war, and discriminatory legislative provisions prevent the possibility of equal rights.

In the immediate post-war environment, the government under former President Rajapaksa moved to strengthen its grip on power and dismantle structures of accountability for rights abuses occasioned during the conflict. Aside from passing the damaging Eighteenth Constitutional Amendment, the government curbed criticism by censoring the media, established military governance of the northern and eastern provinces, and fostered a climate of fear and oppression by abdicating responsibility for attacks against government dissenters, journalists, and civil society advocates. It also refused

to engage in any independent accountability mechanisms that would work to air the grievances of those who suffered during the war.\(^{179}\)

The unapologetic tone of this behaviour is reflected in Sri Lanka’s engagement with human rights mechanisms and UN bodies in the post-war period. In Sri Lanka, rights ritualism takes a different form than for example, in South Africa. Rather than starting with an apparently robust legislative framework and achieving patchy implementation,\(^{180}\) Sri Lanka has simply refused to change national laws and policies. The Sri Lankan military’s comprehensive victory in the civil war has allowed it to provide a one-sided narrative.\(^{181}\) For example, in its National Report to the UPR, Sri Lanka refers to the end of the civil war as a ‘humanitarian operation’—‘in May 2009 nearly 300,000 civilians were rescued’.\(^{182}\) No mention is made of the tens of thousands of civilian deaths that have been reported.\(^{183}\)

In this context, rights ritualism is not so apparent in the way that the Sri Lankan government fails to implement human rights treaties. In Sri Lanka, rights ritualism is implicit in the way that it communicates with the UN and other actors within the international community. Although it set up nine ‘Commissions of Inquiry’ between 1991 and 2009, as well as the LLRC, its efforts were not enough to dissuade the Human Rights Council from urging Sri Lanka to conduct ‘credible and independent investigation into the allegations of serious human rights violations’.\(^{184}\) Sri Lanka is well versed in the language of international human rights law and accountability—a ‘Commission of Inquiry’ sounds impressive to a concerned international community, despite the fact that the legitimate operation of such a commission could be undermined by a restricted jurisdiction,\(^{185}\) or the impugned independence of commissioners.\(^{186}\) Sri Lanka’s submissions to the

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\(^{180}\) As, for example, occurs in South Africa. See the country study on South Africa that forms part of this paper series.

\(^{181}\) See Gomez, above n 135, 142-3.


\(^{184}\) HCHR Report, UN Doc A/HRC/25/23, [65]. The report further comments on the initiatives and mechanisms for redress that have been set up by the Government: ‘none of these have the independence to be effective or to inspire confidence among victims and witnesses’: at [67].

\(^{185}\) As an example, the Commission of Inquiry on Disappearances, set up in 2013, only covers disappearances in the northern and eastern provinces between 1990 and 2009. Many disappearances have been reported in Colombo and other parts of the country, and will not fall within its scope. See ibid [43].

\(^{186}\) Another example is the military courts of inquiry set up pursuant to the National Plan of Action to implement the LLRC recommendations—the Commander of the Army who established the courts was also the commander of the security forces in the main battle zone of the conflict, and was effectively engaged in the overall military planning operations there’: ibid [26].
UN monitoring mechanisms are replete with the language of initiatives perennially actioned, investigations constantly underway. This seemingly revolving door of mechanisms obscures the fact that there has been little accountability on the government side for any of the rights violations that occurred during the war, or subsequently.

The agenda of Sirisena’s government has been more open to the protection of human rights. Early in his Presidency, Sirisena used his Independence Day speech to express conciliatory sentiments towards the Tamil population, emphasising the importance of ‘bringing together the minds of the people of the [n]orth and [s]outh, and through a process of reconciliation bring about co-existence and national understanding’.\(^{187}\) He also diluted the powers attaching to the Presidency by repealing the controversial Eighteenth Amendment to the Constitution, abolishing media censorship, and pledging to review the cases of all detainees held under PTA Act. However, signs of weakened accountability structures include the appointment of Sirisena’s brother to the chairmanship of Sri Lanka Telecom, and the appointment of Sirisena’s son-in-law as Minister of Defence. Overall, it is too early to tell whether the new government will change Sri Lanka’s approach to human rights. The PTA Act is still in place within the country.\(^{188}\)


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<th>Reservations / Declarations?</th>
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<td>ICCPR</td>
<td>Accession 11.06.80</td>
<td>No reservations.</td>
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<td></td>
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<td>The government has declared a number of derogations under article 4(3) of the Covenant on the basis of the proclamation of a state of emergency. Derogation periods on this basis have run consistently from 1983. Emergency regulations were promulgated by President Rajapaksa in 2005. These were amended in 2010. Although a number of article derogations were lifted in light of the end of the civil war, some remained in place on the justification that they were essential for national security. The derogations that were not repealed in 2010 include:</td>
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<td>• the derogation to art 9(3)—right to be brought before a judge, tried in a reasonable time, to be free from custody while awaiting trial; and</td>
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<td>• the derogation art 22(2)—that no restrictions may be placed on the right to freedom of association.</td>
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<td>Despite the lifting of the state of emergency in 2011, some derogations remain in place. Commentators on the issue have noted that a ‘termination date’ for some derogations was never specified. The Committee against Torture noted that new regulations under the PTA were enacted 24 hours before the state of emergency was lifted, which have the same effect of restricting legal safeguards. This suggests that lifting the state of emergency in 2011 was to some extent a formal and not substantive gesture.</td>
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<tr>
<td>First OP</td>
<td>Accession 03.10.97</td>
<td>Yes. The competence of the HRC to receive and consider communications is limited to those arising after the date on which the Protocol entered into force for Sri Lanka. The same matter must not be being examined / have not been examined under another procedure of international investigation or settlement.</td>
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191 CAT Concluding Observations, UN Doc CAT/C/LKA/CO/3-4, [10].
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<td>Second OP\textsuperscript{192} (Death Penalty)</td>
<td>No</td>
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<td>CRC</td>
<td>Ratification 12.07.91</td>
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<td>OP 1\textsuperscript{193}</td>
<td>Ratification 08.09.00</td>
<td>No reservations</td>
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<td>OP 2\textsuperscript{194}</td>
<td>Ratification 22.09.06</td>
<td>No reservations</td>
<td>Sri Lanka made a declaration articulating that there is no compulsory recruitment into the armed forces in Sri Lanka, that recruitment is voluntary, and the minimum age for voluntary recruitment is 18 years.</td>
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<td>OP 3\textsuperscript{195}</td>
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<td>Accession 03.01.94</td>
<td>No reservations</td>
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<td>Art 21 declaration?</td>
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<td>Accession 18.02.82</td>
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<td>Ratification 05.10.81</td>
<td>No reservations</td>
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<td>OP</td>
<td>Accession 15.10.02</td>
<td>Yes</td>
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| OP Art 8-9 inquiry procedure? | Accession 11.03.96 | No reservations | The government made four declarations:  
- The right of non-nationals to remain in the country shall be subject to existing visa regulations (art 8(2));  
- Citizenship rights flow from the father and in the event a child is born out of wedlock, from the mother (art 29);  
- Resident visas for expat workers are allowed in respect of some professions where there is a death of qualified personnel. Once employed, migrant workers cannot change their professions or the institutions where they work (art 49); and  
- Protection against dismissal, quantum of remuneration, period of employment ‘etc’ are governed by individual contract (art 54). |
| CMW      | Accession 11.03.96     | No reservations |       |
| Art 76   | No                     |                |       |
| Art 77   | No                     |                |       |
| CRPD     | Signed 30.03.07; not ratified | No reservations |       |
| CED      | No                     | No             |       |
| Art 31 declaration? | No             | No             |       |
| Art 33 inquiry procedure? | No             | No             |       |